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### Local democracy in Luxembourg

Monitoring Committee

Rapporteurs:<sup>1</sup> Dorin CHIRTOACĂ, Republic of Moldova (L, EPP/CCE)  
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#### *Summary*

This is the second report concerning the monitoring of local democracy in Luxembourg since the country ratified the Charter in 1987. The report notes the commitment the government has shown for several years to continuing and stepping up the administrative and procedural reform efforts for the benefit of the communes and citizens, in particular in the field of legislation, involving the combination of all legislative amendments with an impact at local level in a single “Omnibus” bill, and in the field of public procurement. The abolition of the districts and the good practice in terms of changes in boundaries, which are carried out on a voluntary basis after consulting the electorate in the communes concerned by means of a referendum, are among the many measures favourable to communes.

The rapporteurs underline the need clearly to delimit the powers of the state and the communes, relax the administrative supervision of the communes’ activities with a view to confining it to verification of strict legality and provide communes with sufficient own resources to enable them to exercise their powers, taking account of changes in their core tasks and income disparities between communes. The government is also asked to review the staff recruitment policy for communes so that they can determine for themselves the kind of internal administrative structures which they wish to have, independently and without having to seek ministerial approval. Formalising the procedure for consultation of SYVICOL by central government, which would co-ordinate the entire dialogue process, is also recommended in order to ensure that it becomes a permanent practice, in particular with regard to all matters concerning the communes. Lastly, the government is urged to sign and ratify, in the near future, the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207).

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<sup>1</sup> L: Chamber of Local Authorities / R: Chamber of Regions  
EPP/CCE: European People’s Party Group in the Congress  
SOC: Socialist Group  
ILDG: Independent Liberal and Democratic Group  
ECR: European Conservatives and Reformists Group  
NR: Members not belonging to a political group of the Congress

## Local democracy in Luxembourg

### RECOMMENDATION 380 (2015)<sup>2</sup>

1. The Congress of Local and Regional Authorities of the Council of Europe refers to:

a. Article 2, paragraph 1.b, of Statutory Resolution CM/Res(2011)2 relating to the Congress, which provides that one of the aims of the Congress shall be “to submit proposals to the Committee of Ministers in order to promote local and regional democracy”;

b. Article 2, paragraph 3, of Statutory Resolution CM/Res(2011)2 relating to the Congress, stipulating that “the Congress shall prepare on a regular basis country-by-country reports on the situation of local and regional democracy in all member States and in States which have applied to join the Council of Europe, and shall ensure, in particular, that the principles of the European Charter of Local Self-Government are implemented”;

c. its Resolution 307 (2010) REV2 on procedures for monitoring the obligations and commitments entered into by the Council of Europe member States in respect of their ratification of the European Charter of Local Self-Government;

d. the attached explanatory memorandum on local democracy in Luxembourg.

2. The Congress notes that:

a. Luxembourg signed the European Charter of Local Self-Government (ETS No. 122, hereafter “the Charter”), all provisions included, on 15 October 1985 and ratified it on 18 March 1987. The Charter entered into force in Luxembourg on 1 September 1988;

b. Luxembourg has not signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207);

c. the Monitoring Committee decided to monitor the state of local democracy in Luxembourg and its compliance with the European Charter of Local Self-Government. It instructed Dorin Chirtoacă, Republic of Moldova (L, EPP/CCE), and Marianne Hollinger, Switzerland (L, ILDG), to prepare and submit to the Congress, as rapporteurs, the report on local democracy in Luxembourg;<sup>3</sup>

d. the Congress delegation conducted the monitoring visit to Luxembourg, Schengen and Schuttrange from 3 to 5 March 2015. During the visit, the Congress met representatives of SYVICOL and experts, mayors, government officials, representatives of the Chamber of Deputies, the Council of State, the Constitutional Court and the Ombudsman.

3. The Congress wishes to thank the Permanent Representation of Luxembourg to the Council of Europe and all those whom it met on these visits for their readiness to assist the delegation and for the information which they kindly supplied.

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<sup>2</sup> Discussed and approved by the Chamber of Local Authorities on 21 October 2015 and adopted by the Congress on 22 October 2015, 3<sup>rd</sup> sitting (see document CPL/2015(29)5FINAL, explanatory memorandum), rapporteurs: Dorin CHIRTOACĂ, Republic of Moldova (L, EPP/CCE) Marianne HOLLINGER, Switzerland (L, ILDG).

<sup>3</sup> In their work, the rapporteurs were assisted by Professor Konstantinos TSIMARAS, consultant and member of the Group of Independent Experts on the European Charter of Local Self-Government, and the Congress secretariat.

4. The Congress notes with satisfaction:

a. the commitment the government has shown for several years to continuing and stepping up the administrative and procedural reform efforts for the benefit of the communes and citizens, in particular in the field of legislation, involving the combination of all legislative amendments with an impact at local level in a single "Omnibus" bill, and in the field of public procurement;

b. the relaxation of administrative supervision on the basis of Circular No. 2867 of 7 July 2010, which lists a whole series of communal acts which are no longer subject to the Minister of Interior's approval;

c. the abolition of the districts, something the communes have long been calling for. The law of 2 September 2015 abolishing the districts was approved by the Chamber of Deputies on 7 July 2015 and is due to enter into force on 3 October 2015.

d. the references to the European Charter of Local Self-Government in the opinions of the Council of State;

e. the good practice in terms of changes to local authority boundaries, which are carried out voluntarily and following consultation, by referendum, of the electorate in the communes concerned. Luxembourg's example is clearly a good practice which it would be worth bringing to the attention of other member States which are considering potential mergers.

5. The Congress notes with concern the following:

a. the problems with regard to the distribution of powers between the State and the communes;

b. the partial compliance with the principle that local authorities must be consulted on all matters concerning them directly;

c. the regulatory power over the internal organisation of Luxembourg communes' services, namely the fact that staff recruitment is subject to the prior approval of the Minister of the Interior;

d. the administrative supervision of activities and persons at local authority level, which is sometimes excessive;

e. the difficulties local authorities have with a system of local financing which does not always take account of changes in their core tasks and income disparities between communes;

f. the fact that the unit values for the land tax have not been reviewed since 1941, resulting in lost earnings for local authorities.

6. In the light of the above, the Congress asks the Committee of Ministers to incite the Luxembourg authorities to:

a. clearly delimit the powers of the State and the communes (Articles 4.1 and 4.2 of the Charter);

b. improve the dialogue between central government and the communes and SYVICOL on all matters concerning the communes by putting regular dialogue co-ordinated by central government on a more formal footing so as to ensure that it becomes a permanent practice (Article 4.6 of the Charter);

c. review staff recruitment policy for communes so that they can determine for themselves the kind of internal administrative structures they wish to have, independently and without having to seek ministerial approval (Article 6 of the Charter);

d. relax the administrative supervision of the communes' activities with a view to confining such control to verification of strict legality and review the supervision of individuals, i.e. the hiring of local government officers, the dismissal of mayors or aldermen and the dissolution of the communal council (Article 8.3 of the Charter);

*e.* provide communes with sufficient own resources to enable them to exercise their powers, taking account of changes in their core tasks and income disparities between communes (Article 9.1 and 9.2 of the Charter);

*f.* review the unit values for the land tax to take account of actual property prices so as to restore communal revenues (Article 9.3 of the Charter);

*g.* provide the communes with predictable, stable and sufficiently diversified income to enable them to perform their tasks regardless of the economic climate (Article 9.4 of the Charter);

*h.* review the criteria and formula for financial equalisation, taking account of the size of the communes (Article 9.5 of the Charter);

*i.* consider in the near future signing and ratifying the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207).

7. The Congress invites the Committee of Ministers of the Council of Europe to take into consideration the present recommendation on local democracy in Luxembourg, as well as the explanatory memorandum, in its activities related to this member State.

# Local democracy in Luxembourg

## EXPLANATORY MEMORANDUM

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## **1. Introduction: aim and scope of the visit, terms of reference**

1. In accordance with Article 2 of Statutory Resolution CM/Res (2011)2 of the Committee of Ministers, the Congress of Local and Regional Authorities of the Council of Europe (hereafter “the Congress”) regularly prepares reports on the state of local and regional democracy in the member states and candidate countries.

2. Luxembourg acceded to the Council of Europe on 5 May 1949. It is one of the Organisation's founder countries. On 15 October 1985, Luxembourg signed the European Charter of Local Self-Government (CETS No. 122, hereafter “the Charter”), adopting all its provisions. It was the first country to ratify this instrument, on 18 March 1987. The Charter entered into force in respect of Luxembourg on 1 September 1988.

3. Luxembourg has acceded to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106) and the Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 159). Luxembourg has not signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207).

4. The previous recommendation on local and regional democracy in Luxembourg was adopted by the Congress in 2005 (Recommendation 172(2005)).

5. A visit was made by a Congress delegation to Luxembourg, Schengen and Schuttrange from 3 to 5 March 2015, to examine the situation with regard to local and regional democracy in the country in the light of the Charter. The Monitoring Committee appointed Dorin Chirtoacă, Republic of Moldova (L, EPP/CCE), and Marianne Hollinger, Switzerland (L, ILDG), as rapporteurs and instructed them to prepare and submit to the Congress a report on local democracy in Luxembourg.

6. During this visit, the Congress met representatives of SYVICOL and experts, mayors, government officials, representatives of the Chamber of Deputies, the Council of State, the Constitutional Court and the Ombudsman. A detailed programme of the visit is appended to the report.

7. The rapporteurs wish to thank the Permanent Delegation of Luxembourg to the Council of Europe and all those whom it met on these visits for their readiness to assist the delegation and for the information which they kindly supplied.

## **2. Information concerning institutions / internal political context and elections**

8. Located between Belgium, France and Germany, the Grand Duchy of Luxembourg was established as a separate state under Article 67, para. 2, of the Final Act of the 1815 Congress of Vienna; it was part of the German Confederation until the latter was dissolved in 1866. The independence of the Grand Duchy of Luxembourg was recognised by its monarch, the King of the Netherlands and Grand Duke of Luxembourg, when the Treaty of London was signed on 19 April 1839. Until then, it had officially been administered as a province of the Netherlands.<sup>4</sup>

9. Luxembourg is a democratic, free, independent and indivisible state. Under the Constitution, sovereign power resides in the nation, meaning that any authority which may be established is an expression of the popular will.

10. The first Constitution was drawn up in 1841, two years after the country won independence in 1839, and was followed by the Constitutions of 1848 and 1856. The current Constitution dates from 17 October 1868, and the text has been revised many times since. The complete overhaul of the Constitution forms part of the steps initiated on 21 April 2009 with the tabling of a bill to revise the Constitution in the Chamber of Deputies by the Committee on Institutions and Constitutional Revision. Among the changes proposed by the committee, attention should be drawn to those concerning Chapter 10 of the Constitution on communes, which provides that the State must ensure that local and regional authorities have adequate resources for performing their tasks.

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<sup>4</sup> Cf. Article 1(2) of the Fundamental Law of the Kingdom of the Netherlands of 24 August 1815.

11. Article 33 of the Constitution states that "The Grand Duke shall be the head of the State, the symbol of its unity and the guarantee of national independence. He shall exercise executive power in conformity with the Constitution and the laws of the country". Since his accession to the throne on 7 October 2000, it is Grand Duke Henri who has been head of state. The Grand Duke's legal status is characterised by the representative nature of his office, the constitutionality of his powers, the inviolability of his person and his freedom from political responsibility. The Grand Duke's representative character is based on the constitutionally enshrined principle of the hereditary devolution of the crown.

12. Luxembourg is a parliamentary democracy in the form of a constitutional monarchy. Under such a system, the hereditary monarch is recognised as head of state, but his powers are limited by a higher legal authority, the Constitution, to which the head of state is subject, as are the other branches of government. According to Article 32 of the Constitution, the Grand Duke has no powers other than those formally vested in him by the Constitution and the laws. In other words, the Grand Duke may act only within a prescribed and strictly defined framework. On acceding to the throne, therefore, the Grand Duke swears the oath set out in Article 5 of the Constitution, before the representatives of the nation. The Constitution places the head of state above and beyond political parties and thus guarantees his impartiality. Accordingly, the Grand Duke may therefore not act alone and has no political responsibility. Any legal act on his part must be countersigned by at least one member of the government, who assumes political accountability for the relevant act through his or her countersignature.

13. The Luxembourg Parliament is unicameral. Legislative power is exercised by the Chamber of Deputies consisting of 60 deputies elected for a five-year term by secret, universal, direct and proportional suffrage. The institutional role of the Chamber of Deputies is defined in a legal framework based around the Constitution and the Chamber's Rules of Procedure. The Chamber's assigned tasks of exercising legislative power and supervising the government provide a safeguard for democracy in Luxembourg. According to the Constitution, the Chamber of Deputies possesses powers in financial matters and has the right to review government decisions. The rapporteurs were told that the opinions of local elected representatives (SYVICOL) are now always published, as working documents, in the Chamber of Deputies. As that was not the case before, this is an advance which ought to be underlined.

14. Judicial power is exercised by the courts and tribunals. The Constitution provides for the separation of powers, rendering the courts and tribunals independent in the performance of their functions. There is a Constitutional Court and two branches of jurisdiction, a judicial one (justices of the peace, district courts and the Supreme Court of Justice) and an administrative one (Administrative Tribunal, Administrative Court).

15. The Council of State, which was established by the 1856 Constitution, is an institution called upon to give its opinion on all government and parliament bills and any other matters referred to it by the government or by laws, as well as opinions on draft Grand Ducal regulations. Its organic law explicitly invests the Council of State with the a priori examination of the compliance of government and parliament bills with the Constitution, with international conventions and treaties and with general principles of law. It is worth noting that the Council of State has a quasi-right of veto. The Chamber of Deputies must vote twice in succession on the entire text of all government and parliament bills, with a minimum interval of three months between each vote. However, the Chamber of Deputies may waive the second vote, but any waiver only becomes effective if the Council of State grants its consent, which in practice it usually does. Occasionally, the Council of State may refuse to consent to the second vote being waived, in particular when it believes the bill to be incompatible with the Constitution, the rules of international law or general principles of law. In such cases, there is an interval of at least three months between the first and the second vote.

16. The city of Luxembourg is the capital and the seat of government. Luxembourg is where the Community institutions first began operating when the European Coal and Steel Community held its inaugural session there on 10 August 1952. The EU judicial and financial institutions still have their headquarters in the city.

17. Luxembourg has three official languages: Luxembourgish, French and German, along with the languages of the foreign residents, 15% of whom are of Portuguese origin.

### ***Internal political context and elections***

18. The government formed after the parliamentary elections on 20 October 2013 is a coalition between the Democratic Party, the Luxembourg Socialist Workers' Party and the Greens. The government, sworn in on 4 December 2013, consists of:

- a Prime Minister;
- a Deputy Prime Minister;
- 13 members with the title of minister;
- three State Secretaries.

19. The parliamentary elections on 20 October 2013, which saw a turnout of 91.2%, produced the following results:

- Christian-Social Party (CSV): 33.7% of the vote and 23 seats
- Luxembourg Socialist Workers' Party (LSAP): 20.3% and 13 seats
- Democratic Party (PD): 18.3% and 13 seats
- The Greens: 10.1% and 6 seats
- Alternative Democratic Reform Party (ADR): 6.6% and 3 seats
- The Left: 4.9% and 2 seats

20. The framework for municipal elections is set out in the amended Electoral Law of 18 February 2003 and the modified Communal Law of 13 December 1988. Communal elections are held every 6 years. The last ones took place on 9 October 2011. Communal councillors are elected directly by the local electorate. Since 1 January 2015, the Grand Duchy has comprised 105 communes, each of which forms a single electoral ward. Every commune in Luxembourg has a communal council from which the college of the mayor and aldermen is appointed. Voting is compulsory for everyone on the electoral roll. Voters may not ask somebody to vote in their place. Those who cannot take part in the vote must notify the state prosecutor with territorial jurisdiction of their reasons and provide the necessary supporting documents. Unwarranted abstention is punished by a fine. The fines are heavier for a second offence.

21. Voters who at the time of the election are living in a commune other than the one where they are called upon to vote and voters over the age of 75 are automatically excused. Non-Luxembourg citizens, whether EU nationals or not, who have been residing in Luxembourg for five years or more at the time of the application to be included on the electoral roll have the right to vote and to get elected in communal elections without losing their right to vote in the municipality of their country of origin.

### **3. Previous reports and recommendations**

22. The first monitoring visit on the situation with regard to local democracy in Luxembourg led to the adoption of Recommendation 172 (2005). In this recommendation, the authorities were asked to: a) take measures to strengthen local-authority powers in other areas, such as public order, education and spatial planning, b) introduce a procedure for the mayor to be directly appointed by the communal council; c) examine the feasibility of full-time employment of communal executives, d) improve the organisation of inter-communal co-operation, e) generally speaking, ensure the financial situation of local authorities in Luxembourg was improved in a number of ways in order to strengthen local authorities' control of their own resources, f) group municipalities together and develop inter-communal co-operation, g) create a legal basis for compulsory consultation of municipalities through their associations; h) revise the legislation on supervision of local authorities with a view to confining such control to a posteriori verification of strict legality.

23. According to SYVICOL, an association that represents local authorities in Luxembourg, local self-government has not improved since the adoption of Congress Recommendation 172(2005), with particular attention being drawn to the following:

- *A reduction in local self-government in matters relating to communal spatial planning*

24. Following a legislative reform, Article 2 of the amended law of 19 July 2004 sets only very general objectives for communal spatial planning, thereby leaving considerable scope for interpretation. Since local authority decisions about general and specific spatial planning schemes are subject to approval by the Minister of the Interior, the latter has considerable leeway when basing his or her decision on



the provisions of the article in question. Other legislation introduced later has likewise had an impact on communal spatial planning, in particular the law of 22 May 2008 on assessment of the environmental impact of certain schemes and programmes and the law of 19 December 2008 on water. Similarly, in its judgment no. 111/204 of 20 June 2014, the Constitutional Court interpreted the Interior Minister's powers extensively by granting him or her "power of rectification in the adoption and approval of communal spatial planning schemes, particularly in cases where the minister rules on claims submitted to him or her for the purpose of resolving difficulties".

25. SYVICOL informed the delegation that, generally speaking, under the terms of this legislative reform, spatial planning schemes were subject to additional, in some cases even conflicting, requirements and the communes had less room for manoeuvre than before. To complicate matters, there was also the problem of excessive bureaucracy.

*- A loss of competence in matters relating to schooling*

26. In the education sector, the amended law of 6 February 2009 has led to a reduction in the powers and responsibilities of the communes. One advantage of this law is that it introduced a clearer division of powers, with municipalities being assigned responsibility for infrastructure and operating costs, leaving central government in charge of teaching. Unfortunately, however, despite the curtailment of their powers and responsibilities, there has been no reduction in the financial contribution which communes are required to make towards staff costs, and which continues to be automatically deducted from the Communal Financial Grant Fund.

*- Transfer of responsibility for emergency services to a public institution*

27. Under Article 100 of the amended Communal Law of 13 December 1988, it is the responsibility of each commune to provide its inhabitants with a fire and rescue service. At the same time, there is also a civil protection division of the Emergency Services Authority, which is organised and financed entirely by the State. Since 2004, these two branches have formed two divisions of the Emergency Services Authority. While central government has long played a growing role in fire and rescue services (organisationally and through a grants policy), the latter have nevertheless remained essentially local services. Under the proposed emergency services reform, this dual system is to be swept away and the two existing branches merged within a single public institution run by central government and the communes. While this certainly means a loss of power and responsibility for the communes, SYVICOL is not, in principle opposed to emergency services being centralised and organised along national lines. That said, numerous practical details remain to be agreed, including as regards the communes' future involvement in decision-making and financing. In the meantime, the rapporteurs have been informed by the Ministry of the Interior, in the course of the consultation with the national authorities that, since the visit by the Congress delegation, the reform of the emergency services has taken shape with the submission of preliminary draft legislation by the Minister of the Interior. The draft legislation had been submitted beforehand to SYVICOL, which criticised the consultation period (three weeks) and the content, which it felt risked leading to "nationalisation of the emergency services". It was adopted by the cabinet on 31 July 2015 and tabled in the Chamber of Deputies on 18 August 2015. It proposes the establishment of a public entity of an administrative nature called "Grand Ducal Fire and Emergency Corps" (CGDIS) as a new body encompassing the emergency services. This involves intensive co-operation between central government and the communes, which are to share responsibility for emergency services in Luxembourg. The single body will allow integrated, effective and efficient management of all aspects concerning the organisation of the emergency services (operational, technical, administrative and financial). Synergies will avoid duplication and overcome the current distinction between civil protection and communal fire and rescue services. The single body will allow fairer funding of the emergency services, with costs being shared between the various players on the basis of real needs and the priorities set in the national plan for the organisation of emergency services.

*- A steady decline in non-earmarked revenue relative to grants*

28. According to SYVICOL, the observations made in 2004 remain valid today. Where revenues assigned to communes are concerned, the share accounted for by non-earmarked revenues has fallen relative to grants, resulting in a loss of local autonomy. At the same time, some of these grants are capped, and are apparently failing to keep pace with increases in the cost of living.

*- Administrative simplification and relaxation of controls*

29. The thresholds set in Articles 106 and 173ter of the amended Communal Law of 13 December 1988, which indicated the transaction values beyond which certain communal council decisions require the approval of the Minister of the Interior, were substantially increased by the Grand Ducal regulations of 23 April 2004 and of 3 August 2009. Some efforts have also been made to simplify procedures in the field of public procurement. Under the Grand Ducal regulation of 18 March 2009, for example, the thresholds below which less complex procedures may be used have been raised. The same regulation also introduced a number of procedural simplifications. The Minister of the Interior has likewise managed to encourage administrative simplification merely by issuing circulars. One of the best examples of this approach is Circular No. 2867 of 7 July 2010, which lists the various matters that are no longer subject to the Interior Minister's approval. More recently, on 11 August 2014, the Chamber of Deputies was presented with a bill to abolish the districts, as part of the wider administrative simplification programme. The law abolishing the districts was approved by the Chamber of Deputies on 7 July 2015.<sup>5</sup> It is due to enter into force on 3 October 2015. While SYVICOL has welcomed the move to abolish the districts, something the communes have long been calling for, it is disappointed that the reform does not include any plans to relax administrative supervision, even though this was among the points raised in Recommendation 172(2005). Some mention should also be made of the so-called "Omnibus" bill, tabled on 16 July 2014 and which SYVICOL helped draft, having been duly consulted by the government. The bill includes amendments to numerous laws, again in the interests of administrative simplification. The communes will benefit mainly in terms of local spatial planning in the broad sense.

#### **4. Honouring of obligations and commitments**

##### **4.1 Level at which the Charter is incorporated**

30. As has already been pointed out, Luxembourg was the first country to ratify the European Charter of Local Self-Government, via the law of 18 March 1987. Under Article 49 bis of the Constitution, "The exercise of the powers reserved by the Constitution to the legislature, executive and judiciary may be temporarily vested by treaty in institutions governed by international law". International conventions, therefore, must be ratified by statute in order to form an integral part of Luxembourg's domestic law. They prevail over any other legislative provision to the contrary. In the event of a conflict between a rule of domestic law and a rule of international law with direct effect in the domestic legal order, the rule established by international law must take precedence.<sup>6</sup>

31. The principle of local self-government laid down in the European Charter of Local Self-Government is recognised and accepted in domestic law, most notably in Article 107, paragraph 1, of the Constitution: "Communes form autonomous authorities, organised on a territorial basis, possessing legal personality and managing their own assets and interests through their subordinate bodies. (...)"

32. The Council of State, moreover, in its opinions on communal self-government, regularly refers (implicitly or explicitly) to the European Charter of Local Self-Government.

33. The Charter has been used on several occasions as a legal standard and for the purpose of conducting judicial reviews of legislation, including notably legislation on budgetary control of communal administration,<sup>7</sup> on the communal general interest<sup>8</sup> and on state oversight<sup>9</sup> with regard to local government hiring decisions.

##### **4.2 Constitutional and legislative developments**

34. Communes in Luxembourg are based on the principle of decentralisation which is enshrined in Article 107 of the Constitution and in the amended Communal Law of 13 December 1988. Article 107 of the Luxembourg Constitution states that "Communes form autonomous authorities, organised on a territorial basis, possessing legal personality and managing their own assets and interests through

<sup>5</sup> Following the adoption of the law, the rapporteurs have decided not to include in this report the sections initially planned concerning district commissioners.

<sup>6</sup> Council of State, 21 November 1984, Pasicrisie 26, p.174

<sup>7</sup> Administrative Court 6-11-1997, n°9598

<sup>8</sup> Administrative Tribunal 26-3-2001, n°12335 and Administrative Court 13-12-2001 n°13407C

<sup>9</sup> Administrative Court 22-3-2007 n°22256C

their subordinate bodies.” The same article provides for: a) a communal council directly elected by the inhabitants, b) a college of the mayor and aldermen chosen by the communal councillors, and stipulates that the commune’s responsibilities and the supervision of the communal administration must be governed by law. The main responsibilities of the communal councils are preparing the annual budget, adopting the communal accounts, setting communal taxes and framing communal rules and regulations. While granting communes local autonomy, i.e. the right to manage exclusively local interests themselves, the Constitution also provides for oversight of communal administration. This oversight, known as “administrative supervision” is exercised by the Grand Duke and the Minister of the Interior.

35. The provisions of the Constitution were transposed by the amended Communal Law of 13 December 1988,<sup>10</sup> which is further reflected in a rule that appears in Article 28, paragraph 1, of the Communal Law and which vests the communes with general jurisdiction in all matters of communal interest. Communal jurisdiction is, however, limited both by the power of central government (primacy of the national general interest over the local general interest) and by the natural power of private initiative (e.g. the powers of private individuals flowing from the freedom of trade and industry).

36. “City” status is conferred by statute, i.e. lawmakers specify in the relevant legislation which urban centres are to be called “cities”. Under Article 3 of the Communal Law, a statute is also required in order to change the name of a commune, at the request of the communal council. Note that in Luxembourg, mergers between communes are carried out on a voluntary basis, by means of a special statute.

### **4.3 Local authorities: territorial structures and powers**

#### **4.3.1 Territorial structures**

37. Luxembourg is divided into 105 communes. There are no *départements* or regions, so the commune is the only expression of the principle of territorial decentralisation. Administratively speaking, communes form autonomous authorities, on a territorial basis, possessing legal personality.

38. In each commune, there is a body consisting of the communal council which represents the commune, the college of the mayor and aldermen, and the mayor (Article 4 of the Communal Law).

#### **The communal council**

39. The communal council in each commune is directly elected by the inhabitants of the commune (Article 107, paragraph 2 of the Constitution and Article 5bis of the Communal Law). The number of members who make up the communal council depends on the size of the local population.

40. According to Article 5 of the Communal Law, communal councils, including members of the college of the mayor and aldermen, consist of:

- 7 members in communes with 999 inhabitants or fewer;
- 9 members in communes with between 1,000 and 2,999 inhabitants;
- 11 members in communes with between 3,000 and 5,999 inhabitants;
- 13 members in communes with between 6,000 and 9,999 inhabitants;
- 15 members in communes with between 10,000 and 14,999 inhabitants;
- 17 members in communes with between 15,000 and 19,999 inhabitants;
- 19 members in communes with 20,000 inhabitants or more,
- 27 members in the case of the communal council of the City of Luxembourg.

41. The number of communal councillors assigned to each commune is set by Grand Ducal regulation, on a proposal from the Minister of the Interior, having regard to the outcome of the general census of the population of the Grand Duchy of Luxembourg, which is held at least once every ten years. Where the last general population census took place more than five years before the date of the ordinary communal elections, the number of communal councillors assigned to each commune is determined on the basis of the actual population of each commune as at 31 December of the year

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<sup>10</sup> It should be noted that the law of 13 December 1988 replaced the law of 24 February 1843 which, for many years, was the local government charter. Luxembourg’s communes are principally based on the legislative legacy of the French Revolution. The French Decree of 17 December 1789 relating to the constitution of communes was the cornerstone of Luxembourg’s local government legislation.

preceding the communal elections. The Grand Ducal regulation which determines this number must be published not later than six months before the communal elections. As from 1 January 2016, the number of councillors per commune will no longer be set on the basis of the population census, but on the basis of the number of inhabitants registered in the communal registers of individuals.

42. The number of councillors may be increased or reduced only at the time of the ordinary communal elections. Members of the communal council are elected for a renewable 6-year term. Following the law of 13 February 2011 amending the amended Communal Law of 13 December 1988 and the amended Electoral Law of 18 February 2003, communal councils no longer take office on 1 January of the year following the elections, but “once the appointments and swearing in of the mayor and the aldermen as presented by the majority of the newly elected communal councillors have taken place.” The purpose of this change in legislation is to enable new communal councils to draw up the budgets for their first year of operation themselves.

43. The communal council has jurisdiction over all matters of communal interest such as communal property, revenues, expenditure, works, local public institutions, the appointment of the communal secretary and communal staff.

44. Under Article 107, paragraph 3, of the Constitution, the Grand Duke has the right to dissolve the communal council. Neither the Constitution nor the Communal Law specifies in what circumstances such dissolution may take place. The rapporteurs were informed at the meeting at the Chamber of Deputies, however, that under a proposed constitutional amendment, it was planned to do away with the provision entitling the Grand Duke to dissolve communal councils.

### **The college of the mayor and aldermen**

45. The college of the mayor and aldermen is an executive body responsible for the day-to-day running of the commune. In addition to purely communal responsibilities, it also acts, where the law so provides, as an instrument of central government. As such, it is responsible across the commune for the implementation of laws and police regulations under the supervision of the Ministry of the Interior.

46. In each commune, the college of the mayor and aldermen consists of one mayor and two aldermen. The number of aldermen may, however, be set, by Grand Ducal decree, at three in communes with between 10,000 and 19,999 inhabitants and at four in communes with 20,000 inhabitants or more, except in the City of Luxembourg where the number of aldermen may be set at six. The population size is derived from the last general census. The population size is determined as described in paragraph 42.

47. Under Articles 39 and 59 of the Communal Law, the mayor is appointed by the Grand Duke while the aldermen are appointed by the Minister of the Interior for a six-year term.

#### **“Article 39.**

The aldermen shall be appointed by the Minister of the Interior upon nomination by the majority of the newly elected communal councillors or the communal council. The candidate nominated shall be appointed *de jure*, unless he or she fails to meet an eligibility requirement or unless an incompatibility exists, in which case the Minister of the Interior shall request the newly elected communal councillors or the communal council to name a new candidate.”

#### **“Article 59.**

The mayor shall be appointed by the Grand Duke upon nomination by the majority of newly elected communal councillors or the communal council, for a term of six years. The candidate nominated shall be appointed *de jure*, unless he or she fails to meet an eligibility requirement or unless an incompatibility exists, in which case the Grand Duke shall request the newly elected communal councillors or the communal council to name a new candidate. His or her term of office shall be renewable. However, he or she shall cease to be mayor if, in the meantime, he or she ceases to be a member of the council.”

48. In some areas, the mayor and aldermen act as instruments of central government, hence this method of appointing them. They are primarily, however, instruments of local government, so it is essential that they have the confidence and support of the majority of members of the communal council.

### **The mayor**

49. Mayors are appointed and dismissed by the Grand Duke. Aldermen are appointed by the Minister of the Interior, with no distinction being made between “cities” and communes.

50. The mayor is the head of the communal council and of the college of the mayor and aldermen. He or she is responsible for enforcing laws and police regulations. The mayor may delegate his or her powers in whole or in part to one of the aldermen (Article 67 of the Communal Law), as he or she sees fit.

51. By definition, the mayor has an important and preponderant role within the college of the mayor and aldermen and the communal administration.

52. Like the college, the mayor acts both as an instrument of the commune and as an instrument of central government.

53. Under Luxembourg law, it is not prohibited to serve as mayor while at the same time sitting in the Chamber of Deputies. That said, voices have been raised at both national and local level, objecting to this arrangement.

#### 4.3.2 *Territorial reorganisation of Luxembourg*

54. The plan to reconfigure the local government landscape drawn up under the aegis of the government in 2009 and in consultation with SYVICOL should be seen as a policy response to the need to manage Luxembourg's territory in a sustainable manner and to provide it with local structures capable of meeting public expectations and the needs of the 21st century. During the consultation procedure, the Ministry of the Interior informed the rapporteurs that the government in office since 4 December 2013 had announced in its government programme that it would continue to encourage the process of communal mergers while respecting the principle of subsidiarity and local autonomy and that no mergers would be initiated without obtaining the prior consent of the citizens concerned by means of a referendum.

55. Apart from the mergers that occurred in 1920, 1977, 1978, 2004, 2005, 2009, 2011 and, more recently, in 2014, the communes' territorial boundaries have remained unchanged since they were established in the late 18th/early 19th century. With the rapid changes taking place in the economic and social spheres, however, all the communes are under pressure to provide their citizens with a wide range of services. Increasingly, the capital and day-to-day expenditure which local authorities are required to undertake is beyond their financial means. Amalgamating local entities is an ideal way of dealing with the growing level of debt and optimising administration and local service provision.

56. The criteria which served as a basis for the proposed boundary changes are as follows:

- the size of the communes (the minimum population for a commune to be considered viable being approximately 3,000 habitants and the minimum surface area, 100 km<sup>2</sup>)
- Geomorphologic characteristics
- Road/rail links
- Existing co-operation (intercommunal associations)

57. The Integrative Blueprint for Territorial and Administrative Reform in Luxembourg, as set out in the plan to reconfigure the local government landscape in 2009 made the case clearly for intercommunal mergers: "Any commune, whatever its size, has to meet a number of basic operating costs (communal buildings, communal staff), which place a considerable strain on the communal budget in the case of small local units, whilst having less of a financial impact in large communes. Some of the basic services have a standard cost which weighs heavily on the economies of small communes, even if that cost is reduced to a minimum. The administrative departments required in order to provide public services can be organised more efficiently when the size of the commune increases...".

58. A study carried out by the national authorities on the composition of the staff and the quality of public services in Luxembourg communes shows that communes with at least 3,000 inhabitants are the most viable in terms of self-government. Communes of that size are, by definition, better able to build and run schools by themselves, without having to neglect their commitments to provide and maintain water, sewerage and road infrastructure. The mergers are specifically directed, therefore, at communes with fewer than 3,000 inhabitants (see below, paragraph 105 et seq.). Intercommunal co-operation is also being encouraged.

## 5. Status of the capital city

59. Luxembourg (or Lëtzebuerg in Luxembourgish and Luxemburg in German), which is commonly referred to as the City of Luxembourg (to distinguish it from the country), is the capital of the Grand Duchy of Luxembourg and its largest city, located in the centre of the country.

60. The city covers 51.73 sq. km, which is about 2% of the country's total surface area.

61. The City of Luxembourg has seen strong growth, even in the current context of economic crisis. Its population and employment figures are steadily increasing. In 2009, the city had a population of 90,000 whereas by 2014 this figure had risen to 107,340<sup>11</sup> meaning that it had increased by 15% in only five years. On 23 October 2012, the City of Luxembourg officially became a major city when it registered its 100,000th inhabitant at the Bierger-Center (Citizen Centre). The city is a true cultural melting pot, in which over 60% of the population hold a foreign passport and 159 different nationalities live in harmony.

62. The city is subdivided into 24 urban districts: Beggen, Belair, Bonnevoie-Nord/Verlorenkost, Bonnevoie-Sud, Ville Haute, Cents, Cessange, Clausen, Dommeldange, Eich, Gare, Gasperich, Grund, Hamm, Hollerich, Kirchberg, Limpertsberg, Merl, Muhlenbach, Neudorf/Weimershof, Pfaffenthal, Pulvermuhl, Rollingergrund/Belair-Nord and Weimerskirch.

63. It is well known as a financial centre and, with its 220 financial institutions, it has the highest concentration of banks in Europe and offers its citizens a quality of life which places it 5th in the world ranking of the best cities to live in.<sup>12</sup>

64. Today, the City of Luxembourg is one of the three official seats of the European Union, housing its judicial and financial institutions, the European Court of Justice, the European Investment Bank and the European Court of Auditors, along with the Secretariat of the European Parliament, the EU Publications Office and various departments of the European Commission.

65. The powers and duties of the city's mayor are identical to those of other mayors and are governed by the Communal Law of 13 December 1988, modified by the law of 13 February 2011. The mayor is appointed by the Grand Duke from among the members of the communal council for a six-year renewable term.

66. Before taking up his or her functions, the mayor swears an oath to the Minister of the Interior or his or her representative. The mayor chairs the communal council and the college of the mayor and aldermen. He or she signs the regulations and orders of the communal council and the college, along with the commune's publications, decisions and correspondence.

67. The college of the mayor and aldermen of the City of Luxembourg constitutes the commune's executive body and supervises its day-to-day administration. Its members are chosen from among the communal councillors. Its sittings are chaired by the mayor and are not public. It is made up of six members including the mayor.

68. The Democratic Party and the Greens (déi gréng) have signed a coalition agreement, as a basis for political co-operation in the interests of the City of Luxembourg and its citizens for the 2011-2017 legislature.

69. The functioning of the City of Luxembourg is identical to that of the other communes and is subject to a number of rules laid down in the Communal Law and grand-ducal regulations. The Communal Law does not provide for the capital city to have any special status and this is not something the city authorities are asking for.

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11 <http://villedeluxembourg.lu/La+Ville/La+ville+en+chiffres.html>

12 <http://villedeluxembourg.lu/La+Ville/Histoire+de+la+ville/Cosmopolite+%20conviviale+et+europ%C3%A9enne.html>

## 6. Article-by-article analysis of the situation of local democracy in the light of the European Charter of Local Self-Government

### 6.1 Articles 2 and 3 - Principle and concept of local self-government

#### Article 2 - Constitutional and legal foundation for local self-government

The principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution.

70. The principle of local self-government is recognised in the Constitution and in legislation, and is reflected in Chapter IX of the Luxembourg Constitution entitled “Communes”, Article 107, paragraph 1, of which provides that “*communes form autonomous authorities, organised on a territorial basis, possessing legal personality and managing their own assets and interests through their subordinate bodies*”. The amended Communal Law of 13 December 1988 (including the implementing Grand Ducal regulations) lays down detailed rules on the organisation of the communal system. The Council of State and the ordinary and administrative courts ensure compliance with the requirements of the European Charter of Local Self-Government. Consequently, the recognition of local self-government by the Constitution and in domestic legislation is in compliance with Article 2 of the Charter. Likewise, as mentioned above, the importance that Luxembourg attaches to proper local self-government is demonstrated by the fact that the country was the first having ratified the European Charter of Local Self-Government.

#### Article 3 - Concept of local self-government

- 1 Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.
- 2 This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.

71. Article 107 grants communes the right to manage their own assets and interests through their subordinate bodies (paragraph 1). The second paragraph of Article 107 provides: “in each commune there shall be a communal council elected directly by the commune’s inhabitants; the conditions to vote or stand for election shall be regulated by law”.

72. Communal councillors are elected directly by the local electorate. Every commune in Luxembourg (there are 105 communes and 105 electoral wards) possesses a communal council from which the college of the mayor and aldermen is appointed. Voting is compulsory for everyone on the electoral roll. Voters may not ask somebody to vote in their place. A system of postal voting, available to certain voters under certain conditions, has been introduced to prevent abstention. A voter who wishes to vote by post must notify the college of the mayor and aldermen of the commune where he or she is registered and request, by ordinary letter or using a form provided by the commune, the requisite ballot material. Postal voting is available solely for voters over the age of 75, Luxembourg citizens resident abroad and those who for duly justified professional or personal reasons are unable to vote in person in the polling station they are assigned to. Those who cannot take part in the vote must notify the state prosecutor with territorial jurisdiction of their reasons and provide the necessary supporting documents. Unwarranted abstention is punished by a fine. Non-Luxembourg citizens, whether EU nationals or not, who have been residing in the Grand Duchy of Luxembourg for five years or more at the time of the application to be included on the electoral roll have the right to vote and to get elected in communal elections without losing their right to vote in the municipality of their country of origin.

73. In this respect, the constitutional and legislative provisions on the concept of local self-government (Article 3 of the Charter) are in compliance with the Charter.

## 6.2 Article 4 - Scope of local self-government

### Article 4 - Scope of local self-government

- 1 The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law.
- 2 Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.
- 3 Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.
- 4 Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.
- 5 Where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.
- 6 Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly.

74. Under Article 107 of the Constitution and Article 28 of the Communal Law, the communes regulate all matters of communal interest.

75. The Constitution itself directly assigns certain tasks to the communes, including the management of their territory and their assets, regulatory powers and the right to establish communal taxes (Article 107), civil status (Article 108) and the organisation of primary education (Articles 23 and 107).

76. Under Article 28 of the Communal Law, “the communal council shall regulate all matters of communal interest; it shall deliberate or give its opinion whenever its deliberation or opinion is required by the laws or regulations or called for by the higher authorities.” The work of the communal council varies according to whether it is working in the purely communal sphere or on matters which have been delegated to it by the higher authorities. In the former case, it takes decisions, in the latter it merely gives opinions. Sometimes there are shared powers, as in the case of communal spatial planning, where it can take regulatory decisions.

77. Over time various laws have consolidated the original tasks of the communes, assigned new mandatory tasks to local government or shared powers between the state and the communes. Currently the communes’ most important tasks are communal spatial planning and urban development, regulatory powers and policing, water management, various types of waste management, communal roads and traffic regulations, various activities related to environmental protection, the organisation of elementary education, civil status, social assistance and burials and fire services.

78. Alongside their mandatory duties, communes may also perform optional tasks insofar as their financial circumstances allow. Communes’ optional tasks are services that they have freely decided to make available to their inhabitants without being compelled to do so by legislation. These are services which are useful or agreeable to the population but not indispensable. Communes’ optional tasks therefore fall within the designated framework of communal interests. Optional tasks currently being performed by communes include music teaching, sport, tourist facilities, housing, museums and cultural centres.

79. During their visit, the rapporteurs were told about some problems with regard to the distribution of powers between the state and the communes. For communal tasks to be clearly delimited, they need to be set out in clear and coherent legislation and grouped into a communal code. The rapporteurs were informed during the consultation procedure that the code has now been published by circular of the Ministry of Interior of 15 June 2015.<sup>13</sup> This is a “compilation code” covering all the legislation applicable to communes. Local stakeholders are also calling for some optional tasks to be converted into tasks which are de facto mandatory, with the allocation by central government of corresponding financial resources.

<sup>13</sup> [http://www.legilux.public.lu/leg/textescoordonnes/compilation/code\\_communal/Code\\_Communal.pdf](http://www.legilux.public.lu/leg/textescoordonnes/compilation/code_communal/Code_Communal.pdf)



80. In this respect, SYVICOL had already pointed in 2008 to the need to review the powers of the communes in relation to the outdated decrees of 1789 and 1790 and the need to make a sharper distinction between national and communal powers so as to create a framework within which communal self-government could be exercised and develop fully.

81. The rapporteurs point out that this process will most certainly have to be accompanied by an adjustment to the communes' financial resources to take account of the diversification of their tasks. SYVICOL hopes that the reform will take shape soon and cites the government programme which states that it *"intends to reform the legislation on communes and adapt their tasks to the new circumstances on the ground"*.

82. SYVICOL has also called for an increase in the powers of municipal staff. According to the government programme, "the government will create a statutory basis for municipal staff to be better equipped to supervise and comply with communal regulations. For this purpose, municipal staff must receive the necessary training". This part of the government programme satisfies a long-standing demand by SYVICOL, which points out how important it is to maintain law and order in the communes and to be able to punish conduct which can be qualified as petty local crime or vandalism.

83. As to compliance with the principle that local authorities must be consulted on all matters concerning them directly, the rapporteurs note that SYVICOL is involved in working groups whose aim is to suggest amendments to the legislation. One positive example is the "Omnibus" bill, which has important repercussions for communes and was finalised in consultation with the association of communes.

84. SYVICOL, however, told the rapporteurs of its desire for there to be more systematic consultation on all matters concerning the communes. It is for this reason that on repeated occasions since 2005, SYVICOL has suggested to the government that consultations with the communes be formalised by signing an agreement. This proposal can be found in a resolution of the SYVICOL Committee adopted on 24 September 2012. The resolution contains specific demands in relation to the principle of consultation:

- consultation by the relevant ministry in due course and in an appropriate manner on any proposal likely to have a significant impact at communal level, particularly draft laws and Grand Ducal regulations affecting communes' powers, interests or financial resources, draft state instructions or recommendations at communal level or draft EU legislation relating to matters affecting the communes;

- a consultation process beginning as soon as draft laws or Grand Ducal regulations are devised and continuing throughout the legislative and regulatory procedure, with the requirement that SYVICOL's opinion should be sought at the same time as that of the professional bodies;

- access provided by the government to information and documents, which should be guaranteed in respect of matters connected directly with the question or the proposal on which there is consultation;

- assessment of the administrative and financial impact of the new legislation on the communes. For example, bills proposing that powers be delegated by the state to the communes or that new powers be granted to the communes must give details of the financial resources which will be placed at the communes' disposal to carry out the new tasks.

85. SYVICOL has informed the delegation that some texts have apparently been adopted by the government without prior consultation, including the following in particular:

- the Grand Ducal regulation of 19 December 2014 on the allocation of subsidies for building restoration work;

- the legislation on communal spatial planning, which has been substantially amended since the 2004 law without consultation of the communes, even though it is a shared responsibility;

- sectoral master plans which have led to the preparation of documents without prior consultation and which were communicated to the communes at the same time as they were announced to the public. On the latter point, SYVICOL has, however, acknowledged that the government had been receptive to the observations which it had made following the presentation of the draft sectoral master plans. In this respect, the lack of prior consultation was offset afterwards to some degree by the government

holding meetings with many players concerned with the matter and by its declared intention to meet the communes either individually or jointly.

86. At the meeting with the Minister of the Interior, the minister informed the delegation of his undertaking to consult the communes regularly, namely about six times a year. This is significant progress compared to the practices under the previous government, which only consulted the local authorities from time to time. The minister also confirmed that the agreement proposed by SYVICOL in 2012 could form the basis for a working relationship provided it was established that these consultations would be co-ordinated by the Ministry. The rapporteurs regard this as positive news and are confident that some action will be taken on this point in the near future.

87. SYVICOL has said that co-operation between the communes and the offices of the Ministry of the Interior is functioning satisfactorily.

88. The rapporteurs' view is that Article 4 is only partly respected in Luxembourg. There is a need to clearly delimit the powers of the state and the communes so as to establish a framework within which communal self-government can be exercised and develop fully. As to consultation procedures, the rapporteurs consider that they are applied in practice. They recommend, nonetheless, that exchanges should be placed on a formal footing with SYVICOL, which is the main discussion partner representing the communes, so as to ensure that this becomes a permanent practice in future. The agreement with the government proposed by the association in 2012 could serve as an appropriate working basis in this respect, while bearing in mind that it would be for the Ministry of the Interior to co-ordinate these consultation meetings.

### **6.3 Article 5 - Protection of local authority boundaries**

#### **Article 5 - Protection of local authority boundaries**

Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute.

89. The rapporteurs addressed the question of the reorganisation of local government in Luxembourg in the context of the reform for the merger of communes (2011-2017) in the light of Article 5 of the Charter.

90. The aim of amalgamating communes in Luxembourg is to establish more robust entities so that they can demand more autonomy and act as a true counterweight to central government. This is the very principle of mergers.

91. In August 2014, the government at the time made a statement undertaking to take the necessary steps to provide the country with a public service and local government structures equipped for the challenges of the 21st century. In spring 2005, the Minister of the Interior and Spatial Planning assessed the critical mass that the communes needed to reach to be in a position in the medium term to offer their inhabitants a proper basic service. The Ministry subsequently presented the Chamber of Deputies with its integrative blueprint for territorial and administrative reform of the Grand Duchy of Luxembourg. On 3 July 2008, a policy debate on the reorganisation of local government in Luxembourg was held in the Chamber of Deputies and confirmed the need for a sustained awareness-raising campaign to promote the move towards strong, self-governing communes.

92. Under Article 2 of the Constitution, "the boundaries and capitals of judicial or administrative districts may be changed only in accordance with a law." This provision has the distinct advantage that each merger can be practically tailor-made under a special law taking account of the specific characteristics of the communes merging. Neither the Constitution nor the law expressly requires a referendum to be held prior to a merger of communes. The possibility of holding a referendum at communal level does exist in Luxembourg and derives from Article 35 of the modified Communal Law of 13 December 1988, which provides: "the communal council may call on the voters to give their opinions via a referendum on matters of communal interest and on such terms as it shall determine." Referendums must be held by law if they are requested by a fifth of voters in communes with over three thousand inhabitants and by a quarter of voters in all other communes. In this event, the council must hold the referendum within three months of the request. The arrangements for referendums are established by Grand Ducal regulation. The provisions of the electoral law on compulsory voting, particularly Articles 259 to 262, apply. At all events, referendums are only consultative.

93. The arrangements for this type of referendum are governed by the amended Grand Ducal regulation of 18 October 1989, under which everyone on the electoral roll for communal elections may take part in a referendum. This includes foreign nationals who fulfil the conditions of the modified Electoral Law of 18 February 2003 and have asked to be included on the electoral roll. Although, under domestic law, holding a referendum in the event of a merger of communes is merely a possibility, this form of consultation has always been used without exception, with reference among other things to Article 5 of the Charter.

94. After the first wave of mergers in the 1970s, reducing the number of communes from 130 to 118, the following further mergers were carried out, reducing the number of communes to 105 by 2015:

95. Merger laws and new merged communes established since 2004:

- 21.12.2004 Tandel Bastendorf and Fohren
- 14.07.2005 Kiischpelt Kautenbach and Wilwerwiltz
- 28.05.2009 Clervaux Clervaux, Heinerscheid and Munshausen
- 24.05.2011 Esch-sur-Sûre Esch-sur-Sûre, Heiderscheid and Neunhausen
- 24.05.2011 Käerjeng Bascharage and Clemency
- 24.05.2011 Schengen Burmerange, Schengen and Wellenstein
- 24.05.2011 Parc Hosingen Consthum, Hoscheid and Hosingen
- 24.05.2011 Vallée de l'Ernz Ermsdorf and Medernach
- 19.12.2014 Wiltz Eschweiler and Wiltz

96. All these mergers were preceded by a referendum. Political decision-makers have always considered themselves bound by the outcome of referendums and SYVICOL has expressed its support for mergers.

97. The mergers of communes in Luxembourg have gone hand in hand with a harmonisation of communal regulations and various administrative and technical services. However, all the merger laws referred to include a transitional measure under which the regulations of the former communes remain in force on the territory for which they were enacted until they are replaced by uniform texts that apply to the entire territory of the commune created by the merger. This measure is essential in order to avoid a legal vacuum when the merger comes into force. In some cases the communal councils of merged communes have even worked together to adopt identical regulations ahead of a merger.

98. However, the delegation has been told that sometimes the co-existence of different regulations within one and the same commune causes a whole range of practical and administrative problems. It is in the area of communal taxes and charges that any disparities are most obvious and that harmonisation is most urgently required.

99. In other areas, the continuing existence of old regulations can cause complications that are somewhat difficult to overcome. This applies chiefly to communal spatial planning, as the harmonisation of several master plans and regulations on buildings, public highways and sites must follow the same procedure as when these documents were originally drawn up, which can easily take more than two years. Likewise, preparing the accompanying document file represents a substantial cost.

100. The question of how communal services are reorganised has to be addressed differently for each merger depending in particular on the existing services and geographical considerations. As a rule, practice has shown that it is essential to combine services and that it is best for the efficient functioning of the new commune to do this as quickly as possible. This often entails major costs (for projects such as the construction of a new town hall or technical facilities or the conversion of existing buildings) and this accounts for a large share of state funding for mergers.

101. It is worth pointing out that the commune resulting from a merger is automatically a member of the intercommunal groupings to which at least one of the merged communes belonged. As far as SYVICOL knows, the difficulties that this caused in the past were resolved in the course of the merger preparation procedure.

102. The offices of the Ministry of the Interior help communes which are candidates for a merger with the formalities.

103. In accordance with a cabinet decision, financial support for mergers of communes from the government is provided by means of a per capita subsidy (EUR 2,500 from 2004 to 2011) based on

population size at the date when the merger begins. Payment of this amount is spread over ten years. A sliding scale<sup>14</sup> was applied for the first time to the merger of the communes of Eschweiler and Wiltz under the law of 19 December 2014. The rapporteurs have been informed that the cabinet meeting of 25 April 2014<sup>15</sup> adopted yet another calculation method for the years 2015 to 2016, which differs from the previous ones in that it no longer applies to the population of the commune created by the merger, but to that of each commune merged. The subsidies are now set at EUR 2,000 per capita per commune for the bracket up to 2,000 inhabitants and EUR 1,000 per capita per commune for the bracket from 2,001 inhabitants to 3 000 inhabitants.

104. In the light of the foregoing, the rapporteurs conclude that Luxembourg is in full compliance with Article 5 of the Charter, as changes to local authority boundaries are not only voluntary but are preceded by a referendum of the electorate of the communes concerned. In addition, the law on mergers provides for “tailor-made” mergers and, in this respect, Luxembourg’s example is clearly a good practice, which it would be worth bringing to the attention of other member states which are considering potential mergers.

#### **6.4 Article 6 - Appropriate administrative structures and resources for the tasks of local authorities**

##### **Article 6 - Appropriate administrative structures and resources for the tasks of local authorities**

- 1 Without prejudice to more general statutory provisions, local authorities shall be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management.
- 2 The conditions of service of local government employees shall be such as to permit the recruitment of high-quality staff on the basis of merit and competence; to this end adequate training opportunities, remuneration and career prospects shall be provided.

105. The legislation makes certain tools available to communes to enable them to perform both their mandatory and their optional tasks. Firstly, the communes may carry out their tasks as they wish; secondly, the law provides them with various means of working with other legal entities to complete certain tasks.

106. To perform some of their tasks, the communes employ their own staff (local government officers, employees, workers), who then provide the communal services. Communes are free to establish their own organisation charts and the posts of local government officer they consider necessary for these purposes, albeit always subject to the prior authorisation of the Minister of the Interior. Although the communes establish their own staffing requirements, it is the Minister of the Interior who approves the creation of the post and the appointment of the officer. The representatives of local elected officials claim that this supervision has a tendency to become one of expediency – and sometimes a disproportionate one – rather than one of mere legality. Competitive recruitment procedures are organised by the state but the officers are paid by the commune. It should be pointed out that the Minister of the Interior is entitled to intervene to rectify communal budgets.

107. Article 87 of the Communal Law requires each commune to have a secretary. The rules on the recruitment and examination of candidates for the post of communal secretary are contained in the Grand Ducal regulation of 1 February 2008.

108. Article 92 of the Communal Law requires each commune to have a revenue officer (*receveur*). The rules on the recruitment and examination of candidates for the post of communal revenue officer are contained in the Grand Ducal regulation of 20 December 1990. Like any other member of the communal staff, revenue officers are placed under the supervision of the college of the mayor and aldermen (Article 57 of the Communal Law). With the assistance of the communal secretary, the college verifies the revenue officer’s accounts at least once every three months. The college is also required to take steps to ensure the safety of revenue office staff.

109. The amended law of 19 July 2004 added a new section to the Communal Law containing rules on communal technical services. As communal spatial planning and urban development are increasingly

14 According to the government press release of 27 February 2014, “The amounts will be a little lower than before. Communes will receive EUR 2,000 per capita for the first 4,000 inhabitants, then EUR 1,500 between the 4,000th and 6,000th inhabitants and EUR 1,000 from the 6,000th to 10,000th inhabitants. The amounts will be reduced a little further for communes that merge after 2014.” (<https://www.gouvernement.lu/3532771/27-kersch-quotidien?context=3316989>).

15 <http://www.gouvernement.lu/3673077/25-conseil>

complex matters, it has become necessary to provide communal authorities with qualified staff who can ensure that the legislation in these areas is correctly applied. This is why communal technical services are now regulated by the communal law.

110. The communal technical services' task is to assist communal bodies both with the application of the law on communal spatial planning and urban development and its implementing regulations and with the preparation and implementation of local spatial planning projects and schemes and the buildings regulations.

111. An obligation was introduced into the legislation for communes with 10,000 inhabitants or more to set up appropriate technical services. They were required to include at least one urban or spatial planner who meets the statutory conditions governing the profession and, where needed, one or more officers with a professional background in technical engineering.

112. Every commune with 10,000 or more inhabitants may decide to recruit an urban or spatial planner, and a number of communes with fewer than 10,000 inhabitants may decide, on approval by the relevant minister, to group together to recruit a joint urban or spatial planner in accordance with the procedures laid down by the communal law for the appointment of a joint secretary.

113. Each commune with 3,000 inhabitants or more is required to employ at least one communal officer with a professional background in technical engineering to take charge of technical service duties.

114. During their visit the rapporteurs were told by several mayors that small communes had a real need for specialised urban planning staff. Similarly, the communes repeatedly stressed the need for legal and technical support. The draft constitutional amendment presented to the rapporteurs included an article on the right of communes to set up public institutions.

115. While Article 6 is generally respected, the rapporteurs are concerned about the fact that staff recruitment is subject to the prior approval of the Minister of the Interior with regard to the creation of posts and the appointment of local government officers. The restriction of local self-government in this respect prompts the rapporteurs to reach a finding of partial compliance with this article.

#### **6.5 Article 7 - Conditions under which responsibilities at local level are exercised**

##### **Article 7 - Conditions under which responsibilities at local level are exercised**

- 1 The conditions of office of local elected representatives shall provide for free exercise of their functions.
- 2 They shall allow for appropriate financial compensation for expenses incurred in the exercise of the office in question as well as, where appropriate, compensation for loss of earnings or remuneration for work done and corresponding social welfare protection.
- 3 Any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles.

116. In Luxembourg, mayors are appointed by the Grand Duke. Aldermen are appointed by the Minister of the Interior, with no distinction being made between "cities" and communes. All mayors and aldermen must be appointed from among the communal councillors and the practice is for the majority faction on the newly elected communal council to put forward a proposal to the state authorities. This system has not given rise to any criticism from Luxembourg's local elected representatives, especially given the fact that the Communal Law provides for the possibility of a no-confidence motion when the communal budget is being voted on, which is a sign that the communal executive body is indeed accountable to the elected council.

117. Under Article 107, paragraph 3, of the Constitution, the Grand Duke has the right to dissolve the communal council, which is directly elected. In the event of commonly acknowledged misconduct, fault or gross negligence, aldermen may be suspended by the Minister of the Interior, while mayors may be suspended by the Grand Duke. The terms "*commonly acknowledged misconduct*" and "*gross negligence*" are not defined by the law. They are rather vague and allow central government a wide margin of discretion. The rapporteurs were told that although the Grand Duke has the right under the law to dissolve the communal council and dismiss the mayor, in practice this option has never been exercised.

118. It is not prohibited to hold office at local and national level simultaneously. The Minister of the Interior told the delegation that this possibility might be ruled out in future.

119. The question of the possibility of the full-time employment of mayors and aldermen, particularly in communes above a certain size, is a recurring issue. Any development of this sort would represent a move towards the professionalisation of communal executives, particularly in those communities with the largest number of inhabitants. For communes with 10,000 or more inhabitants, the mayor is granted political leave of 40 hours per week (full time) and the aldermen, 8 hours per week.

120. Persons holding the office of mayor or alderman are paid an allowance which is intended to offset the expenses incurred in the performance of their duties. Allowances for mayors and aldermen are set by the communal council with the approval of the Minister of the Interior. The amended Grand Ducal regulation of 13 February 2009 establishes the upper limits for these allowances. Besides these allowances, mayors and aldermen may not receive any remuneration financed by the commune under any pretext or designation whatsoever (Article 55 of the Communal Law). For example, it has been found in court that the Communal Law prohibits the communes from providing mayors with a free official residence.<sup>16</sup>

121. Mayors and aldermen are not entitled to the fees which may be paid to communal councillors for attending meetings of the council and its committees. However, this prohibition, set out in Article 55, does not apply to travel expenses, subsistence costs or telephone charges.

122. Mayors, aldermen and communal councillors who work in the public or private sectors, along with those who are self-employed or not working and under 65, are entitled to leave for political activities in order to discharge their duties. The detailed rules on leave for political activities are set out in Articles 78 to 81 of the Communal Law.

123. The rapporteurs are of the opinion that the situation in Luxembourg is in compliance with the provisions of Article 7.

## **6.6 Article 8 - Administrative supervision of local authorities' activities**

### **Article 8 - Administrative supervision of local authorities' activities**

- 1 Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute.
- 2 Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities.
- 3 Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.

124. Administrative supervision of the communes is governed by Part 3 of the modified Communal Law of 13 December 1988 entitled "*Administrative supervision*". However, numerous other texts require decisions by communal authorities to be approved by a higher authority.

125. The Constitution, in granting communes communal self-government, provided for a supervisory procedure that would aim to prevent communal decisions from undermining the fundamental interests of the state. That is why Article 107 of the Constitution also provides for oversight of communal administration. Such oversight, which the Ministry of the Interior indicated is due to end, constitutes "administrative supervision" and is exercised by the Grand Duke and the Minister of the Interior. The supervision exercised by the state authorities over the communes is regulated by statute, which envisages various measures for overseeing the activities of communal authorities.

126. In the case of administrative supervision, a distinction is made between supervision of activities and supervision of persons.

127. Supervisory power proper (annulment, suspension, approval, substitution of actions) is vested in the Grand Duke and the Minister of the Interior, according to the arrangements described below.

<sup>16</sup> Supreme Court of Justice, 31 July 1950, Pasicrisie XV, p. 306.

128. Administrative supervision of activities is intended to verify the legality of communal authorities' activities.

129. The law establishes various means of supervising the activities of communal authorities. The Directorate of Communal Affairs is mainly responsible for reviewing the legality of any acts or decisions of communes, groupings of communes or public institutions placed under the supervision of communes which are submitted to it. It exercises power of approval in the cases expressly provided for by law. In this context, it prepares the decisions of the higher authority, Grand Ducal decrees or ministerial decisions as the case may be, especially in the following areas: real estate transactions above a certain value prescribed by law, large-scale construction projects, leases above a certain value, communal staffing matters and tax regulations.

130. Ex officio measures may be taken in the following circumstances:

- If the budget does not comply with the laws and regulations, the Minister of the Interior will rectify it (Communal Law, Article 124);
- If the budget is not put forward by the college of the mayor and aldermen or if the communal council does not approve it within the prescribed time, the Minister of the Interior will step in and either propose or adopt ex officio a budget covering merely mandatory costs as well as revenues and expenditure that are essential for the functioning of the commune (Communal Law, Article 125);
- In the event that the communal council should seek to avoid payment of mandatory costs which it is required to bear by law, by refusing to allocate all or some of those costs, the Minister of the Interior, after hearing the communal council, will personally charge the expenditure to the budget, in proportion to need, without prejudice to the recourse provided for in Article 107 (Communal Law, Article 125);
- If the college of the mayor and aldermen refuses or omits to authorise expenditure which the commune is required to bear by law, the Minister of the Interior may order that the expenditure be effected immediately. Such decision constitutes an order and the revenue officer is bound to pay the relevant amount (Communal Law, Article 133);
- If the college of the mayor and aldermen refuses or omits to draw up an order for outstanding revenue, the Minister of the Interior may order that the sum be recovered immediately. Such decision constitutes a revenue order requiring the revenue officer to collect the amounts in question. (Communal Law, Article 137);
- In all cases where budgets, accounts or other documents are not submitted within the prescribed time, the Minister of the Interior may, in accordance with Article 108 of the Communal Law, appoint a special commissioner to carry out the outstanding work at the expense of the defaulting parties (Communal Law, Article 165).

131. Supervision of persons may be exercised in respect of individuals (dismissal of a mayor or alderman) or groups (dissolution of the communal council) and amounts to a disciplinary power.

132. Supervision of individuals may be exercised only in respect of mayors and aldermen, who are instruments of local government and, at the same time, representatives of the state. It does not apply to communal councillors.

133. Supervision of persons is referred to in the following legislative provisions:

*a.* Dissolution of the Communal Council, collective measure: under Article 107, paragraph 3, of the Constitution, the Grand Duke has the right to dissolve the communal council. Neither the Constitution nor the Communal Law specifies in what circumstances such dissolution may take place.

*b.* Individual measures: the mayor and the aldermen are not merely involved in the administration of the commune; they also act as the state's representatives at local level. Under the Communal Law, therefore, the government has the power to discipline mayors and aldermen, but not communal councillors.

134. In cases of commonly acknowledged misconduct, fault or gross negligence, aldermen may be suspended by the Minister of the Interior for a period which may not exceed three months unless it is renewed by reasoned decision (Article 41 of the Communal Law). The mayor may be suspended by the Grand Duke in the same instances and on the same terms (Article 63 of the Communal Law).

135. Mayors and aldermen may also be dismissed, by the Grand Duke and the Minister of the Interior respectively, if the situation is sufficiently serious to warrant such measures. Any mayor or alderman who has been dismissed cannot sit on the college of the mayor and aldermen until after the next communal council election following his or her dismissal.

136. The terms “commonly acknowledged misconduct” and “gross negligence” are not defined or clarified by law. The rapporteurs note that these terms are rather vague and allow scope for interpretation, as court rulings have shown. The current conditions governing dismissal allow central government a wide margin of discretion, therefore.

137. The provisions on financial supervision are found in Part 4 of the same law, under the heading “*Communal accounts*”. Here too, many communal authority decisions, such as approval of the budget and any amendments made thereto during the year, and adoption of the accounts, are subject to ministerial approval. At the same time, the Minister of the Interior has a department responsible for carrying out on-site audits of local government accounts.

138. In its Recommendation 175 (2005), the Congress questioned the conformity of the system of administrative supervision with the Charter and invited the Luxembourg authorities to “revise their legislation on supervision of local authorities with a view to confining such control to a posteriori verification of strict legality”.

139. During the meeting with the rapporteurs, SYVICOL complained of an increase in central government supervision since the 2005 recommendation, notably in the field of urban planning. The Minister of the Interior, for example, can even amend a general development plan (PAG) adopted by the communal council. Although it is enshrined in law, such scrutiny could in some instances amount to a review of expediency.

140. The rapporteurs note that so far, no changes have formally been made to the legislation in question with the aim of relaxing the supervision. There is a law abolishing districts (passed on 7 July 2015, entering into force on 3 October 2015), but it does not make any substantial improvements in this area given that the powers and responsibilities hitherto vested in the district commissioners are simply transferred to other authorities, in most cases the Ministry of the Interior.

141. The previous government indicated in a 2013 activity report that 2013 had been devoted to further efforts to reform the system of administrative supervision with a view to tabling a bill amending Part 3 and various other provisions of the amended Communal Law of 13 December 1988. The aim of this reform was based on the proposals set out in the report by the Chamber of Deputies’ Special Commission on the Territorial Restructuring of Luxembourg and on the objectives set in the governmental declaration of 2009.

142. The reform was accordingly designed to implement the following principles:

- a. General supervision concerning the possible annulment of decisions and suspension to be abolished.
- b. Supervision concerning the approval of decisions to become the exception.
- c. Mandatory transmission of communal decisions to become the rule.
- d. A list of decisions which do not have to be transmitted to be drawn up.
- e. An institutional dialogue on issues relating to legality to be introduced.
- f. Disputes over purely legal questions to be settled by the administrative court.

143. The rapporteurs’ understanding is that the current government is aware of the problem since it states in its governmental programme that “the government believes that the Ministry of Interior must be able to act in a more flexible, effective and speedy manner than is the case at present. To ensure better co-operation between the Ministry and the communes, the Ministry of the Interior needs to be less concerned with supervising and more concerned with partnering and advising the communal councils. In future, the various processes and responsibilities within the Ministry will be made transparent and verifiable...”.

144. At the time of the monitoring visit, there was no evidence of any tangible progress on the reform of supervision. That said, the rapporteurs were informed by the Ministry of the Interior of plans being drawn up in this area which should lead to a fundamental reform in this respect, taking account of the following points:

- application of the principles of proportionality and subsidiarity



- redefinition of the scope of ministerial supervision
- revision of the principle of double ministerial supervision
- establishment of transparent criteria for the allocation of subsidies to communes
- establishment of e-government.

145. The rapporteurs therefore consider that the situation is only partly compliant with Article 8. Particularly problematic in their view is the implementation of Article 8, paragraph 3, notably where urban planning and the hiring of local government officers are concerned.

#### **6.7 Article 9 - Financial resources of local authorities**

##### **Article 9 - Financial resources of local authorities**

- 1 Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.
- 2 Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.
- 3 Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.
- 4 The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks.
- 5 The protection of financially weaker local authorities calls for the institution of financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility.
- 6 Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.
- 7 As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.
- 8 For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.

146. When discussing communal finances, a distinction needs to be made between communes' ordinary revenues which are designed to cover current expenditure and extraordinary revenues which are designed to cover capital expenditure.

147. Communes' ordinary revenues are intended to cover their operating costs and may be subdivided as follows:

**a. Local taxes:**

- communal trade tax
- land tax

**b. State grants:**

- the Communal Financial Grant Fund

**c. Local charges:**

- for drinking water supplies
- for the removal and treatment of wastewater
- for waste disposal
- for the sale of various goods and services (electricity, gas, etc.)

**d. State subsidies:**

- state contributions towards the cost of operating childcare facilities (*maisons relais*)
- subsidies for public transport provided by the communes and groupings of communes
- subsidies for music teaching, etc.

148. Local taxes and state grants awarded through the Communal Financial Grant Fund constitute “non-earmarked” income for the communes, whereas local charges and state subsidies are “earmarked” income, to the extent that they are intended to pay for specific services provided by the communes and to finance clearly defined activities respectively.

149. Since the last monitoring exercise, local authorities in Luxembourg are still awaiting a communal finance reform promised by the national authorities. As a result, the mechanisms of local-government finance have remained almost unchanged, with the communes increasingly unhappy with a system of financing that takes no account of communes’ changing tasks or income inequality between communes. Indeed, for years now, the state’s ordinary revenues have been growing at a faster pace than those of the communes and the gap is becoming ever wider.

150. Some differences can nevertheless be observed in the way the various sources of non-earmarked communal revenue, i.e. the Communal Financial Grant Fund, the communal trade tax and the land tax, have evolved.

151. The Communal Financial Grant Fund was instituted under Article 38 of the Law of 22 December 1987 on the state budget for 1988. It is through this fund that non-earmarked grants are channelled from central to local government. The annual grant awarded via the fund is made up as follows:

- 18% of receipts derived from personal income tax determined on an assessment basis and from the withholding tax on wages and salaries
- 10% of VAT receipts, less any sums due to the European Communities by way of own resources derived from this tax
- 20% of motor vehicle tax receipts
- a flat-rate amount which is calculated schematically and the rules governing it which are, where necessary, adjusted annually to reflect changes in the legislation.

152. This tax has grown steadily in recent years. Two main factors account for this upward trend: an expanding job market in Luxembourg, which has helped boost personal income tax receipts, and substantial VAT receipts thanks to e-commerce. Under a European directive incorporated into Luxembourg law in 2014, however, as from 2015, VAT is to be applied in the consumer’s country, rather than the provider’s. The move to the new system of taxation will be spread over four years, which means that VAT receipts from e-commerce will have disappeared entirely by 2019. It is estimated that, as from 2015, the Luxembourg government stands to lose some EUR 800 million per year in VAT receipts, possibly more. Since the communes have traditionally received 10% of these receipts via the Communal Financial Grant Fund, the impact on local government finances will be considerable. During the consultation procedure, the Ministry of the Interior made it clear “that it is not the current government’s intention to alter the mechanisms of the Communal Financial Grant Fund to the detriment of communes’ interests.”

153. The communal trade tax was instituted by the Law of 1 December 1936, amended by the Law of 11 December 1967. Under this legislation, communes are entitled to levy a communal trade tax based on company profits. The communal trade tax is a means of involving communes in local business activities, by compensating them, as it were, for the costs and nuisance generated by these activities. Communal trade tax rates are determined annually by each commune. This tax is generally perceived as favouring communes where there are one or more companies making significant profits. The communal trade tax has been steadily losing ground to the Communal Financial Grant Fund. Under the state budget for 2015, communal trade tax receipts are projected to rise by a further 5.8% in relation to the amount budgeted for 2014. Compared to the actual amount for 2014, the forecasts are down slightly, by 0.6%. Given the “fiscal optimisation” efforts made by many companies, SYVICOL fears that communal trade tax receipts will continue to stagnate over the next few years.

154. It is important to note that receipts from the Communal Financial Grant Fund are the healthiest part of local government revenues, whereas communal trade tax is increasingly proving to be an unpredictable and unstable source of income for individual communes.

155. Lastly, under the amended law of 1 December 1936, communes are permitted to levy a local land tax. As with the communal trade tax, land tax rates are set annually by each commune. The local land tax would account for a significant share of communes’ overall revenues if the unit values used to calculate it were reviewed. However, the unit values have not been reviewed since 1941, resulting in persistent disparities in the value of some buildings because of their locations, which are now difficult to justify. SYVICOL has spoken out in favour of reforming the land tax to reflect actual property prices.

An interministerial working group, which SYVICOL had been invited to join, had begun to discuss revising the land tax base under the previous government. This working group has not met, however, since the new government took office in December 2013, the latter having announced that it wished to deal with the matter as part of a wider fiscal reform.

156. Revising the unit values on which the land tax is based would help not only to reduce the disparities that currently exist in terms of the value of certain buildings but also to restore communes' revenues, probably significantly.

157. The following table shows how communes' ordinary revenues break down into the various categories described above :

|                                      | (amounts in EUR) |        |         |       |
|--------------------------------------|------------------|--------|---------|-------|
|                                      | 2013             |        | 2014    |       |
| Communal trade tax (ICC)             | 556.0            | 24.8%  | 564.2   | 24.5% |
| Land tax (IF)                        | 34.3             | 1.5%   | 36.0    | 1.6%  |
| Communal Financial Grant Fund (FCDF) | 956.1            | 42.6%  | 1,016.4 | 44.1% |
| Earmarked revenues                   | 700.0            | 31.2%  | 685.7   | 29.8% |
| Total                                | 2,246.4          | 100.0% | 2,302.4 | 100%  |

Source: 2014 activity report, Government of the Grand Duchy of Luxembourg

158. Communes' ordinary expenditure naturally depends on available revenue and the tasks they choose to undertake: a distinction needs to be made between mandatory tasks (original, constitutional and statutory) and optional tasks, i.e. ones that are freely chosen by the communes with or without financial help from the State.

159. Examples of tasks which communes are required to perform include:

- maintaining law and order within the commune;
- communal spatial planning;
- drinking water supplies;
- wastewater treatment;
- waste management;
- burials and upkeep of graveyards;
- firefighting;
- road building and maintenance;
- social assistance;
- primary education – care;
- registering births, deaths and marriages.

160. Examples of tasks which communes can choose to perform include the setting-up and operation of sports, cultural and tourism infrastructure; youth facilities (care, day centres, etc.); facilities for the elderly (retirement homes, day centres, etc.), gas and electricity supplies (these tasks had tended to disappear from the local budget because of outsourcing to private entities).

161. The following table shows the trends in communes' ordinary expenditure in recent years :

|          | (amounts in EUR)               |       |
|----------|--------------------------------|-------|
|          | Communes' ordinary expenditure | Var.  |
| 2009     | 1,538,511,795                  | -6.0% |
| 2010     | 1,639,616,576                  | 6.6%  |
| 2011     | 1,749,294,651                  | 6.7%  |
| 2012     | 1,846,345,469                  | 5.5%  |
| 2013 (1) | 1,790,208,423                  | -3.0% |
| 2014 (2) | 1,901,593,059                  | 6.2%  |
| 2014 (3) | 2,002,473,606                  | 5.3%  |

- (1) accounts not yet approved by the Ministry of the Interior
- (2) rectified budgets
- (3) budgets

Source: 2014 activity report, Government of the Grand Duchy of Luxembourg

162. As regards taxes, under Article 107 of the Constitution and Article 105 of the amended Communal Law of 13 December 1988, communal regulations introducing charges must be approved by the Grand Duke if the charges in question are in the nature of taxes proper designed to cover general expenditure from the communal budget, such as charges intended to contribute to the financing of collective facilities. During the consultation procedure, SYVICOL stressed that the fiscal autonomy of the communes provided for in Article 107, paragraph 3, is subject to the restriction that the taxes raised must cover a financial need. The association believes that it is hard for communal authorities to prove the relevant need, as demonstrated by the supervisory authorities' refusal to approve numerous tax regulations. The Administrative Court has held the following: "While the communes are fiscally autonomous and can take the initiative of establishing levies and taxes and determining their base, their amount and the arrangements for application and exemption, such fiscal autonomy is not absolute, as the communes may exercise it solely under the supervision of the higher authority, which must ensure that the communes act in accordance with the restrictions provided for by law and demanded by the general interest, including the restriction that their power is exercised to the extent – and hence within the limit – of their needs."<sup>17</sup>

163. This is not the case with communal regulations introducing charges designed to pay for a service provided by the communal authority, i.e. to cover the costs of that service, which is used specifically by the individuals who pay for it. These compensatory charges are subject to approval by the Ministry of the Interior under Article 106,7 of the amended Communal Law of 13 December 1988 and include notably charges for services such as water, gas and electricity supplies, waste disposal, parking and any other charges for services provided by the commune.

164. Such decisions must be approved by the Ministry of the Interior. Following approval, the decisions must be duly published in the commune by displaying them according to the procedure laid down in Article 82 of the Communal Law and then placing a notice in the official gazette.

165. Where the Ministry of the Interior finds that a tax regulation passed by a communal council is not in keeping with the law or is not in the general interest, it will return the decision to the relevant communal authorities, explaining the reasons why it cannot approve the proposed provisions and will invite the communal council to reconsider the regulation in the light of the comments made.

166. When drawing up the state budget for 2015, the government adopted several measures which SYVICOL believes will have an adverse impact on local finances and which it has condemned as detrimental to communes' financial autonomy. These measures concern the following three points:

- the decision not to allow the communes to share in the extra income generated by the increase in VAT
- abolition of the state contribution towards financing the two-yearly salary increments
- the capping of communal trade tax receipts at three times the national average per capita revenue from Communal Trade Tax.

167. The Minister of the Interior has presented this package of measures as an initial step towards reforming local finances, to be followed by more extensive reform in the coming years. SYVICOL believes that, rather than carrying out genuine reform, the government is engaged in an exploratory process that is giving rise to an array of disparate measures aimed at reducing state financial transfers to the communes in order to shore up the state budget.

168. Given the current situation in the communes, which have long been calling for local finance reform, the rapporteurs feel that any such reform should seek to achieve the following goals:

- provide the communes with predictable and stable income;
- introduce a system to ensure that receipts are allocated between communes in a fair manner and are commensurate with their tasks.

169. The rapporteurs also feel that the mechanisms for financial equalisation could stand to be developed further. In this regard, representatives of SYVICOL have called for discussions on setting up an independent equalisation mechanism, including by dividing communes into categories (e.g. small, medium-sized and large).

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<sup>17</sup> Administrative Court Decision 6-12-07 (23020C to 23023C and 23040C)

170. As regards consulting local authorities according to the criteria laid down in Article 9, paragraph 6 of the Charter, the rapporteurs are of the opinion that genuine consultation does in fact occur in practice. The Ministry of the Interior sends draft legislation to SYVICOL and holds meetings with mayors. Local elected representatives, moreover, have confirmed the existence of such co-operation between central and local government, although they believe it is too ad hoc and wish it to be more regular. There is, however, no legal framework that would make it compulsory to consult the communes via SYVICOL, the main discussion partner representing local elected officials in Luxembourg, in all matters which concern them directly.

171. As regards borrowing, it is important to note that communes are permitted to take out loans only in order to fund extraordinary expenditure, if other methods of financing are neither feasible nor economical and if the commune is in a position to make regular repayments. Any loans in excess of EUR 50,000 must be approved by the Minister of the Interior.

172. Under the law of 23 February 2001 on groupings of communes, furthermore, certain groupings are entitled to borrow in order to pre-finance communes' capital investments. Accordingly, local government groupings set up for the purpose of ensuring drinking water supplies, wastewater treatment, waste management or the construction and running of crematoria, may borrow in order to obtain the funds needed to finance capital expenditure connected with these tasks. At the request of the grouping, communes must make a contribution equal to at least 30% of the total capital required, meaning that the maximum loan that can be awarded by the grouping is 65% of the amount requested by the commune. As the contributions are gradually released, the grouping uses the funds to repay the loan. The debt interest is payable by the commune concerned.

173. Borrowing may be used only to obtain the funds needed to balance the extraordinary budget and only then if all the funds carried over from previous years have already been used up and provided the ordinary budget can support the capital and interest repayments.

174. The following table shows the trends in local government debt in recent years:

|          | Debt<br>(at year end) | Var. | New loans   | Var.   |
|----------|-----------------------|------|-------------|--------|
| 2009     | 782,830,068           | 4.1% | 84,858,500  | 83.5%  |
| 2010     | 811,786,550           | 3.7% | 118,436,030 | 39.6%  |
| 2011     | 822,740,179           | 1.3% | 73,218,757  | -38.2% |
| 2012     | 825,965,282           | 0.4% | 73,823,387  | 0.8%   |
| 2013 (1) | 826,396,315           | 0.1% | 60,518,331  | -18.0% |
| 2014 (2) | 830,000,000           | 0.4% | 65,000,000  | 7.4%   |

- (1) provisional data  
(2) estimate

175. With the increase in repayment capacity, local government debt had increased in 2009 and 2010, before levelling off at EUR 826.4 million at the end of 2013. At the same time, the total value of newly contracted loans declined sharply between 2010 and 2013, mainly because of the increase in revenues in recent years. For 2014, the available figures indicate a similar pattern to that observed in previous years.

176. As regards access to the national capital market, under Article 173ter of the amended Communal Law of 13 December 1988, communes and groupings of communes may, without prejudice to the legislation on public procurement, conclude among themselves and with public and private legal entities and individuals, agreements on matters of communal interest. These agreements must be approved by the Minister of the Interior if the amounts involved exceed EUR 100,000. In addition, the ministerial circular of 24 January 2014 has set new thresholds for public procurement contracts covered by European directives as from 1 January 2014. For example, for public works contracts concluded by local authorities, the threshold is EUR 5,186,000, whereas for supply and service contracts, it is EUR 207,000.

177. The rapporteurs conclude that Article 9 of the Charter is being partly complied with. The issue of free disposal of sufficient own resources seems to pose a problem. It is worth noting that Article 119, paragraph 3, of the draft revised Constitution currently being debated in Luxembourg provides that "The communes are entitled to the financial resources for performing the tasks assigned to them by law". This provision is an innovation compared with the current text. If it were adopted, the

rapporteurs believe that it would clearly be a very positive development, provided that it was implemented in practice. Local authorities are having to contend with the difficulties of introducing a system of financing which does not always take account of changes in their core tasks and income disparities between communes. The rapporteurs also feel that the equalisation formula and the criteria on which this formula is based could stand to be reviewed. Speaking to the delegation, the Minister of the Interior confirmed that he intended to revise the formula, just as, under the fiscal reform, he is planning to review the unit values for the land tax which have remained unchanged since 1941, resulting in lost earnings for local authorities. The rapporteurs therefore wish to underline that while paragraphs 1 to 5 of Article 9 are not being fully observed by Luxembourg, they received an assurance from the government that these provisions were currently receiving close attention from the authorities. The rapporteurs will follow any developments that occur in this area.

178. As regards conformity with paragraphs 6 to 8 of Article 9, the rapporteurs are of the opinion that these provisions are being observed. The government's procedure for consulting local authorities is followed in practice. The rapporteurs' view is that it would be a good idea to place this regular consultation on a more formal footing, with the government providing co-ordination, so as to ensure that this becomes a permanent practice in future.

### **6.8 Article 10 - Local authorities' right to associate**

#### **Article 10 - Local authorities' right to associate**

- 1 Local authorities shall be entitled, in exercising their powers, to co-operate and, within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest.
- 2 The entitlement of local authorities to belong to an association for the protection and promotion of their common interests and to belong to an international association of local authorities shall be recognised in each State.
- 3 Local authorities shall be entitled, under such conditions as may be provided for by the law, to co-operate with their counterparts in other States.

179. Luxembourg communes are entitled, in exercising their powers, to co-operate and, within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest. SYVICOL is a case in point. Since 1996, it has been working to promote, safeguard and defend the general and common interests of its members.

180. SYVICOL has accordingly managed to establish itself as a spokesperson for the communes, by becoming the government's preferred contact in all matters concerning local authorities. Alongside its lobbying activities in decision-making processes at national level, SYVICOL actively engages with several European and international bodies whose task is to defend common interests.

181. The communes' increasingly numerous and extensive responsibilities in the social, economic and cultural spheres together with communal and national spatial planning have ultimately served to put intercommunal consultation and co-operation on a more formal footing, not least through local government groupings, of which there are now 67.<sup>18</sup>

182. The sixty-seven groupings of communes can be broken down as follows, according to the type of activity pursued:

| <b>Main area of activity</b>                                      | <b>Number</b> |
|---|---------------|
| Waste collection and disposal                                     | 8             |
| Wastewater treatment  | 10            |
| Water supply to communes  | 7             |
| Setting up and managing regional schools and/or sports facilities | 8             |
| Setting up and managing regional economic activity zones          | 9             |
| Spatial planning and nature conservation                          | 8             |
| Public transport  | 1             |
| Running an intercommunal hospital                                 | 2             |

<sup>18</sup> 2014 activity report, Government of the Grand Duchy of Luxembourg, Ministry of the Interior.

|  |           |
|--|-----------|
| Intercommunal swimming pool                            | 7         |
| Retirement home  | 1         |
| Crematorium  | 1         |
| Music school   | 2         |
| Managing an IT centre                                  | 1         |
| Home care and nursing care for the elderly             | 1         |
| Promoting and protecting the interests of the communes | 1         |
| <b>Total</b>   | <b>67</b> |

183. The rapporteurs conclude that the situation is therefore in conformity with Article 10 of the Charter.

## **6.9 Article 11 - Legal protection of local self-government**

### **Article 11 - Legal protection of local self-government**

Local authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for such principles of local self-government as are enshrined in the constitution or domestic legislation.

184. Under the Constitution (Article 107, paragraph 1), the communes possess legal personality and, as such, can take legal action against any state decision that might interfere with the free exercise of their powers.

185. Supervisory measures may also be challenged in the courts. Article 107 of the Communal Law further provides that local authorities have a right of appeal concerning any decision of an individual or regulatory nature which has been set aside or denied approval by the Grand Duke, by the Minister of the Interior or by another supervisory authority. Such appeals are to be lodged with the Administrative Court.

186. As regards communal council decisions which require the approval of a higher authority if approval is denied, the communal authorities can appeal to the Administrative Court.

187. In the light of the foregoing, the rapporteurs consider that the situation is wholly compliant with Article 11 of the Charter.

## **7. Conclusions and further steps in the monitoring procedure**

188. The principle of local self-government, as laid down in the European Charter of Local Self-Government, has long been recognised and accepted in Luxembourg's domestic legislation. The constitutional and legal foundation for local self-government (Article 2) is fully observed in Luxembourg.

189. The legislation grants communes the right to manage their own assets and interests through their subordinate bodies. The constitutional and legislative provisions on the concept of local self-government (Article 3) are in conformity with the Charter.

190. The government is encouraged to clearly delineate the powers and responsibilities between the state and the communes (Article 4.1 and 4.2) so as to create a framework within which local self-government can be exercised and develop fully. The rapporteurs also believe that further efforts should be made to improve dialogue with the communes and SYVICOL in all matters which concern the communes directly (Article 4.6). Article 4 has been partly complied with, therefore.

191. The merging of communes and protection of local authority boundaries in Luxembourg is assured (Article 5). Any territorial boundary changes are carried out on a voluntary basis, after consulting the local electorate by means of a referendum. This is a positive example which it would be worth bringing to the attention of other member states which are considering potential mergers.

192. As regards administrative structures (Article 6, paragraph 1), implementing this provision seems to be somewhat problematic because, although Luxembourg's communes have regulatory power concerning the internal organisation of services, any decisions in this area are subject to the prior authorisation of the Minister of the Interior. The rapporteurs believe that the communes should be able

to determine for themselves the kind of internal administrative structures which they wish to have, independently and without having to seek ministerial approval. The implementation of Article 6 could be improved, therefore.

193. The conditions under which responsibilities at local level are exercised (Article 7) are applied and guaranteed in Luxembourg. The situation in this respect is fully in keeping with Article 7 therefore.

194. Administrative supervision of local authorities (Article 8, paragraph 3) is a source of some concern, in particular as regards the creation of posts and the appointment of local government officers, which require the prior approval of the Minister of the Interior. The rapporteurs consider that administrative supervision of local authority decisions is sometimes excessive and ought to be relaxed.

195. The provision regarding local authorities' financial resources (Article 9) is being partly observed. The issue of free disposal of sufficient own resources seems to pose a problem. Local authorities are having to contend with the difficulties of introducing a system of financing which does not always take account of changes in their core tasks and income disparities between communes. The equalisation formula and the criteria on which this formula is based could stand to be reviewed, as could the unit values for the land tax, which have remained unchanged since 1941, resulting in lost earnings for local authorities. The rapporteurs therefore wish to underline that while paragraphs 1 to 5 of Article 9 are not being fully observed by Luxembourg, they received an assurance from the government that these provisions were currently receiving close attention from the authorities. As regards conformity with paragraphs 6 to 8 of Article 9, the rapporteurs are of the opinion that these provisions are being observed. The government's procedure for consulting local authorities is followed in practice. The rapporteurs' view is, however, that it would be a good idea to place this consultation on a more formal footing and make it more regular, with the government providing co-ordination so as to ensure that it becomes a permanent practice in future.

196. The right to associate (Article 10) is guaranteed both in law and in practice for local authorities, which may co-operate with each other, join associations for the protection and promotion of their common interests and engage in transfrontier co-operation.

197. Lastly, as regards the legal protection of local self-government (Article 11), the fact that local authorities have recourse to a judicial remedy if they consider themselves victims of an unlawful decision or consider that their interests have been damaged by a decision means that this provision is fully complied with in Luxembourg law.



**Appendix 1 – Programme of the Congress monitoring visit in Luxembourg**

**CONGRESS MONITORING VISIT TO LUXEMBOURG  
(Luxembourg, Schengen, Schuttrange )  
(3 - 5 March 2015)**

**PROGRAMME**

**Congress delegation:**

Rapporteurs:

Mr Dorin CHIRTOACĂ                      Rapporteur on local democracy  
Chamber of local authorities, EPP/CCE<sup>19</sup>  
Member of the Congress monitoring committee  
Mayor of Chisinau (Republic of Moldova)

Ms Marianne HOLLINGER                      Rapporteur on local democracy  
Chamber of local authorities, GILD-ILDG<sup>20</sup>  
Member of the Congress monitoring committee  
President of the municipality of Aesch (Switzerland)

Congress Secretariat:

Ms Stéphanie POIREL                      Secretary to the Monitoring Committee

Consultant:

Mr Konstantinos TSIMARAS                      Member of the Independent Group of Experts (GEI)

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<sup>19</sup> EPP/CCE: European People's Party Group in the Congress  
<sup>20</sup> ILDG/DILG Independent and Liberal Democrat Group in the Congress

**Tuesday, 3 March 2015  
Luxembourg**

Meetings with:

- **Luxembourg National Delegation to the Congress,  
The Association of Luxembourg Town and Municipalities (SYVICOL) &  
Mr Ronald Mayer, member of the Group of Independent Experts (GIE)**

**Mr Jean-Pierre KLEIN**, President of the Luxembourg Delegation to the Congress, Mayor of the municipality of Steinsel, 1<sup>st</sup> Vice President of the Association of Luxembourg Town and Municipalities

**Mr Emile EICHER**, President of SYVICOL, Mayor of the Municipality of Clervaux and Vice President of the Luxembourg Delegation to the Congress

**Mr Ronald MAYER**, Luxembourg, member of the Group of Independent Experts

- **Ministry of the Interior**

**Mr Dan KERSCH**, Minister of the Interior, Minister for Public Services and Administrative reform

**Mr Laurent DEVILLE**, First Class Government Counsellor

- **Council of State of the Grand Duchy of Luxembourg**

**Ms Françoise THOMA**, Vice President of the State Council, President of the Committee of Public Administrations and Institutions

**Mr Paul SCHMIT**, State Counsellor, President of the Committee on Constitutional Affairs

**Ms Lis DE PINA**, Secretariat of the Committee of Public Administrations and Institutions

**Wednesday, 4 March 2015  
Luxembourg**

Meetings with:

- **Chamber of Deputies**

**Mr Mars DI BARTOLOMEO**, President of the Chamber of Deputies

**Mr Alex BODRY**, President of the Committee on Institutions and Constitutional Amendments

**Mr Gilles ROTH**, Vice President of the Home Affairs Committee

**Ms Josée LORSCHÉ**, Deputy Member of the Luxembourg Delegation to the Congress

**Mr Claude FRIESEISEN**, General Secretary

**Ms Anne BRASSEUR**, President of the Parliamentary Assembly of the Council of Europe, Deputy of the Luxembourg Delegation to the Congress

- **Mediator of the Grand Duchy of Luxembourg**

**Ms Lydie ERR**, Mediator

- **Constitutional Court**

**Mr Georges SANTER**, President  
**Mr Georges RAVARANI**, Vice President  
**Mr Francis DELAPORTE**, Adviser  
**Mr Romain LUDOVICY**, Adviser  
**Mr Jean-Claude WIWINIUS**, Adviser

- **College of Aldermen of the City of Luxembourg (Mayor and Aldermen)**

**Ms Lydie POLFER**, Mayor

**Thursday, 5 March 2015**  
**Schengen, Schuttrange**

Meetings with:

- **Municipality of Schengen (Mayor and Aldermen)**

**Mr Ben HOMAN**, Mayor

- **Municipality of Schuttrange (Mayor and Aldermen)**

**Mr Jean-Pierre KAUFFMANN**, Mayor  
**Mr Victor BACK**, Alderman  
**Mr Alain DOHN**, Municipal Secretary