

## Chapter 8

### The interface between subnational and national levels of government

Multilevel regulatory governance – that is to say, taking into account the rule-making and rule-enforcement activities of all the different levels of government, not just the national level – is another core element of effective regulatory management. The OECD’s 2005 Guiding Principles for Regulatory Quality and Performance “encourage Better Regulation at all levels of government, improved co-ordination, and the avoidance of overlapping responsibilities among regulatory authorities and levels of government”. It is relevant to all countries that are seeking to improve their regulatory management, whether they are federations, unitary states or somewhere in between.

In many countries local governments are entrusted with a large number of complex tasks, covering important parts of the welfare system and public services such as social services, health care and education, as well as housing, planning and building issues, and environmental protection. Licensing can be a key activity at this level. These issues have a direct impact on the welfare of businesses and citizens. Local governments within the boundaries of a state need increasing flexibility to meet economic, social and environmental goals in their particular geographical and cultural setting. At the same time, they may be taking on a growing responsibility for the implementation of EC regulations. All of this requires a pro active consideration of:

- The allocation/sharing of regulatory responsibilities at the different levels of government (which can be primary rule-making responsibilities; secondary rule-making responsibilities based on primary legislation, or the transposition of EC regulations; responsibilities for supervision/enforcement of national or subnational regulations; or responsibilities for service delivery).
- The capacities of these different levels to produce quality regulation.
- The co-ordination mechanisms between the different levels, and across the same levels.

#### Assessment and recommendations

**There has been some real progress in Better Regulation at the subnational level, but much remains to be done.** The communes (municipalities) do not have much room for manoeuvre as their role is generally confined to carrying out projects and regulations prepared by the central government. Nevertheless, the communes have considerable independence in organising their territory and regulating development and land use, through zoning plans and building permits, and they are also responsible for delivering utility services such as water. One-stop shops have been set up for serving the public in a growing number of communes. It is not clear that the communes have given much thought to the overall improvement of regulatory management insofar as it affects their activities.

Some EU countries (for example, the Netherlands and Sweden) have adopted shared action plans.

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**Recommendation 8.1. With the support of SYVICOL (Union of Luxembourg Cities and Communes), consider whether to adopt an action plan and priorities for Better Regulation in areas of municipal responsibility.**

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**The communes would like the central government to take more account of their views.** Co-operation between the national and subnational levels needs to be reinforced. Although the State is highly centralised, it is important to guarantee co-ordination among all levels of government. The SYVICOL could be consulted more regularly by all ministries, especially in the process of simplifying legislation and administrative burdens. The ministries are under no obligation to consult the communes – this is up to the ministry and will depend on the project in question. However, decisions can have significant implications for the communes, which are obliged to carry them out.

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**Recommendation 8.2. Build into the central policy for Better Regulation an aspect concerning the central/municipal link.**

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## Background

### *Structure, responsibilities and funding of local governments*

#### *Structure of local governments*

Luxembourg has only one administrative level below the central government: the communes. The country is divided into 116 communes (of which 109 have fewer than 10,000 inhabitants, and 60 have fewer than 2 000). Their oversight ministry is the Ministry of the Interior and the *Grande Région*. The communes constitute autonomous entities, territorially based, with their own legal personality. They manage their assets and their interests through local representatives (the municipal council, see Box 8.1), under the supervision of the central government, either through special bodies such as the district commissioners and the municipal auditors, or through a system of authorisations or approvals known as *tutelle administrative* (“administrative oversight”).

The Grand Duchy is divided geographically into three administrative districts, which constitute a purely administrative division of the territory and are not autonomous entities. Each administrative district has a District Commissioner, appointed by the Grand Duke. These are State officials, reporting directly to the Minister of the Interior and, more generally, to the government. Their task is to serve as hierarchical intermediaries between the central government and the municipal administrations. The Commune of Luxembourg is not supervised by a District Commissioner, but deals directly with the Ministry.

#### **Box 8.1. Municipal bodies**

Pursuant to Article 28 (1) of the Municipal Act, the municipal council handles all matters of municipal interest. Municipal competence is however limited both by the powers of the central government (pre-eminence of the general national interest over the general municipal interest) and by the natural power of private initiative (e.g. the powers of private individuals flowing from the freedom of trade and industry).

Action by the municipal council will be different depending on whether it is exercised in a purely municipal field or deals with matters submitted to it by the higher authority. In the first case, it takes

decisions; in the second case, it merely issues opinions.

The *Collège des bourgmestre et échevins* ["College of Mayors and Councillors"] is responsible for executing laws, regulations and Grand Ducal and ministerial orders, as long as they do not concern the police, unless that power has been attributed to them by a special legal provision.

The Municipal Act gives the College of Mayors and Councillors the responsibility to publish resolutions of the municipal council. Those resolutions include municipal regulations, the publication modalities of which are determined by Article 82 of the Municipal Act.

The municipal council adopts resolutions, and the College executes them. As soon as the council has taken a decision, its power is exhausted, and that of the College comes into play. If the council takes responsibility for executing its own decisions, it thereby encroaches on the powers of the College and violates the law.

### *Responsibilities and powers of subnational governments*

#### Principal powers of the communes

The communes have both mandatory and optional powers. A decree of 1789 still constitutes the legal basis for the primary municipal powers, namely the obligation to "ensure that the inhabitants enjoy good policing, particularly of property, public health, safety and tranquility in the public streets, places and buildings." As a result, the communes have broad and independent policing powers, to be exercised within such limits as may be established by national regulation.

The communes also act in fields governed by regulations established by other bodies. In fact, when it comes to regulation, the role of the communes is often that of a simple executing agent for national regulations. In principle there are certain compulsory areas of responsibility in which municipal autonomy no longer applies, or is greatly reduced. The most important field here is that of basic education. Apart from certain questions concerning teaching staff, the organisation and implementation of basic education falls entirely to the communes, and yet they cannot regulate in this area. At most, they may adopt internal rules governing permitted uses of school facilities. The same holds for classified or hazardous establishments. Here, the communes have powers of public investigation and even of authorisation, but they cannot regulate in the matter.

Municipal planning and urban development is another complex area of great importance, and one that is governed by a highly detailed set of national regulations. Yet the communes have a wide degree of autonomy in organising their territory and regulating development and land use. Thus, general and specific land-use plans are adopted by the municipal councils, under the supervision of the higher authority, and municipal regulations governing buildings and construction permits are delivered by the competent municipal authorities without any supervisory control.

The services that fall under municipal responsibility include, in particular, water supply, sanitation and sewage evacuation, waste management, school transportation, musical instruction, municipal childcare facilities, and cemetery management. Social assistance is also a municipal responsibility, but it is managed by a social office attached to the commune, and partially under its supervision.

#### Control over legality

The constitutional right accorded to elected municipal bodies to manage their own, exclusively local affairs gives them broad autonomy characterised by municipal power, local representation, and legal personality. In fact, as a legal person under public law, the commune possesses and manages its own property, it may acquire rights, contract

obligations and pursue action before the courts. However, the Constitution gives Parliament the power to regulate the makeup, organisation and attributes of the municipal council, and it reserves to the supreme authority the right to exercise ongoing control over the communes.

Most municipal regulations are thus subject to control for legality by the oversight authority, namely the Ministry of the Interior. In some matters, that Ministry acts in parallel with the responsible line ministry. If the Grand Duke, the Minister of the Interior or any other competent authority annuls or disallows an act of a municipal authority, the commune may appeal to the Administrative Court to set aside that decision.

### Financing

The ordinary resources of the communes are divided into three broad categories, each of which represents roughly one-third of their overall resources: direct municipal taxes (the municipal business tax (ICC) and the real estate tax); non-earmarked State financial contributions to the Municipal Finance Fund (FCDF); and earmarked operating revenues (municipal service fees and utility charges; subsidies granted by the State, for example to finance musical education).<sup>1</sup> A financial equalisation system has been instituted to offset differentials in revenues from economic activities. The Ministry of the Interior approves the rates for the ICC and the real estate tax set each year by the communes, as well as communal fees and charges.

### Territorial reform proposals

In 2005 the Ministry of the Interior published a discussion paper on territorial and administrative reform in the Grand Duchy. That report set out to rethink the entire territorial organisation, starting from the recognition that, because of their small size, most communes were unable to afford the administrative structures needed to offer all the services that citizens expect of them.

The 2005 report encouraged the merger of communes and the development of “intercommunal” structures, and proposed that municipal responsibilities be redefined and that municipal finances be adjusted. With respect to intercommunal structures, a number of municipal groupings or “*syndicats*” have emerged since the 1980s, primarily for the provision of essential municipal services (such as construction and operation of school complexes, water and sanitation services, and waste management), but also for optional services (such as home care, retirement centres and sporting activities). The 2005 report highlighted the difficulties resulting from this inflation, which was blamed on over-dimensioning of the *syndicats*. It proposed placing the emphasis on intercommunal structures at the regional level. Progress has been limited, both in terms of mergers (the number of communes has diminished only marginally, from 118 in 2005 to 116 in 2010).

### ***Better Regulation policies deployed at local level***

The central government's programme for 2009-14 establishes the goal of creating an administrative environment favourable to economic activity, and it calls for a number of administrative simplification measures relating, in particular, to municipal planning and urban development procedures, classified establishments, and the protection of nature. The planned initiatives include creation of a one-stop shop for urban development; preparation of a standard municipal building code; preparation of an implementation guide for greater legislative coherence; and creation of inter-ministerial co-operation platforms.

The “administrative simplification” aspect of the government programme includes a series of individual reforms of “legislative provisions and individual regulations” concerning the communes, in particular:

- the Law of 19 July 2004 on municipal planning and urban development, as well as certain Grand Ducal regulations in this area;
- the law of 19 January 2004 on the protection of nature and natural resources;
- the law of 10 June 1999 on classified establishments;
- legislation governing public procurement;
- legislation on environmental impact assessments for transportation infrastructure projects;
- the water law of 19 December 2008; and
- the law of 17 June 1994 on the prevention and management of wastes.

The Ministry of the Interior (the oversight authority for the communes) has taken the initiative to develop standard municipal regulations in various matters, together with municipal representatives and experts.

As to municipal initiatives, a growing number of communes are establishing “one-stop shops” (*guichets citoyen*) which local inhabitants can access at the municipal websites. This however is not an obligation for the communes, and is dependent on the initiative of municipal leaders or administrative personnel.

The communes are under no obligation to consult the public when preparing regulations, with one exception: the Municipal Act allows municipal councils to consult voters by means of a referendum on issues of municipal interest, and such a referendum is mandatory when demanded by a quorum of voters (one-fifth of voters in communes with more than 3,000 inhabitants, and one-quarter of voters in the other communes).

### ***Co-ordination mechanisms***

#### *Co-ordination between the central and local administrations*

Every administrative district has a district commissioner appointed by the Grand Duke. The commissioners are State officials, reporting directly to the Ministry of the Interior, and more generally to the government. They serve as hierarchical intermediaries between the central administration and the communes. All municipal administrations, with the exception of the City of Luxembourg, are under their immediate supervision and, except in serious and exceptional circumstances, all municipal dealings with higher authorities must be conducted through the commissioners.

When a draft national regulation concerns or affects the communes, the government will sometimes involve them in the preparatory work, through the association of communes (SYVICOL). The government creates *ad hoc* ministerial (or inter-ministerial) working groups for this purpose and invites SYVICOL to join them. The Minister of the Interior, who is by law the oversight authority for the communes, meets twice a year with SYVICOL to exchange views, to listen to municipal concerns and proposals, and to work out approaches for solving problems. The exchange of information between the national

and municipal levels is also facilitated by the fact that the Chamber of Deputies has many mayors among its members. SYVICOL told the OECD team it would like to have an annual meeting with the government.

When the State confers new responsibilities on the communes, it does not always give them the resources to carry them out with the necessary care and effectiveness. Sometimes the State will create new instruments or services which the communes will have to organise and manage, but it will not necessarily give them sufficient time to prepare and implement them properly. In such cases, regulation imposed from on high may seem excessive or inappropriate to the circumstances, at least during the start-up period.

Occasionally there will be a delay in adopting the implementation regulations for giving effect to new laws, and this too can pose problems for the subnational authorities in applying national regulations. The principal problem mentioned by the communes to the OECD team has to do with the implementation of new regulations, and stems from a lack of resources or too little time for preparation.

The government programme calls for codification (on a settled-law basis) of all national regulations governing or involving the communes, so as to have in the end a local government code. The government has also worked with SYVICOL to draw up a charter for the potential regrouping of communes.

#### *Co-ordination among local administrations*

The District Commissioners serve as co-ordinators among the communes. They are empowered to convene and chair meetings of the authorities of several communes to discuss matters of common interest.

In practice, the communes co-operate in many fields through SYVICOL.

### Note

1. In 2005, earmarked resources represented 37% of municipal funding, municipal taxes 30% (of which more than 28% came from the municipal business tax, ICC) and the FCDF 33% (source: Ministry of the Interior).

## *Bibliography*

- Andrich, Daniel (2003), La procédure législative et réglementaire, Service central de législation, Luxembourg.
- Besch, Marc (2005), Traité de légistique formelle, Conseil d'Etat du Grand-Duché de Luxembourg.
- Nothar, Roger (2002), La procédure administrative non contentieuse, p.8-11 [www.Legilux.public.lu/leg/textescoordonnes/guides/procedure\\_administrative\\_non\\_contentieuse/P\\_047\\_098.pdf](http://www.Legilux.public.lu/leg/textescoordonnes/guides/procedure_administrative_non_contentieuse/P_047_098.pdf).
- Ministère de l'Intérieur (2005), « Concept intégratif pour une réforme territoriale et administrative du Grand-Duché de Luxembourg », [www.miat.public.lu/publications/relation\\_communes/Concept\\_integratif/concept.pdf](http://www.miat.public.lu/publications/relation_communes/Concept_integratif/concept.pdf).
- Ombudsman (2009), Rapport d'activité du 1<sup>er</sup> octobre 2008 au 30 septembre 2009. Secrétariat du Médiateur, Luxembourg. [www.Ombudsman.lu/doc/doc\\_downloads\\_51.pdf](http://www.Ombudsman.lu/doc/doc_downloads_51.pdf).
- CNSAE (2009), Simplify – Simplification administrative en faveur des entreprises, Rapport 2004-2009, Luxembourg. [www.simplification.public.lu/brochure/Brochure.pdf](http://www.simplification.public.lu/brochure/Brochure.pdf).
- Etudes économiques de l'OCDE : Luxembourg 2010.
- Plan de conjoncture du gouvernement du 6 mars 2009 : lutter contre les effets de la crise-préparer l'après-crise.