

2 Environmental governance and management

Luxembourg is a small country with a centralised system of environmental governance. The government has made significant efforts to increase its transparency and accountability and to update environmental legislation. However, resource constraints impede more effective implementation of environmental policies and law and use of good practices in compliance assurance. Chapter 2 analyses the institutional and regulatory framework for environmental management, the setting and enforcement of environmental requirements, and mechanisms of public participation in decision-making, as well as access to environmental information, education and justice.

2.1. Introduction

The last decade has been marked by the increased political profile of environmental issues. Environmental governance has become more proactive and transparent, with many new legislative and policy initiatives. While general regulatory quality, rule of law and government effectiveness in Luxembourg are high, they decreased somewhat between 2012 and 2017 (World Bank, 2017). These trends can also be seen in the environmental domain, where policy implementation often lacks whole-of-government coherence and struggles to deliver expected results.

2.2. Institutional framework for environmental governance

The Grand Duchy of Luxembourg is a small unitary state with a centralised system of environmental governance. However, its 102 municipalities have a large degree of autonomy under the control of the central government, which appoints mayors. The 12 cantons serve as judicial and electoral districts, but do not have administrative functions.

Central government and horizontal co-ordination

The Ministry of Environment, Climate and Sustainable Development (MECDD) is responsible for making environmental and sustainable development policy. Under its auspices, three authorities perform regulatory and monitoring functions: the Environment Administration (AEV), the Nature and Forest Administration (ANF) and the Water Management Administration (AGE). In the water domain, the AEV and AGE have complementary responsibilities. For example, the AEV and AGE both regulate effluents into surface water bodies. The AGE also covers water abstraction, surface water and groundwater quality. In addition, the AGE oversees drinking water supply and municipal wastewater treatment infrastructure (water-related responsibilities were transferred from the Ministry of the Interior to that of the environment in 2013). The administrations have a modern, task-based organisational structure, which has improved their efficiency.

The Ministry of Energy and Spatial Planning (MEA) covers renewable energy and energy efficiency. It also co-ordinates national policies for territorial development and land use. The Ministry of the Interior is in charge of co-ordination between the state and local communities, including urban development and local spatial planning (Section 2.3). The Ministry of Mobility and Public Works is in charge of transport and infrastructure. The MEA and MECDD oversee the Myenergy agency that promotes sustainable energy transition, particularly in the housing sector. Several of these environment-related responsibilities were within the scope of the Ministry of Sustainable Development and Infrastructure (MDDI) in 2013-18. However, the remit of the environment minister (one of two in the former MDDI) has remained virtually unchanged.

Overall, horizontal co-ordination on environmental and sustainable development issues functions well. The Interagency Commission for Sustainable Development (CIDD) oversees the elaboration and implementation of the National Sustainable Development Plan (Chapter 3), bringing together government stakeholders on main strategic matters. In addition, an issue-specific interagency co-ordination committee oversees implementation of each environmental law. For example, the future climate law will likely establish a formal mechanism for collaboration between the MECDD and the MEA on energy and climate issues. At the same time, economic interests of specific sectors (such as agriculture) often impede better inter-ministerial collaboration.

Local governments

Municipalities (communes) are responsible for local land use, water supply, and wastewater and waste management, as well as certain aspects of nature protection (Chapter 5). They are mostly autonomous in their policies and practices. Communes pool their resources to create *syndicats* – associations of several communes for joint delivery of certain environmental (water or waste management) services. Many communes are members of several environmental service associations. This is a good practice also observed in several other OECD member countries (e.g. France, Sweden and Hungary). These associations are often key interlocutors for the central government on local environmental issues. In waste management, communes and their associations could co-operate better to harmonise practices across the country (Chapter 1).

Direct contacts between the central government and communes have increased with the 2015 abolition of district commissariats that once served as intermediaries between the two levels of government. This was in line with the 2010 Environmental Performance Review (EPR) recommendation that Luxembourg ensure better co-ordination between central and local governments to implement environmental and land-use policies. Communes are routinely consulted on draft regulations that concern them, e.g. on nature protection or water protection zones, as well as on all strategic plans. The environment ministry has issued several guides (*vade mecum*) for communes on issues within their remit.

All communes have signed the Climate Pact, a co-operation agreement under which they commit to implement certain environmental and climate-related measures. In exchange, they receive financial and technical assistance from the state and environmental certification (Chapter 3). Communes have recently adopted a voluntary “climate pact” (inspired by the European Energy Award). This encourages them to implement measures in six different domains (including land-use planning, construction and mobility) and achieve several levels of certification. In addition, communes form water partnerships and flood partnerships (usually across the same river). They also adhere to “biological stations” – inter-municipal associations that transpose nature conservation projects to the local level.

2.3. Setting of regulatory requirements

National environmental legislation is brought together in an Environmental Code – a regularly updated online compendium. During the review period, several new important pieces of environmental legislation entered into force, including the 2018 nature protection law and the 2012 waste management framework law. In addition, a number of environmental laws were updated to align them with European Union (EU) directives. These include the 2018 law on environmental impact assessment (EIA) and the 2014 law on industrial emissions. Luxembourg is in good standing with regard to implementation of EU law: it had only two infringements against EU environmental directives, the fewest among member states, along with Denmark (EC, 2019a).

Regulatory and policy evaluation

Regulatory impact assessment (RIA) is undertaken for all laws and regulations through a checklist that focuses on administrative burden and enforcement costs. It does not, however, consider environmental impacts or benefits. Instead, a “sustainability check” for all draft laws is being put in place. The sustainability check, based on priorities of the country’s Sustainable Development Plan (Chapter 3), would be an information and transparency instrument: it will be submitted to parliament and available to the public. Its use would be mandatory, but its conclusions would not be binding.

There is also a lack of *ex ante* evaluation of environmental policies, plans and programmes, particularly evaluation involving cost-benefit analysis. This sometimes results in incoherence between strategies, which reduces their efficiency.

All national spatial plans and sectoral strategic plans undergo mandatory strategic environmental assessment (SEA) in line with a recommendation of the 2010 EPR. However, SEA covers only parts of municipal land-use plans. Where SEA is carried out, it usually stays at a general level. This creates confusion with public consultation, which is usually conducted in parallel with the SEA process. SEA results are rarely followed up during the implementation phase of the plan or programme.

Several *ex post* evaluations have been undertaken in the environmental domain (e.g. the second Climate Plan and the second National Sustainable Development Plan). However, in spite of the 2010 EPR recommendation to closely monitor results of environmental actions, the evaluations are not consistently used as a management tool (OECD, 2018). There are insufficient resources for policy evaluation within the government. Moreover, the Audit Chamber (*Cour des comptes*) does not have a mandate for performance assessment of government activities, contrary to practice in several other OECD member countries (e.g. Estonia and Canada).

Environmental impact assessment and permitting

EIA and permitting are subject to separate procedures. The 2018 law on EIA divides development projects into several categories, with preliminary screening required for most activities. The EIA report is published on a dedicated website and announced in at least four daily newspapers for public comment over a 30-day period. A positive “motivated conclusion” of the MECDD on the EIA report is a prerequisite for submission of an environmental permit application.

Since 2017, “classified” (regulated) installations apply for an environmental permit using a standard application package (“commodo” electronic form). This has reduced incomplete applications and, as a result, sped up the permitting process. In the future, it will also be transmitted electronically to further accelerate the process. Depending on the installation’s category, the AEV and the Labour and Mines Inspectorate issue permits separately or in co-ordination. For medium-impact facilities, the local government issues permits. Draft permits are subjected to public comments for 15 days.

For the low-impact category of installations, permitting is replaced by declaration in accordance with standardised environmental requirements (general binding rules) contained in a government regulation. These requirements are not sector-specific because there are too few installations in each sector to justify regulations for each one. There are plans to extend the declaration regime to several other types of economic activity to reduce the administrative burden on small enterprises.

The AGE issues a range of water-related permits: for abstraction from, and discharges to, surface water and groundwater, as well as for relevant infrastructure projects. There are also a number of permits related to forestry and other nature uses (Chapter 5).

Land-use planning

According to the 2018 spatial planning law, a Strategic Spatial Planning Programme (PDAT) should form the basis of land-use planning in the country. The PDAT is supposed to be implemented through four binding sectoral strategic plans (for housing, transport, economic activity zones, and landscape protection) and locality-specific plans (*plans d’occupation du sol*). Locality-specific plans target nationally important infrastructure (e.g. the airport) and take precedence over municipal plans. The PDAT, and sectoral and locality plans, are subject to SEA.

The Government Council approved four sectoral plans in July 2019 after extensive public consultation. However, the current, second PDAT dates to 2003. To ensure better alignment between strategic and sectoral spatial planning, the MEA is developing a new PDAT with a draft expected in 2020.

The Ministry of the Interior oversees the development of master plans (*plans d’aménagement général*) and detailed land-use plans (*plans d’aménagement particulier*) by communes. In the past, municipal plans often

led to conflicts between housing development pressures and environmental considerations. As of March 2020, 48 communes have adopted “new generation” master plans. Their drafts are considered by the Spatial Planning Commission co-chaired by the Ministry of the Interior and the MEA, which issues an opinion. The MECDD, also a member of the commission, can issue an opinion as well, but only with respect to green areas. However, municipalities are not obliged to follow these opinions, which may lead to contradictions between municipal and national sectoral plans.

The MECDD recommends that municipal master and detailed land-use plans in their entirety undergo SEA, as practised in many OECD member countries (e.g. France and Latvia). However, the administrative tribunal has ruled that only parts of these plans that are related to green areas should be subject to SEA. This is the predominant practice, which does not ensure adequate integration of environmental considerations into local land-use planning.

2.4. Compliance assurance

According to AEV statistics, Luxembourg has few serious environmental non-compliance cases. However, the low level of resources for this activity may mean the government overestimates compliance by the regulated community. Indeed, in the water domain, where the AGE has stepped up inspection, the rate of significant non-compliance is high, between 20% and 30%.

Environmental inspections

The AEV’s control and inspection unit created in 2017 conducts compliance monitoring of activities with high environmental risk. The unit’s staff of 4 (among AEV’s staff of about 110) does not cope with all compliance monitoring needs. Among the staff, only two inspectors have special investigative powers of judicial police officers.

Most AEV inspections are triggered by citizen complaints (65% of inspection cases in 2018), and requests by the environment ministry, the prosecutor’s office or the police. The number of complaints grew by 50% in 2018 over the previous year (AEV, 2019), which led to the doubling of complaint-related inspections. However, the recently introduced complaint form has facilitated more targeted response to them.

The frequency of planned inspections is defined in the 2014 law on industrial emissions: it is annual for high-risk installations and once every three years for lower-risk facilities. In practice, annual frequency is not respected for every installation governed by the EU Industrial Emissions Directive (IED, 2010/75/EU). There were only 17 planned inspections of the country’s 35 IED installations in 2018 (AEV, 2019), which is largely due to the lack of human resources. Better balance is needed between reaction to complaints and proactive risk-based inspection planning.

The AEV also carries out occasional ad hoc inspection campaigns covering specific activity sectors. Such a campaign was conducted in the agricultural sector in 2018. Routine monitoring (sampling and measurement) of pollution releases from a wide range of installations is outsourced to specialised organisations accredited by the MECDD. Some 1 200 to 1 500 site visits take place each year.

The AGE established its own inspection and control service in 2017. It verifies compliance with water-related permits and licences, and reacts to water pollution incidents. Inspections more than tripled from 85 to 270 over 2017-19. There is some collaboration between all three environmental administrations (AEV, AGE and ANF) in compliance monitoring, but it is insufficient. The AGE and the ANF maintain their own statistics, making it difficult to assess compliance levels. Indeed, the administrations would benefit from an integrated compliance assurance strategy that the MECDD could develop.

The AEV website includes information on inspection planning and full inspection reports for IED installations, but only until 2016. These include descriptions of instances of non-compliance identified and

corrective actions recommended to, and accepted by, the operator. However, inspection reports do not usually contain information on warnings issued, sanctions applied or compliance achieved after enforcement action. Inspection reports for non-IED installations and unplanned inspections are not available to the public.

Enforcement

Environmental authorities often rely on the national police and customs in criminal enforcement matters. Police and customs officers receive training on environmental legislation, but more specialised training may be necessary. Furthermore, there are no prosecutors or judges specialised in environmental matters. Only the prosecutor's offices in Luxembourg City and Diekirch have two staff each, who work on waste-related crimes (EU, 2019).

Information is lacking on the effectiveness of different sanctions, as well as on how competent authorities ensure a proportionate response to different types of non-compliance (EC, 2017). Administrative enforcement has historically been limited to warnings, compliance prescriptions and orders to stop the non-compliant activity. Environmental inspectors and the police can issue a penalty notice (*procès-verbal*), which is then transmitted to a public prosecutor for further criminal enforcement. However, recent modifications of the waste and water legislation have introduced administrative fines of up to EUR 1 000 for minor violations. Similar changes are expected in enforcement of nature-related offences. Expanded availability of administrative fines would allow inspectors to use monetary penalties more without resorting to criminal enforcement.

Few criminal sanctions are applied: over almost 140 inspections in 2018, the AEV issued only one notice of violation and did not impose penalties. The same year, the AGE took 122 administrative enforcement measures in 231 inspections, but opened only two criminal cases. The reluctance to initiate criminal enforcement is largely due to the resource-intensive efforts needed to collect evidence that would withstand scrutiny in a criminal court.

Fines for most environmental crimes range from EUR 250 to EUR 125 000, while imprisonment ranges from eight days to six months. Small waste-related offences can be punished with a “warning fine” (*avertissement taxé*) of up to EUR 250. These sanctions are lower than in most OECD member countries and are unlikely to have a deterrent effect. The courts determine penalties, but there is no guidance for judges on how to set fines proportional to the gravity of the violation. In 2018, there were 49 criminal convictions for environmental offences. Monetary penalties were imposed in 14 of these cases (in 10 of them the fine was less than EUR 1 000).

Environmental liability

Liability for damage to the environment

According to the 2009 law on environmental liability, a judge orders remediation of damage to the environment by the responsible party at its cost. The order also defines a remediation timeline, which cannot exceed one year, and may impose a financial deposit (*astreinte*) until the remediation is completed. In the last decade, only two cases of accidental water pollution were treated under this law. However, the law's provisions are not retroactive. Pre-2009 cases can be addressed through other regulatory provisions, but not always in a coherent manner.

An operator may be required in a permit to provide financial guarantees to cover estimated costs of site decommissioning and remediation. Such financial guarantees are mandatory for operators of IED installations and facilities storing large amounts of hazardous substances. Operators may choose to buy environmental insurance. However, companies in Luxembourg do not offer environmental insurance of

significant environmental damage (i.e. with high indemnity levels) because there are too few potential clients to make a national environmental insurance market viable.

Contaminated sites

Luxembourg has a cadastre of about 12 000 potentially contaminated sites. However, their actual remediation relies on voluntary efforts and financing by responsible parties. Remediation of orphan sites (i.e. those where the responsible party cannot be found or is financially insolvent) may be funded up to 50% by the Environmental Protection Fund. However, the remaining financing must be provided by communes, which are not always ready to pay. These gaps were already noted in the 2010 EPR, which recommended that Luxembourg “establish a multiyear clean-up and rehabilitation plan for contaminated sites, including orphan sites, and specify how it will be funded”.

A new law on soil protection and management of contaminated sites is awaiting adoption. It will require the government to develop a national plan for soil protection, establish a list of high-risk installations for soil contamination, verify sites registered in the cadastre and, eventually, limit registration to sites with a significant degree of contamination. It will define soil as a non-renewable natural resource and lay out responsibilities and procedures for its remediation.

Promotion of compliance and green practices

Environmental authorities do not give sufficient attention to promotion of compliance and green business practices. This gap is partly bridged by trade associations that disseminate information on environmental requirements and ways to comply with them among their members.

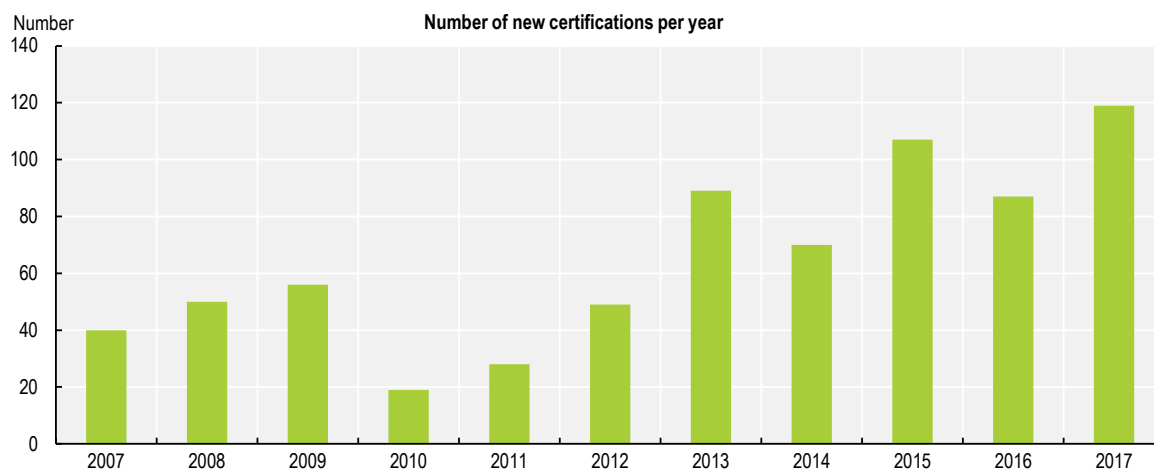
Voluntary business initiatives

Voluntary environmental agreements are not yet widely used. One such agreement between the government and 50 energy-intensive enterprises envisages a 7% reduction of energy consumption over 2017-20. The environment minister recognises voluntary environmental audits and other forms of environmental self-assessment by a certificate of approval (*agrément*). There were 87 physical and legal persons holding such a certificate in 2018 (AEV, 2019). Small business associations have proposed the idea of expanding the Climate Pact (Section 2.2) to small and medium-sized enterprises as a way of promoting energy efficiency and other climate-friendly practices.

Environmental management system certifications

The annual number of new certifications to the ISO 14001 environmental management system standard grew sixfold between 2010 and 2017 (Figure 2.1), with few incentives from the government. The AEV has only recently begun to consider ISO 14001 certification in calculating planned inspection frequencies. Several EU institutions located in Luxembourg and one local organisation have adopted the EU Eco-Management and Audit Scheme (EMAS). Several other local organisations are under consideration. However, EMAS remains unpopular among local businesses. The AEV and the Luxembourg Institute of Science and Technology started a joint programme in 2018 to further promote this instrument.

Figure 2.1. The number of ISO 14001 certifications rose significantly over the last decade



Source: ISO (2018), *ISO Survey 2017*, International Organization for Standardization, Geneva.

StatLink  <https://doi.org/10.1787/888934168626>

Greening public procurement

Luxembourg has neither a national action plan nor a national strategy on green public procurement (GPP). Specific targets or measures to promote GPP are also absent. However, the government's public procurement law encourages contracting authorities to use tender procedures to promote sustainable development. In 2018, the government decided that its own fleet vehicle should be electric or plug-in hybrid vehicles, with justified exceptions. It also set up a working group on challenges and opportunities of public procurement in a circular economy (EC, 2019b).

2.5. Promoting environmental democracy

Luxembourg ratified the Aarhus Convention in 2005, and its Pollution Release and Transfer Register (PRTR) Protocol in 2006. Over the last decade, the presence of the Green Party in the government has contributed substantially to the culture of openness of environmental decision making.

Public participation in environmental decision making

Overall, the central government and the MECDD in particular have been proactive in engaging businesses and the public in policy development. Public participation is part of both EIA and permitting processes (Section 2.3). It is also part of the elaboration of all strategic plans, which constitutes a good practice. Drafts of all relevant laws and regulations are sent for comment to non-governmental organisations (NGOs) and trade associations.

The Sustainable Development Board (CSDD) provides a forum for civil society participation. Its 15 members, nominated on a personal basis by the government, represent the private sector, NGOs and academia. The CSDD meets on average every six weeks; its secretariat, provided by a MECDD officer, is located within the ministry. It issues opinions, generally considered by the government, on key environmental issues and draft government programmes and legislation.

Access to environmental information

Access to environmental information may be required on the basis of the 2005 law on public access to environmental information, which transposes the Aarhus Convention into national law. The 2018 law on transparent and open administration further established public access to all government-held information. However, both provide for an exemption from the right of access in case of commercial confidentiality without going into detail. The grounds for refusing access are to be interpreted in a restrictive manner, taking into account public interest. Information on pollutant emissions reported by companies can thus not be qualified as confidential information.

The 2018 law created a Document Access Commission to consider appeals in case an information request is refused or inadequately answered. Further recourse is available in an administrative tribunal. In practice, environmental authorities often do not have sufficient human resources to adequately address all information requests.

The 2010 EPR recommendation to improve the production and dissemination of environmental information has been partly implemented. Luxembourg has a national environmental portal containing most of the relevant information such as legislation, data and other documents. The main portal can be difficult to navigate; it is not always clear where to find particular information. The government uses new platforms such as Digital Luxembourg to disseminate environmental information: air quality data can be downloaded using a cell phone application. The national Geoportal constitutes a central public-sector platform for the exchange of geospatial data, products and services. The national PRTR covers installations in 9 activity sectors and 91 pollutants. However, many environment-related government webpages are outdated due to lack of resources to maintain them.

Due to lack of resources, the country has not published a state of the environment report since 2003. The MECDD plans to develop such a report in collaboration with the National Statistics Institute and publish it online in the coming years.

Access to justice

Citizens can invoke the constitutional right to a clean environment (Article 11bis of the Constitution) directly in administrative and judicial procedures. No courts deal specifically with environmental issues. Individuals who can demonstrate “direct and certain interest” in the matter can bring environmental claims to court or administrative tribunals. NGOs, including foreign ones, have legal standing if environmental protection has been part of their charter for at least three years (European e-Justice Portal, 2019).

A case can be filed in court before all administrative remedies have been exhausted: this is a good practice not applied in many OECD member countries. Class action suits do not exist in Luxembourg. Apart from seeking legal remedies, people can file a claim against an administrative decision with the Ombudsman, who would mediate between the parties but not rule on the case.

There are no specific exemptions from legal costs on environmental matters, which may be high. However, the state may cover costs of, and provide legal aid to, individuals of insufficient means. There are no public-interest environmental law organisations in the country.

Environmental education

Luxembourg has implemented the 2010 EPR recommendation to develop environmental education as part of the National Plan for Sustainable Development. Sustainable development education has been one of the horizontal themes of the Ministry of National Education, Childhood and Youth (MENEJ) since 2012. The coalition government programme for 2018-23 emphasises integration of sustainable development education into the elementary and secondary school curricula.

The environment ministry created a platform for education on the environment and sustainable development in 2012. In 2017, it had over 200 members. The same year, it reactivated an inter-ministerial committee for education on sustainable development that had been created in 2008 (EC, 2019b). This committee has compiled online guidance on sustainable daily practices drawn from various national campaigns and initiatives. The MECDD and the MENEJ also put together a training process in 2017 called “Forum for a sustainable school” for secondary school teachers.

Over 50 institutions take part in different environmental education initiatives: school and adult education, leisure activities and general information dissemination. The ANF has established several visitor centres in natural parks and other protected areas. The MECDD and AEV conduct regular environmental awareness campaigns (e.g. on energy saving and green mobility), reaching out to all households and enterprises by email.

Recommendations on environmental governance and management

Strengthening the institutional and regulatory framework

- Reinforce institutional co-ordination to achieve coherent sustainable development policies across the central government and harmonised implementation practices at the local level.
- Introduce environmental aspects into the assessment of draft laws and regulations, including via the “sustainability check”; apply cost-benefit analysis in *ex ante* evaluation of environmental policies and legislation; expand the use of their *ex post* evaluation.
- Ensure consistent application of SEA to all communal land-use plans and their better alignment with national sustainable development policies through increased co-ordination between the ministries responsible for the environment, spatial planning and local government.

Improving compliance assurance

- Enhance resources dedicated to compliance promotion and monitoring; increase the number of proactive risk-based inspections; reinforce collaboration between the three environmental administrations through an integrated compliance assurance strategy.
- Expand the use of administrative fines, while ensuring their proportionality to the gravity of infringements; review the levels of administrative and criminal fines to increase their deterrent impact; provide guidance to inspectors on imposition of sanctions.
- Adopt the draft law on soil protection and management of contaminated sites; establish a programme for remediating contaminated sites, including abandoned ones.

Enhancing environmental democracy

- Improve the user-friendliness of environmental information and its full accessibility for the public, including regular publication of a state of the environment report and related indicators, as well as inspection reports; ensure that sufficient resources are available for dissemination of environmental information.

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