National legislation

Luxemburgo

In this section, you will find an overview of the different sources of law in Luxembourg.

Sources of law

International sources of law

The Grand Duchy of Luxembourg is bound by international, multilateral and bilateral treaties. In addition to the obligations that those commitments impose on the Luxembourg State in its relations with other States, some of those treaties are sources of law for individuals (for example, EU citizens can rely directly on freedom of movement on the basis of the European treaties).

International agreements

These are international treaties and accords concluded between the Grand Duchy of Luxembourg and foreign States. Some examples are the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 or the Benelux treaties signed in The Hague on 3 February 1958 and 17 June 2008 respectively, and which are binding on Belgium, the Netherlands and Luxembourg.

European Union law

European Union law comprises the European treaties themselves and the rules of secondary legislation, contained in the acts adopted by the institutions of the European Community and the European Union: directives, decisions, regulations, opinions and recommendations.

National sources of law

Constitutional rules

The Constitution of the Grand Duchy of Luxembourg was promulgated on 17 October 1868. The constitutional system established in 1868 closely resembles the system of the Belgian Constitution of 1831. Notwithstanding the numerous differences in the details, publications on Belgian constitutional law can be referred to without reservation as regards the general principles. Despite the numerous constitutional amendments made since its promulgation, the current Constitution still corresponds substantially to the text promulgated in 1868.

The Luxembourg Constitution is a rigid constitution, meaning that a special procedure is required to amend it, which is more complex than the ordinary legislative procedure. An amendment to the Constitution requires two successive votes of the Luxembourg Parliament (*Chambre des Députés*) and at least a two-thirds majority of the votes cast, with no proxy voting allowed. The two votes must be held at least three months apart.

If, in the two months following the first vote, more than a quarter of the members of the Parliament or 25,000 voters so request, the text adopted at first reading by the Parliament is subject to a referendum. In such case, there is no second vote and the amendment is adopted only if it secures a majority of the valid votes cast.

Legislative rules

Laws are defined as the norms passed by the Parliament and promulgated by the Grand Duke. The Luxembourg legislature decides on the overall form it wants its administrative law to take, except when a constitutional provision or a provision of international law limits its freedom.

Regulatory rules

Clearly, laws cannot regulate every matter down to every last detail. Furthermore, the use of the relatively complicated legislative procedure is not always appropriate, for example when it comes to legislating in an area in which the provision has to be frequently amended.

This is where the Grand-Ducal regulation (*règlement grand-ducal*) comes in, which is the implementing instrument for the law. Indeed, the Luxembourg Constitution entrusts to the Grand Duke the task of '(enacting) the regulations and orders necessary for carrying laws into effect'.

What, if any, are the other sources of law and what force do they have?

Case-law

Recognising case-law as a source of law is not without its difficulties. Indeed, Luxembourg law does not recognise the 'rule of precedent' applied in legal systems based on the common law model, and the courts are generally not bound by judgments handed down in other, even quite similar, cases. Moreover, judges are prohibited from ruling through general principles and their judgment must therefore always be limited to the specific case before them.

In practice, the production of case-law rendered in a similar case nevertheless has clear significance. Furthermore, when an instrument is open to interpretation, the judge clearly has greater power because he or she can shape the law while interpreting it.

International case-law

The Grand Duchy of Luxembourg recognises the direct authority of several international courts, including the European Court of Human Rights sitting in Strasbourg.

European case-law

Pursuant to Article 267 TFEU, the case-law of the Court of Justice of the European Union applies to national courts by means of reference for a preliminary ruling, which allows national courts, before ruling, to ask the Court of Justice for the solution to problems arising from the application of EU law, of which individuals can avail themselves before those courts.

National case-law

As a general rule, court judgments handed down at the conclusion of civil and commercial proceedings only have relative *res judicata* authority: these judgments are binding on the parties to the case, but they do not alter the arrangement of the law.

That is also the case for the majority of judgments handed down by the administrative courts. By way of exception, when an action against a regulatory act is brought before the Administrative Court of First Instance (*Tribunal administratif*) or the Administrative Court (*Cour administrative*), a judgment or decision will be of general application and it will be published in the *Mémorial*, the official journal of the Grand Duchy of Luxembourg.

The decisions handed down by the Constitutional Court (*Cour constitutionnelle*) are also of general application and are published in the *Mémorial* (the official journal of the Grand Duchy of Luxembourg).

The general principles of law

Among the rules derived from case-law, it is important to note in particular the category of the general principles of law, defined as 'rules of law that are binding on the administration and the existence of which is confirmed by the decisions of the courts'.

Hierarchy of norms

In domestic law, there is a hierarchy of sources of law. The Constitution is the highest source of law, followed by laws and regulations.

In the absence of any constitutional provisions, the position of Luxembourg law on the relationship between international law and domestic law derives exclusively from case-law.

Luxembourg case-law on this point has grown since the early 1950s when first the Court of Cassation (*Cour de Cassation*), and then the Council of State (*Conseil d'Etat*), signalled an end to the previously upheld position that a review by the courts of the conformity of laws with international treaties was impossible due to the separation of powers.

According to the Council of State's landmark decision of 1951, 'an international treaty incorporated into domestic legislation by a law of approval is a law of superior essence having a higher origin than the will of an internal body. It follows that in the case of a conflict between the provisions of an international treaty and those of a subsequent national law, international law must prevail over national law' (Council of State, 28 July 1951, Pas. lux. t. XV, p. 263).

The language of that decision is obviously very broad since the ruling asserts without any distinction that international norms prevail over the will of any internal body. However, the Luxembourg courts have never explicitly ruled in favour of the primacy of international norms over the Constitution.

It should be noted that the Constituent Assembly, at the time of the 1956 amendment, expressly rejected a government bill, which stated that 'The rules of international law are part of the national legal order. They prevail over national laws and all other national provisions.' The commentary on the articles had clearly stated that the latter wording was to include constitutional provisions.

Nevertheless, the Council of State implicitly acknowledged that primacy in an opinion of 26 May 1992 on the draft law approving the Treaty on European Union. Indeed, in it the Council suggests that 'it should be borne in mind that under the rule of the hierarchy of legal norms, international law takes precedence over national law and, in the case of conflict, the courts shall set aside domestic law in favour of the Treaty. Given the importance of avoiding a contradiction between our national law and international law, the Council of State urges that the related constitutional amendment take place within the appropriate period of time to prevent such a situation of incompatibility.' The Grand Duchy of Luxembourg therefore appears to have taken a resolutely internationalist path.

This state of affairs is undoubtedly a technical consequence of the absence of a constitutional review of laws in Luxembourg. The Constitutional Court verifies the conformity of laws with the Constitution. An issue regarding the conformity with the Constitution of a law approving an international treaty may not actually be referred to it.

In the Luxembourg legal system, laws contrary to the Constitution may be declared unconstitutional by the Constitutional Court. A Luxembourg judicial or administrative court may refer a matter to the Constitutional Court when, in the context of proceedings before it, the issue of constitutionality is raised. Direct application to the Court is not possible.

An action for annulment is also possible against illegal regulatory acts before the Administrative Court of First Instance with the possibility of appeal before the Administrative Court. However, such an action is only admissible within a period of three months from the publication of the regulation. If, after the expiry of that period, the legality of a regulatory act is discussed before a judicial or administrative court, the court still has the option of setting aside the regulatory instrument in favour of the law, but unlike the direct action possible during the three months following publication, that judgment will not have general enforceability.

National entry into force of rules in supranational instruments

International agreements

The Luxembourg Constitution is exceptionally concise in regulating the procedure for the approval of international treaties since it confines itself to stating that 'treaties will not have effect before having been approved by law and published in the forms specified for the publication of laws'.

The Grand Duchy is a country with a monistic tradition. In other words, the treaty itself applies in the same way as a domestic norm of the Grand Duchy without it being necessary to transpose it in one form or another.

The content of the law of approval is therefore very brief and generally confines itself to a single article according to which a particular treaty 'is hereby approved'. This law has no normative content. The law of approval approves, but it does not transpose; it has no purpose other than to authorise the Government to proceed with ratification of the treaty.

The law of approval is passed by the Parliament in accordance with the ordinary procedure. Voting is normally by absolute majority, except if the treaty comprises the delegation of powers (see below). Since the 1956 amendment, the Luxembourg Constitution contains an express provision making it possible to delegate powers to international organisations by treaty. Article 49*bis* of the Constitution states that 'the exercise of powers reserved by the Constitution to the legislative, executive and judicial branches may be temporarily vested by treaty in institutions governed by international law'. The second paragraph of Article 37 of the Constitution, nevertheless, provides that treaties of this type must be approved by the Parliament by a significantly reinforced majority.

Except where expressly provided, the passing of a law of approval does not have the effect of bringing a treaty into force in Luxembourg national law. The law of approval is a prerequisite for its entry into force but this will only take place after ratification. Moreover, in Luxembourg, even after approval by the Parliament, the executive branch is held to retain full discretion to ratify the text and the exercise of that power cannot be reviewed by the courts.

The entry into force of a treaty in national law is generally subject to three conditions: (1) the Grand Duchy must have ratified the treaty, (2) the treaty must be in force internationally and (3) the text of the treaty must have been published in full in the Luxembourg *Mémorial* in the same way as a law.

It should be noted that the publication of the treaty (required by Article 37 of the Constitution) is a separate requirement from the requirement to publish the law approving the treaty. Admittedly, in most cases, both conditions are met at the same time, i.e. the text of the treaty is published in the *Mémorial* immediately after that of the law. However, they are two separate acts and their publication could be separate since the treaty does not form an integral part of the law of approval.

European Union norms

The Luxembourg Constitution does not contain any specific provisions governing the transposition of secondary European legislation into Luxembourg's national law.

The usual instrument for the implementation of European directives is a law adopted by an ordinary majority of the Parliament.

While, in principle, European directives normally have to be transposed into Luxembourg legislation by means of a law, it is not, however, necessary to use formal law when the directive concerns a matter already governed by a non-contradictory Luxembourg law. In this case, transposition can take place by means of a Grand-Ducal regulation adopted on the basis of the general power to enforce laws that the Government draws from Articles 33 and 36 of the Constitution. It is then *strictly-speaking* the Luxembourg law that the Grand Duke enforces, even if the content of the regulation actually draws on the European directive.

The use of legislation can even be avoided when the matter harmonised by the directive has been the subject of an enabling statute by which the Parliament grants the Government the power to deal with matters that normally fall within the scope of laws by means of simple regulations.

Such ‘enabling statutes’ have been adopted by the Parliament since 1915 and the Government thus has extensive regulatory powers in the fields of the economy and finance that, even in the absence of an express reference to Europe, would undoubtedly have enabled it also to transpose numerous European directives.
Nevertheless, the transposition of European directives is today governed by a specific enabling statute of 9 August 1971, amended by a law of 8 December 1980, the purpose of which is limited to authorising the Government to execute and endorse the directives of the European Communities on issues relating to the economy, technology, agriculture, forestry, social affairs and transport. By way of derogation from the ordinary regulatory procedure, the Grand-Ducal regulations in question must have received the approval of the relevant parliamentary committee.
The procedure for adopting Grand-Ducal regulations is characterised, like the legislative procedure, by the obligation on the Government to submit its bill for the opinion of the Council of State and of the professional chambers (*Chambres professionnelles*). However, unlike the legislative procedure, the regulatory procedure allows the Government simply to avoid such consultations on the grounds of the urgency of adopting the recommended measure. This facility is, nevertheless, denied to the Government when it aims to transpose a EU directive by means of a Grand-Ducal regulation. Indeed, the law of 9 August 1971 supplements the ordinary regulatory procedure by requiring, on the one hand, the mandatory consultation of the Council of State and, on the other hand, the approval of the relevant parliamentary committee.
In both cases, the text of the Grand-Ducal regulation is adopted in the Council of Ministers (*Conseil des ministres*), then signed by the minister responsible and submitted to the Grand Duke for the purpose of promulgation. The Grand-Ducal regulation enters into force after its publication in the *Mémorial*.

Entry into force of rules of national origin

In the Grand Duchy of Luxembourg, laws and regulations enter into force only following their publication in the *Mémorial*.

Authorities empowered to adopt legal rules

International norms

The Luxembourg Constitution states that ‘The Grand Duke signs treaties’. However, it adds that ‘treaties will not have effect before having been approved by law and published in the forms specified for the publication of laws’.
It should be noted that approval is required for all international treaties, irrespective of their purpose and that this approval must be given in the form of a law. The latter clarification was inserted in 1956 at the express request of the Council of State, which considered that ‘this approval is tied to the law-making procedure, because the Constitution only recognises this single procedure, which is applicable to all expressions of will of the Parliament, on any matter whatsoever’.

National norms

In the legislative system of the Grand Duchy of Luxembourg, **the initiative for a law** may come from the Parliament or the Government.
The right of initiative of the Government is called ‘government initiative’ and is exercised by presenting ‘**government bills**’.
The right of initiative of the Parliament is called ‘parliamentary initiative’ and is exercised by presenting ‘**private member’s bills**’.
Afterwards, these government or private member’s bills are submitted for the opinions of the bodies concerned (professional chambers) and, most importantly, for the opinion of the **Council of State**. After the Council of State’s opinion has been received, the government or private member’s bill is sent back to the Parliament.

Process for the adoption of these legal rules

Laws

The Parliament is a single-chamber parliament.
In order to mitigate the risk of impetuosity in a unicameral system, Luxembourg’s Constituent Assembly provided that every government bill must in principle be the subject of two votes, at least three months apart.
However, the Constitution provides that the requirement of a second vote (known as a ‘second constitutional vote’) may be waived ‘if the Parliament, in agreement with the Council of State, sitting in open session, decides otherwise’.
The Council of State exercises a very distinctive function in this case, similar to the role played by the second legislative chambers in other States (and in particular the role played by the House of Lords in England). It is first involved before the parliamentary debates. The Constitution requires that the opinion of the Council of State be sought on every government or private member’s bill. The Council of State then participates a second time after the first vote of the Parliament to decide, in open session, whether to waive the second vote.
In practice, a second vote is waived in this way for the vast majority of laws. The Council of State has adopted a policy according to which the waiver is granted in almost all cases, with the sanction of refusal being reserved for the most serious cases. Potential obstacles to the waiver are most often removed during the preliminary procedure.
It should also be pointed out that the power of the Council of State is not an effective power of veto, which would, moreover, be difficult to reconcile with the fact that the Council of State is an unelected body. Indeed, the members of the Council of State are appointed by the Grand Duke. In the event of a vacancy, replacements are appointed in turn, the first: directly by the Grand Duke, the second: from a list of three candidates proposed by the Parliament and the third: from a list of three candidates proposed by the Council of State. The Council of State may only delay the passing of a law by two months and in this way allow the legislature additional time for reflection.
The Grand Duke participates not only at the start of the legislative procedure (for government bills), but also after the final passing of the text of the law by the Parliament. The Luxembourg Constitution states that ‘the Grand Duke promulgates laws within three months of the vote of the Parliament.’

Grand-Ducal regulations

Pursuant to Article 2 of the law of 12 July 1996 reforming the Council of State (*loi du 12 juillet 1996 portant réforme du Conseil d’Etat*), all **draft regulations** implementing laws and treaties may only be submitted to the Grand Duke once the **Council of State** has been consulted for its **opinion**.
However, the Government may waive this general rule in cases of urgency (to be assessed by the Grand Duke on the basis of a properly reasoned report prepared by the proposing minister) and consequently dispense with seeking the opinion of the Council of State (or *Haute Corporation* as it is sometimes referred to). Nevertheless, the exercise of this **emergency procedure** is to be reserved for exceptional circumstances.
Moreover, if an act of parliament expressly requires that the Council of State be asked for its opinion on regulations implementing that law, under no circumstances may the emergency procedure be exercised. That is also the case for amendments to draft regulations for which the Council of State has already issued a first opinion.
In the same way as for acts of parliament, the Council of State delivers its opinions on draft regulations in the form of a **reasoned report** containing general considerations, an examination of the text of the draft and, where necessary, a counter draft regulation.
Examination by the Council of State takes into consideration the content and the form of draft regulations as well as their compliance with a higher legal norm.

Legislative databases

The Légilux site is the online law portal of the Government of the Grand Duchy of Luxembourg.

It provides access to Luxembourg legislation, either in the form of the rough (original) texts in *Mémorial A* or in the form of consolidated texts, contained for the most part in legislative codes and digests.
The site is divided into three main areas, which are:
The Legislation Area bringing together publications concerning Luxembourg legislation, various other publications and consolidated texts.
The Administration Area featuring publications considered to be 'administrative'. This consists primarily of *Mémorial B* digests and the *Annuaire Officiel d' Administration et de Législation* (the official directory of administration and legislation).
The Companies and Associations Area, *Mémorial C* was replaced , from 1 June 2016, with a list of publications available on the website of the Luxembourg Business Registers (*Registre de commerce et des Sociétés* — RCS). The *Mémorial C* archives, from 1996 to the last *Mémorial C* published on 27 July 2016, will remain available in the Companies and Associations Area.

Is database access free of charge?

Yes, access to the databases is **free of charge**.

Related links

Légilux site
Council of State
The Parliament
Government
Ministry of Justice

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