GUIDE

10 PRINCIPLES OF RESPONSIBLE GOVERNANCE FOR NON-PROFIT ORGANISATIONS

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ILA
THE LUXEMBOURG INSTITUTE OF GOVERNANCE

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FOREWORD

Quality of governance is an essential factor in ensuring the proper functioning, credibility and long-term sustainability of associations and foundations. In an environment characterised by growing demands for transparency, accountability and professionalisation, non-profit organisations are called upon to structure their governance practices whilst preserving the distinctive nature of their public-interest mission.

The reform introduced by the amended Law of 7 August 2023 on non-profit associations and foundations in Luxembourg is fully in keeping with this development. It strengthens the legal framework applicable to the sector and invites the leaders of organisations to pay particular attention to the organisation of their governance, the allocation of responsibilities, the identification of risks, and the proper functioning of decision-making bodies.

It is in this context that the Non-Profit Organisations Working Committee of the Luxembourg Institute of Governance (ILA) operates. Created in 2015 and reactivated in 2024 following this legislative reform, the working group's mission is to contribute to strengthening the governance of associations and foundations. Through its work, it aims to promote good governance principles, formulate practical recommendations, and develop useful tools for the Board members and executives of non-profit organisations.

The exchanges held with sector stakeholders, notably within the framework of conferences, thematic meetings, and training sessions organised by the ILA, have highlighted a genuine need for clear and accessible guidance enabling the leaders of associations and foundations to better understand their responsibilities and structure their governance practices.

This document is part of that effort. It proposes an update to the guide dedicated to the "10 Principles of Good Governance Applicable to Non-Profit Organisations," first published in 2018.

This guide is intended to serve as a practical reference framework for the Board members and executives of non-profit organisations governed by Luxembourg law. Each principle is presented with concrete recommendations, illustrations, and tools designed to facilitate their implementation.

By making this guide available to the non-profit sector, we wish to contribute, in our own way, to the development of responsible, transparent and effective governance within non-profit organisations in Luxembourg, in service of their public-interest mission and of Luxembourg's social fabric.

 

Anne Goeres and Manon Loison, Co-Chairs of the ILA Non-Profit Organisations (NPO) Working Committee

INTRODUCTION

The work of the Non-Profit Organisations (NPO) Committee of the Luxembourg Institute of Governance (ILA) forms part of the ILA's general mission to promote both the professionalism of board members and best practices in governance.

This document, entitled "10 Principles of Responsible Governance for Non-Profit Organisations" (hereinafter the "Guide"), is addressed to Board members and members of the governing and management bodies (hereinafter "Executives") of non-profit associations and foundations, and public-utility establishments governed by Luxembourg law (hereinafter "Non-Profit Organisations" or "Organisations"), regardless of their field of activity.

The Guide should be read in the context of the Luxembourg Law of 7 August 2023 on non-profit associations and foundations, as amended (hereinafter the "Law"), and any supplementary regulations. Through this Guide, the ILA intends to establish practical guidance for the implementation and management of common good governance practices. The ILA assumes no responsibility for the compliance of actions or omissions on the part of Organisations or their Executives with applicable laws and regulations, even when acting in accordance with the recommendations of the Guide.

Furthermore, all Organisations may, where applicable, be subject to a supervisory authority, which may give rise to additional obligations in terms of authorisation and disclosure; such obligations shall prevail over the Guide in all circumstances.

It is recommended that Organisations observe good governance rules governing relations between their bodies, in particular the Board of Directors, the operational management, and all stakeholders (beneficiaries, donors, suppliers, the public sector, etc.), whilst taking into account voluntary contributions and their contribution to the general or societal interest.

Every Organisation and its Executives must be familiar with the existing codes of conduct applicable to their sector and ensure that they remain informed of their development.

The Guide aims to present a set of principles intended for the Executives of Organisations in order to promote good governance within the non-profit sector. These principles are stated in general terms and are intended to apply broadly. It will be for each Organisation to adapt them to its size and individual characteristics, and to review them at regular intervals as well as whenever changes to the legislative and/or regulatory framework indicate the need to do so.

The application of these principles is the responsibility of each Organisation and must be assessed in light of its statutory purpose, size, resources, environment, and the nature of its activities. These principles are not intended to unnecessarily increase the administrative burden on Organisations, but to help them structure governance that is appropriate, legible and effective, in service of their mission, their accountability and their impact. On the basis of these principles, certain recommendations have been formulated in order to provide concrete responses for readers.

The 10 principles retained and developed by the ILA are those it has judged to be of primary importance, without, however, claiming to be exhaustive. They address the responsibilities, composition and positioning of the decision-making body (most commonly the Board of Directors). The primary aim is to provide a basis for reflection that the Board members and Executives of Organisations are called upon to undertake both individually and collectively.

DEFINITIONS

TERM	EXPLANATION
BOARD OF DIRECTORS	The administrative body as referred to in Articles 5 and 45 of the Law of 7 August 2023. This collegial management body is composed of Board members acting under a mandate from the general assembly, duly appointed and registered with the Luxembourg Trade and Companies Register.
MANAGEMENT	The person(s), or the body where applicable, responsible for the day-to-day management of the Organisation, under mandate from the Board of Directors and within the limits defined by the latter.
EXECUTIVE(S)	Any person charged, individually or collectively, with executive responsibilities or day-to-day management within a Luxembourg non-profit association or foundation, in accordance with Articles 7 and 48 of the Law of 7 August 2023.
GUIDE	The 10 Principles of Good Governance for Non-Profit Organisations of the ILA, the Luxembourg Institute of Governance.
ILA	The Luxembourg Institute of Governance
LAW	The Law of 7 August 2023 on non-profit associations and foundations, as amended.
GOVERNING BODY	Board of Directors and/or Management.
BODY	The general assembly and the Board of Directors, as defined in Article 4 of the Law, as well as the Management as established, where applicable, by the articles of association of the non-profit association or by a decision of the Board of Directors.
ORGANISATIONS	Non-profit associations and foundations as defined by the Law of 7 August 2023.
STAFF	Any person bound by an employment contract with the Organisation.

PRINCIPLES

PRINCIPLE N° 1: DEFINE THE VALUES AND A CLEAR MISSION

The Organisation ensures that it defines shared and understood values that enable the definition of a clear mission and thus contribute to creating an environment conducive to the fulfilment of its social purpose.

The creation of an Organisation is motivated by a shared project and the common values of its members. These are translated by the Organisation's Board of Directors into a clear mission, formalised through the Organisation's social purpose.

The Board of Directors establishes a strategy and an inventory of resources with a view to fulfilling the Organisation's social purpose. It will also ensure that the Organisation is provided with tools and/or Bodies enabling the fulfilment and evaluation thereof.

The definition of the mission, as approved by the Board of Directors, reflects the shared project and values of the Organisation's members. These values, ideally limited in number, must be described in a clear and concise manner.

Recommendations:

1. Draft the mission and shared values, clearly and in written form, in order to establish the framework and enable easy reference.

2. Ensure that Executives and Staff understand the mission and shared values and are fully committed to them.

3. Make the mission accessible to all stakeholders in a spirit of transparency, enabling them to understand the Organisation's activities.

4. Regularly monitor the alignment between the mission and the Organisation's strategy, taking into account changes in the environment.

PRINCIPLE N° 2: APPOINT COMPETENT BOARD MEMBERS AND EXECUTIVES

The Organisation ensures that it appoints a Board of Directors and, where applicable, one or more Executive(s), who possess the required competencies, commensurate with its size and specific characteristics.

The selection of members of the Board of Directors, and where applicable the Executive(s), is based on an assessment of candidates' competencies, availability and experience, whilst also ensuring diversity of profiles, skills, and experience.

The aim is to ensure, collectively, that each Governing Body of the Organisation possesses the necessary competencies appropriate to the nature, scale and complexity of the Organisation's activities in order to fulfil all the responsibilities incumbent upon it.

Board members and all Executives act exclusively in the interests of the Organisation and its mission. They exercise their mandate with loyalty, diligence and independence of judgement, in keeping with the values and purpose of the Organisation.

Recommendations:

1. Take into account the legal form, size and characteristics of the Organisation in order to determine the number and qualifications of Board members and Executives.

2. Compose a Board of Directors and a Management team that collectively bring together all the necessary competencies (field of activity, legal, financial, human resources, etc.) for the proper functioning of the Governing Bodies and the fulfilment of the Organisation's mission.

3. Select Board members and Executives who are available, whilst ensuring diversity (age, gender, experience, etc.) conducive to exchange and objectivity.

4. Ensure that Board member(s) and Executive(s) are aware of:
   - the scope of the Organisation's social purpose.
   - the scope of their commitment within the Governing Body, their personal and joint liability to safeguard the interests of the Organisation in the management of its affairs, in compliance with applicable regulations.
   - the fact that they have the availability necessary to exercise their mandate effectively and are committed to devoting the time required to do so.
   - the collegial nature of the Governing Body (and the implications thereof) in the context of decision-making and the sharing of responsibilities.

5. Consider limiting the number of possible mandate renewals and/or setting an age limit for Board members or Executives. Even in the absence of such constraints, it is good practice to regularly renew the composition of the Governing Body (bringing fresh ideas through new personalities and opening new development perspectives for the organisation). It is also good practice to plan for the succession of members of the Governing Body (avoiding "clientelism", ensuring the Organisation's sustainability and knowledge transfer).

6. Anticipate the renewal of Board members and key positions and put in place a contingency plan in the event of an unexpected departure.

7. It is essential that, on an individual basis, Board members and Executives have a thorough knowledge of the Organisation's activities and the associated risks.

8. It is recommended that a training plan be developed for Board members and Executives, aimed at acquiring or consolidating the necessary competencies.

9. Obtain Directors & Officers (D&O) civil liability insurance appropriate to the Organisation's needs.

Examples:

- It is advisable, particularly at the time of a potential mandate renewal, to take into consideration the Executive's attendance rate at Governing Body meetings, their participation in proceedings, their commitment, and their availability for the Organisation's activities.

- Assess and plan for the ongoing training of Board members and Executives in order to enable them to respond appropriately to changes in the Organisation's environment.

- Introduce a self-assessment process for the Governing Body in order to identify any shortcomings and the corrective measures to be put in place.

- Depending on the size of the Organisation, formalise in internal rules and procedures the principles underpinning the selection of Executives.

PRINCIPLE N° 3: ESTABLISH AN ADEQUATE GOVERNANCE FRAMEWORK

The Organisation ensures that it establishes a formal organisational structure appropriate to its activities, and clearly defines and allocates interactions, roles, and responsibilities between the various bodies and Executives in order to guarantee its good governance.

The objectives pursued are multiple:

- Define a formal organisational structure with a clear definition and delimitation of powers and competencies (taking applicable regulations into account) between, on the one hand, the Executive(s) and, on the other, the Organisation's Governing Bodies. The Board of Directors ensures that the respective competencies and responsibilities of the Executive(s) are precisely defined. Within this framework, Management proposes an organisation of day-to-day management enabling a clear distinction between implementation and execution responsibilities, which fall to Management or persons mandated for that purpose, and orientation, supervision and control responsibilities, which fall to the Board of Directors.

- Integrate the values and mission as mentioned in Principle 1 into the definition of this structure.

- Distinguish strategic governance (the responsibility of the Board of Directors) from operational management (the responsibility of the Executives). This distinction must enable a clear differentiation between implementation and execution responsibilities, which fall to Management or persons mandated for that purpose, and orientation, supervision and control responsibilities, which fall to the Board of Directors.

- Clarify the Organisation's operational dynamic (interactions, processes, controls, information, consultation), taking into account the separation of executive and control functions.

It is further recommended that communication be transparent, both internally and externally, regarding the organisational structure and the allocation of roles within it.

For certain larger Organisations and/or in order to assist the Board of Directors and the Executive(s) in decision-making in specific, clearly delimited areas, committees and sub-committees, chaired by a qualified person, or mandates conferred on qualified persons, may be established. Committees and mandataries must adopt a professional approach, communicate effectively and regularly report on their activities.

Recommendations:

1. Draw up an organisational chart of the Organisation covering the legal bodies and the Executive(s).

2. Draft and keep up to date the key internal procedures relating to interactions between the various functions, roles and responsibilities.

3. Clearly establish the Organisation's powers of representation in order to guard against any abuses.

4. Draw up a schedule of regulatory and statutory obligations and ensure that the associated processes are clearly identified and under control.

5. As the Organisation evolves, ensure the coherence of the structure in relation to actual activity.

Examples:

- Assess the advisability of establishing committees and/or mandataries in specific areas such as risk management, audit, ethics, finance, scientific research, etc.
- Decide on the role of these committees (advisory or executive, validation of internal procedures).
- Ensure that these committees act in line with the organisation's mission and values (e.g. when the Finance Committee defines investment policy).
- Formalise and keep up to date an organisational chart, a description of key functions, and a delegation framework.
- Define signing authorities and, where applicable, internal rules and procedures.
- Make use of all available means of communication (internet, intranet, social media, and in-person communication). No single method of communication is exclusive of one or more others.

PRINCIPLE N° 4: ENSURE THE INTEGRITY OF BOARD MEMBERS AND EXECUTIVES

The organisation ensures that the role of Board member and Executive is exercised with the highest standards of integrity, probity and impartiality.

In the exercise of their mandate, Board members and Executive(s) must uphold the highest standards of integrity and probity towards the Organisation, its members and third parties.

Integrity is characterised by the refusal of any decision, transaction, or operation that would be contrary to public order or morality, or that would be liable to prejudice the Organisation.

Probity in the exercise of a mandate consists in discharging it with prudence, diligence and responsibility. This means demonstrating honesty and objectivity by avoiding any personal conflicts of interest and managing potential conflicts of interest.

As a reminder, pursuant to Article 45(2) of the Law of 7 August 2023, the mandate of a Board member is exercised on an unpaid basis.

Recommendations:

1. Adopt an ethics charter and/or develop these principles within internal rules and procedures.

2. Include a chapter dedicated to the management of conflicts of interest (in order to manage situations of conflicts of interest with the aim of avoiding them insofar as possible), as well as a reminder of the "disinterested" attitude expected of employees and volunteers in the exercise of their duties. It may also highlight the particular nature of its sector of activity, its non-profit purpose, and its role of "long-term conservation" of any surplus results of the Organisation. This constitutes not only protection for the Organisation in respect of the operations in question, but also security for the Executives in identifying decisions liable to engage their personal liability.

3. Document decisions and the reasoning preceding certain decisions so as to maintain a record and protect Executives in the event of future queries.

Examples:

- It is suggested that guidelines be put in place regarding the tendering of contracts to suppliers who have a family connection with the Organisation's Board members, Executives, employees or volunteers. It is also suggested that the non-profit purpose of the Organisation be regularly recalled to Board members, employees and volunteers.

- Establish a process for handling conflicts of interest: prior and systematic declaration, non-participation in the debate and in decision-making, documenting the decision-making process and discussions, and recording the decision(s).

- Establish a register of potential and actual conflicts of interest and the measures taken to mitigate them.

PRINCIPLE N° 5: DEVELOP AN ADEQUATE AND TRANSPARENT DECISION-MAKING PROCESS

The Organisation ensures that it puts in place decision-making processes that incorporate the governance framework, clearly define the roles and responsibilities of each participant as well as the appropriate controls, and ensure transparency towards all stakeholders.

The Organisation clearly establishes and delimits levels of authority and information flows between the various Governing Bodies.

The drafting of procedures may vary according to the size and characteristics of the Organisation. This process will focus in particular on the relationships and interactions between the Governing Bodies, as well as the steps to be followed, notably for operations that are of a certain importance to the Organisation. It is important to incorporate control rules and, in particular, the four-eyes principle for any significant decision.

The Organisation identifies, assesses and manages the principal risks liable to affect its mission, reputation or long-term viability.

Bearing in mind the principle of proportionality, it is also recommended that an internal as well as external control function be established through a regular audit in order to monitor financial management and risk management within the Organisation.

In the interest of transparency, it is necessary for decisions taken to be recorded in writing, together, where applicable, with the document(s) on which the decision was based. These documents are thus available at any time for any internal or external review.

Recommendations:

1. Adopt the "four-eyes" principle as a general rule (meaning that the systematic involvement of two competent persons is required and documented for any decision of a certain importance).

2. Clearly define the reporting obligations, information obligations and information flows between the various bodies, so that the Board of Directors can fulfil its supervisory and control role without replacing the day-to-day management.

3. Set the frequency of Governing Body meetings, adapted to the activities and needs of the Organisation.

4. Set the frequency of reviews of the Organisation's activities. Favour collegiality in decision-making or, failing that, a precise delegation framework, and provide for clear rules in the event of a lack of consensus (e.g. potential recourse to the Board of Directors or the general assembly of members).

5. If, exceptionally, an important decision is taken outside the framework of scheduled meetings, it is recommended that it be ratified at the next Governing Body meeting and recorded in the minutes.

6. Make all preparatory and monitoring documents as well as the minutes available in paper or digital format in a secure manner.

7. Identify, monitor and manage the principal risks and draw up a simple map of areas of vulnerability.

PRINCIPLE N° 6: COMPLY WITH LEGISLATION, ARTICLES OF ASSOCIATION AND PROCEDURES

The Governing Bodies ensure that they act in compliance with applicable legislation, the articles of association, procedures and all regulations whilst upholding the defined values.

The Governing Bodies ensure that they identify the legislation applicable to the Organisation by reason of its legal form and activities. They ensure that they are familiar with and understand this legislation. Where appropriate, they may have recourse to experts.

The Governing Bodies, in their actions, follow procedures and statutory rules in order to uphold the Organisation's values and ensure a sound and appropriate decision-making process.

Recommendations:

1. Draw up a schedule of legal, tax and regulatory obligations.

2. Where the Organisation receives designated/restricted donations, the Executives ensure that the donor's wishes are respected and, accordingly, ensure financial and operational traceability.

3. In order to strengthen the Organisation's governance in respect of the risks of money laundering and terrorist financing, it is recommended that a competent person be appointed within the Board of Directors, tasked with regularly monitoring the existence and implementation of appropriate controls and procedures.

Examples:

The Governing Body ensures that it acts in compliance with applicable legislation, including (non-exhaustive list):

- The Law of 7 August 2023 on non-profit associations and foundations
- The General Data Protection Regulation (GDPR)
- The Labour Code
- The Law of 12 November 2004 on combating money laundering and the financing of terrorism
- Collective bargaining agreements where applicable

PRINCIPLE N° 7: OBSERVE THE PRINCIPLE OF PROPORTIONALITY

The Board of Directors ensures that the governance framework is adapted to the activity and size of the organisation and to applicable legal and regulatory constraints.

Organisations evolve over the course of their existence; it is therefore important for their Executives and Board members to adapt as required the governance framework, the number of participants and the processes to the obligations arising from the activity and the Law (e.g. crossing audit thresholds and/or recourse to public funding), whilst ensuring adequate communication with members.

Changes in legal and regulatory constraints may be a driver of changes to the governance framework. Accordingly, Executives and Board members must ensure that they have the means, structures and resources necessary to address these changes.

Recommendations:

1. Monitor size criteria against legal and regulatory requirements.

2. Verify the relationship between the size of the Bodies and the Organisation's activity (volumes may, among other things, be analysed on the basis of monetary flows involved, the number of activities, etc...).

3. Analyse the needs arising from new activities or new directions given to them.

4. Adapt/modify the composition of the Governing Bodies in view of the new competencies required by new activities or increases in size.

PRINCIPLE N° 8 : IMPLEMENT STRATEGIC OVERSIGHT

In order to ensure compliance with the Organisation's mission, the Board of Directors puts in place mechanisms for selecting and monitoring projects, as well as methods for evaluating and measuring the impact of activities.

Strategic oversight is the responsibility of the Board of Directors. The Board of Directors ensures that the Organisation's activities are in line with the strategy as defined.

The strategic oversight of projects is broken down into three stages:

1. **Project selection**:

   For each activity and/or project, ensure that clear objectives are defined. Where possible, these are accompanied by a timetable, indicators and a budget.

2. **Project monitoring**:

   The Board of Directors ensures regular monitoring of the project and any necessary corrections.

3. **Project evaluation**:

   The results obtained are then analysed taking into account the resources used. This monitoring enables the improvement of the effectiveness of the Organisation's future actions and the measurement of their impact.

Recommendations :

1. Establish an annual, or even multi-annual, strategic plan.
2. Establish a project selection group.
3. Organise regular reports in order to enable monitoring.

PRINCIPLE N° 9: IMPLEMENT REGULAR MANAGEMENT CONTROLS

Regular management control is the responsibility of the Executives.

Executives ensure that controls are put in place covering mandatory legal and regulatory formalities, as well as regular monitoring of the Organisation's financial position.

Executives put in place mechanisms to ensure that the Organisation complies with its legal and regulatory obligations, and that regular monitoring of its financial position is maintained under the supervision of the Board of Directors.

They ensure that these obligations are fulfilled correctly and within the deadlines set. Simple, regular and well-known controls help to limit the risks associated with the Organisation's activities and financial management.

Management control must be adapted to the size and activities of the Organisation and be perceived as a useful tool, contributing to sound and responsible management.

Recommendations:

1. Verify the signing authorities on bank accounts, their correct registration and their validity. Avoid individual signatures wherever possible.

2. Confirm previously granted delegations of authority.

3. Appoint a committee comprising Executives responsible for monitoring the Organisation's financial operations.

4. Define a procedure enabling any interested person (e.g. an employee) to bring matters to the attention of the Board of Directors in the event of a failure to comply with regulatory obligations.

5. Establish independent oversight of the accounts in order to identify certain anomalies (an independent auditor in cases where statutory audit is not provided for by the Law).

PRINCIPLE N° 10: ENSURE TRANSPARENCY

The Governing Bodies act with complete transparency towards all stakeholders by sharing clear information, publishing key documents and complying with legal publication obligations.

The Governing Bodies ensure that they communicate transparently with all stakeholders.

The Organisation identifies its principal stakeholders and ensures that it maintains a transparent and constructive dialogue with them.

The Governing Bodies share clear information with Board members, members, donors and any other stakeholder.

The Governing Bodies publish key documents such as the annual activity report and a financial summary and ensure that third parties are kept informed in compliance with the publication requirements of the Law.

Recommendations:

1. It is suggested that the Organisation publishes its activity report on its website so as to make it easily accessible to all stakeholders and to the public.

This guide may be used in a number of ways: as a self-assessment tool for a board of directors, as a basis for reflection when establishing or developing the governance of an organisation, or as a common reference for structuring practices and reinforcing transparency and accountability within governing bodies.

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