JESSICA

JOINT EUROPEAN SUPPORT FOR SUSTAINABLE INVESTMENT IN CITY AREAS

Evaluation Study for Luxembourg

Final Report

April 2010

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Foreword

This report has been prepared on behalf of the European Investment Bank (EIB) as an evaluation study for the application of a JESSICA funding structure in Luxembourg.

The report covers the five principal and two supplementary objectives outlined within the Terms of Reference. In particular, this report is intended to evaluate Nordstad as a pilot, and to consider whether it is suitable for structural funds support which could be financed through JESSICA. Areas of our study have been limited by the information available and all financial estimates are therefore based on high level assumptions.

During the course of this study, a number of issues have arisen that have led to the consultancy team to consider areas outside of the original Terms of Reference. Particularly, in relation to our proposals for a new National Development Framework and the establishment of a wider Development Fund in Luxembourg.

The purpose of this report is to act as a useful starting point to promote further discussion over the potential implementation of the JESSICA mechanism in Luxembourg.

SUMMARY OF FINDINGS

The principle conclusions from this study are as follows:-

1. **There is a clear role for JESSICA in Luxembourg** to form part of a Luxembourg-wide Development Fund. The JESSICA funding element would stimulate public private investment in regeneration and development schemes across the country.
2. **A National Development Agency and National Development Plan is required** to create (inter-)ministerial direction, strengthen partnerships across both the public and private sectors and to create the foundations of a Luxembourg-wide Development Fund.
3. **A realistic and deliverable timetable needs to be set up** to promote the implementation of the National Development Agency, National Development Plan and Luxembourg-wide Development Fund.

In short, JESSICA represents a powerful tool that can be used in Luxembourg to facilitate development and regeneration. The summary of findings below outlines the above conclusions in more detail:-

- Luxembourg has a strong planning framework, which provides a good proxy for the Integrated Plan for Sustainable Urban Investment which is a pre-requisite for the establishment of a JESSICA fund.
- Luxembourg has a number of major development projects in consideration, which are going to require very significant financing over the coming 10 to 15 years. Developments of the magnitude currently under consideration in Luxembourg will require co-ordination and prioritisation, a clear timescale for delivery, consensus, innovative delivery structures and an appropriate range of legal powers and controls.
- Given the nature of these projects and the current economic conditions, it is highly unlikely that they will be deliverable by the private sector alone. Significant amounts of Government expenditure will be needed to finance these projects.
- There will be a role for Local Delivery Vehicles (LDVs) in delivering these projects. However, LDVs do not raise finance directly, and thus there remains a role for the establishment of an Urban Development Fund (UDF).
- A Luxembourg Development Fund can be established without recourse to JESSICA, however, the advantages of JESSICA are compelling in the Luxembourg context. The establishment of a JESSICA fund could provide a national revolving fund for the structuring, financing and delivery of major regeneration and development projects in an integrated manner across the country. Such a fund would provide a legacy that would long outlast the end of the current Operational Programme in 2013.
- The establishment of a JESSICA fund would represent one such innovative delivery structure. The Luxembourg Operational Programme is of relative small size - ERDF totals EUR 25 million for the period 2007-13 - but the full Operational Programme totals EUR 85 million when public and private match funding is taken into account. The size of a JESSICA fund would be limited to between EUR 10-20 million, which would be further leveraged by other public and/or private sector contributions.
- A fund of this size would need to be augmented by an additional Government investment (EUR 25-30 million). Such an investment would increase the potential for the fund to invest in projects which fall outside of the JESSICA requirements. Some of this funding will potentially already be committed to development and regeneration project.

- There would be considerable advantages to setting up a JESSICA fund in Luxembourg, the most important of which are the establishment of a long-term strategic, revolving, efficient fund and its ability to attract private sector equity and debt.
- The CB Richard Ellis work involved a review and assessment of the Nordstad masterplan to identify projects which could potentially form pilots for JESSICA investment. The report identified a number of issues in using Nordstad as a JESSICA pilot, the most significant of which are the occupational strategy for the Nordstad area (which has not yet been sufficiently defined) and a lack of mature urban development projects. However, the study does not reject the immediate eligibility of the Nordstad proposals. This is due to the distinct lack of information available to undertake a reasonable economic assessment.
- Whilst our findings suggest a mid/long-term perspective for the implementation of Nordstad projects, the study shows significant potential for JESSICA to catalyse strategic projects on a national level in the short to mid-term. As part of the project Terms of Reference, we undertook a high level review of other projects across Luxembourg which could usefully benefit from JESSICA intervention. These projects included: Belval Ouest; Fonderie de Rodange; Terre Rouge; Crassier d'Ehlerange; Junglinster; Portes de Hollerich; Luxembourg Central; Royal Hamelius; Ban de Gasperich; Mersch; Midfield; WSA; and Wiltz.
- The issues associated with Luxembourg's future economic growth targets, which are aimed at diversifying both the country's economic activity and the geographic base for that activity should be addressed in a co-ordinated manner. Luxembourg's spatial development policy must adequately reflect the country's sustainable economic development plan, both of which should in turn be underpinned by a sound financial strategy.
- A National Development Agency, sponsored by the Ministère du Développement Durable et des Infrastructures, is required to promote and deliver the Integrated Development Plan. The Agency has the potential to either take the form of a newly established or already existing structure. The terms of reference of the Agency would be broadly "to support Luxembourg's economic development by the promotion, and the development of high quality, attractive places to live, work and enjoy, either by creating new communities or by improving existing ones".
- The benefits of establishing the Agency are to create ministerial direction, to focus scarce specialist skills and ensure those skills are made available to the communes, strengthen partnerships across both the public and private sectors, and potentially generate procurement and efficiency savings. Appropriate governance arrangements would be needed to support the new Agency, and there would need to be close collaboration between the relevant Ministries. Other delivery bodies, such as the Fonds du Logement, Kirchberg and Agora, would work closely with the Agency, or could even form the nucleus of the new Agency.
- Government funds in support of development would be made available through the Agency on both an investment and grant basis (where projects cannot support an investment approach). A Development Fund would be set up to invest Government funds (and potentially other public and private sector resources) in development projects. JESSICA would form an element of the Development Fund to fund certain qualifying projects.
- It is envisaged that the National Development Plan and the Agency could be established within a two year period. Work to develop the JESSICA fund could take place in parallel with this with a view to having all structures in place by the end of 2012.

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JESSICA Background and Objectives to the Study

European Investment Bank

INTRODUCTION

Following a formal request from the Ministry of the Interior, Ministry of the Economy and Ministry of Finance, the European Investment Bank (EIB) commissioned this study as a preliminary evaluation of the application of a Joint European Support for Sustainable Investment in City Areas (JESSICA) funding structure in Luxembourg.

The report was undertaken in close liaison with an overall project Steering Committee, comprising representatives of both the EIB and the above three Ministries, by a consortium of three firms:-

- CB Richard Ellis (London and Luxembourg) – Property and financial structuring
- Bonn Schmitt Steichen – Luxembourg legal issues
- Eversheds – State Aid, procurement and financial structuring

The purpose of this study is to inform a proposed strategy in relation to the potential implementation of a JESSICA fund to assist with promoting and realising urban regeneration and development in Luxembourg considering the proposed development of Nordstad as a key pilot project.

WHAT IS JESSICA?

JESSICA is a policy initiative of the European Commission (EC), supported by the EIB, designed to help authorities in the EU Member States to implement financial engineering mechanisms to support investment in sustainable urban development in the context of EU Cohesion Policy. Other International Financial Institutions, as well as the European Banking and private sector, are also expected to contribute and the Council of European Development Bank (CEB) is already a participant. Under new procedures, Managing Authorities in the Member States are allowed to use some of their Structural Fund allocations to invest in Urban Development Funds (UDFs) to accelerate investment in urban areas.

The aim behind JESSICA is for EU Member States to be given the option of using some of their Structural Funds (usually provided as grant funding), to make repayable investments in projects forming part of an integrated plan for sustainable urban development. These investments may take the form of equity, loans and/or guarantees and are delivered to projects via UDFs and, if required, Holding Funds. The overarching aim is to invest in projects that would otherwise be unviable or marginal with the prospect of a financial return.

HOW DOES JESSICA WORK?

In short, JESSICA is a transformation of European Regional Development Funds (ERDFs) funding into loans, equity or guarantees in order to finance projects with revenues through revolving urban development funds on the basis of integrated urban development plans. Outlined below is a summary of the fund structuring process:-

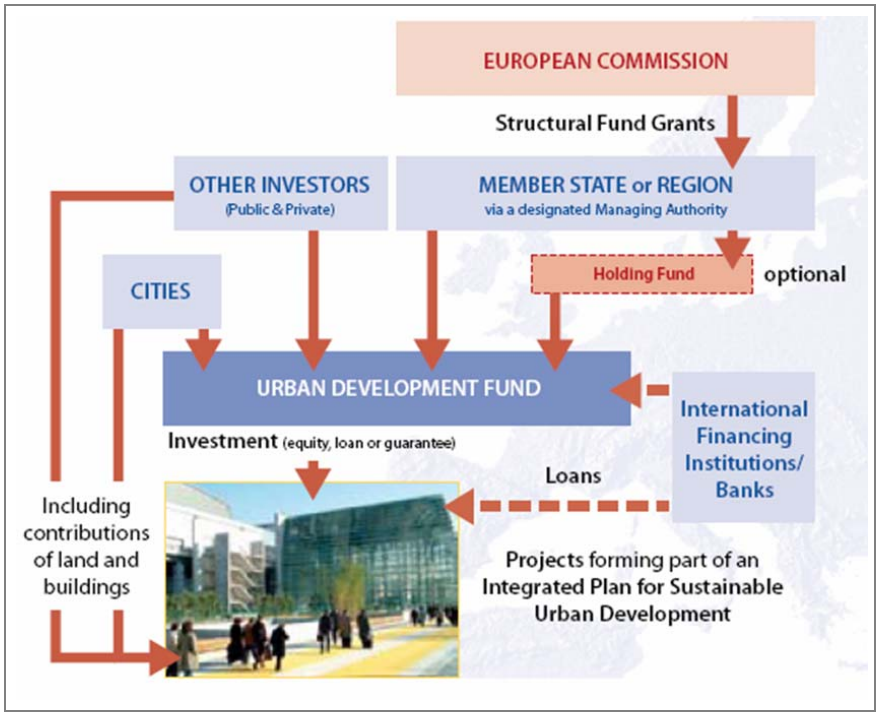
1. A proportion of the Member State's ERDF allocation is re-designated as a JESSICA funding stream. That proportion is determined by the size of the Member State's Operational Programme for 2007-13, the proportion that is already committed (and therefore not available for reallocation to JESSICA), and the Member State's investment priorities.

JESSICA Background and Objectives to the Study

2. The JESSICA funding stream, together with its associated 'match funding element', is drawn down and transferred to a newly established UDF.
3. The match funding can be provided either by the Government contributing cash or land and property assets to the UDF, or could alternatively be provided either by way of a loan or equity investment (again in cash, or land and property assets) from another private or public source.
4. Further private sector financing can then be sought at either a project or fund level to optimise the fund value.
5. The match funding can be provided as one payment, or else drip-fed into the UDF over a period of time (in which case, the ERDF-JESSICA funding would be received on a matching basis).
6. The UDF invests according to a pre-agreed business plan, in appropriate projects by way of equity, debt and/or guarantees.
7. The pre-agreed business plan should be formulated in such a way that projects receiving support from JESSICA form part of an Integrated Plan for Sustainable Urban Development (IPSUD).
8. As the projects supported by the UDF mature, the JESSICA investment is repaid to the UDF, possibly with an appropriate return, and the funds become available for reinvestment again. If the project does not perform as expected, there is no come back against the UDF or the Member State. The only consequence is that the fund declines in value as one or more investments are not repaid in full.

This process is represented graphically below.

JESSICA Concept



Source: JESSICA - A new way of using EU funding to promote sustainable investments and growth in urban areas (EIB 2008)

JESSICA Background and Objectives to the Study

The general implementation framework for JESSICA is provided by the following EC regulations:-

- Council Regulation (EC) No. 1083/2006
- Council Regulation (EC) No. 1080/2006
- Commission Regulation (EC) No. 1828/2006

WHERE SHOULD JESSICA BE USED?

Regeneration schemes can generally be classified into three types:-

1. **Projects which do not yield any commercial return.** This arises when the price for which the completed assets can be sold is less than the cost of developing those assets, and often occurs when a development requires significant up-front investment in infrastructure, or the provision of substantial public realm assets. In this case, grant funding should continue to be the funding mechanism of choice.
2. **Projects which yield an appropriate commercial return.** In this case, the market will eventually provide these assets, and unless there is a need to expedite the delivery of such projects, they should generally be left for the private sector to deliver.
3. **Projects which fall between these two categories.** These types of projects are capable of producing some return, but not necessarily at a level which would be attractive to the private sector. JESSICA would be particularly useful in this case and can be used to de-risk the potential return to the private sector, thereby leveraging private sector funding into schemes which would not otherwise be attractive to private sector investors.

JESSICA funding can also sit side-by-side with grant funding in the same project. For example, ERDF or other Government grant can be used to fund certain non-commercial elements of a project, with JESSICA then subsidising the remaining more commercial elements subject to not infringing State Aid.

WHAT CAN JESSICA INVEST IN?

In terms of potential projects, JESSICA is intended to facilitate investments linked to lasting improvement in the economic, physical, social and environmental conditions of a city or urban area. A key element is how integration is shown to be achieved. Use of JESSICA to fund investment in rural areas will not be consistent with the requirement to link investments projects within urban/city areas.

Typical projects which JESSICA funds are intended to target involve urban infrastructure (e.g. transport, water or energy facilities), protecting heritage sites or sites of cultural importance for tourism or other sustainable purposes; redeveloping brownfield sites, including sites clearance and decontamination; providing office space for SMEs or undertakings in the research and development sector; providing or enhancing university buildings, including medical, biotech and other specialised facilities and improving energy efficiency.

At the project level, UDFs will not be able to apply JESSICA funds into any ERDF sensitive sectors. These include areas such as: shipbuilding; agriculture; food processing; banks and insurance companies; motor vehicle manufacturing; coal; steel; defence sector; building and renovation of housing. In addition JESSICA funds are not applicable to the provision of:-

1. **Generalised (school age) education.** However, specialised activities involving technical education or vocational training, even at university level, may be eligible.
2. **Retail.** However, there may be exceptions, for instance under Sustainable Communities Priorities, where the provision or improvement of a retail outlet is an important integral part of a general economic development strategy. In addition, where a cultural or tourism benefit can be demonstrated, retail facilities might be supported.

It is of particular note that whilst JESSICA funds cannot be directly applied to any of the areas noted above, some of these sector types may form part of a larger mixed-use scheme. In this situation the direct allocation of JESSICA funding will only apply to those asset types eligible for JESSICA funding and not those noted above.

HOW DOES JESSICA INVEST IN PROJECTS?

As highlighted earlier in this Chapter, JESSICA can invest in projects in the form of loan, equity or guarantee. This section briefly explores: the functioning and principal characteristics of each financing method; how these instruments can facilitate development of projects; and how these different instruments allow for the recycling of resources.

Loan

- **Principal characteristics** - allows investment in projects at minimal risk (as the loan is secured against either land, a development company or a floating charge is applied over a number of assets). This is currently the most secure method of injecting finance into a project although will need to be combined with equity (c. 50%) due to present high loan to value (LTV) ratios required for development finance.
- **Instrument to facilitate development** - debt finance is currently in short supply and expensive (charged at c.3% above Libor), and is therefore a major barrier to delivery of regeneration.
- **Recycling method** – loan finance is generally applied over the long term and can be recycled back into a UDF via a frequent reflux of capital through debt service and interest payments.

Equity

- **Principal characteristics** - can take the form of cash or land and is needed to secure debt finance. Equity finance would take first loss position therefore represents high risk. Typical returns vary from 12% to 25% per annum.
- **Instrument to facilitate development** – equity finance would be applied to high risk projects (where the public sector might put in land as equity). The initial equity finance contribution would also facilitate access to additional debt or mezzanine finance to develop out the project.
- **Recycling method** – returns are generally provided on an annual basis through profit measures or overall returns based on an agreed exit strategy. All profit shares and exit returns can be recycled back into a UDF for investment in further regeneration projects.

Guarantee

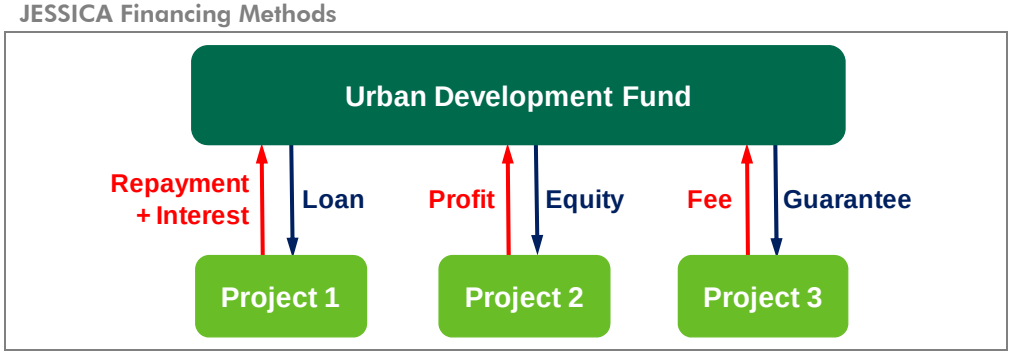
- **Principal characteristics** – various methods of guarantee can be applied including: rental guarantee; buy-out guarantee; or an individual guarantee to an organisation or SPV.

JESSICA Background and Objectives to the Study

- **Instrument to facilitate development** - a guarantee is provided to enable a project to be de-risked thus making it easier to draw down debt finance.
- **Recycling method** – returns are provided through an annual charge (fee) for providing the guarantee. The level of charge is tied into the amount of risk associated with the guarantee.

The functioning of the three methods of intervention is outlined diagrammatically below:-

JESSICA Financing Methods



Source: CB Richard Ellis

WHAT ARE THE GENERIC BENEFITS OF JESSICA?

The principal benefits of using JESSICA are as follows:-

Long term revolving efficient fund

- JESSICA involves the recycling of funds for future projects rather than a short term grant distribution which is lost once dispensed.
- It acts as a catalyst to investment in locations that might otherwise not attract funds.
- By replacing grant funding with investment where appropriate more regeneration outputs can be delivered per pound (or Euro) of public expenditure.

Attract private sector investment (both equity and debt)

- JESSICA should leverage private sector funding by de-risking projects.
- Its use has the potential to lower project IRR's by being applied as upfront expenditure.
- Through the JESSICA mechanism private sector skills, resources and project management capabilities can be harnessed.

Accelerating project delivery

- JESSICA can enable schemes to be brought forward by combining public and private sector delivery capacities including the public sector's legal powers to facilitate implementation.

Flexibility

- Finance solutions (equity, debt, guarantees) can be considered on a case by case basis.
- JESSICA can be combined with grant finance, other forms of public sector investment and other ERDF financing (subject to compliance with State Aid rules).

JESSICA Background and Objectives to the Study

- Dependent on the funding structure, the UDFs can invest in non-qualifying projects alongside JESSICA funding (which can only invest in schemes qualifying under ERDF criteria and the managing authority's Operational Programme).
- Once the investment has been recycled there are no further restrictions on the uses to which the previous JESSICA funding can be applied.
- Opportunity to gear-up the fund through private sector equity and/or debt once it is fully operational.

Greater certainty over receipt of EU funding streams

- JESSICA funds can be drawn down from the moment the holding fund or UDF is established and prior to a full list of projects being confirmed. This is not the case with ERDF financed projects where grant is reclaimable against invoices.
- Interest payable on un-invested funds can be retained within the UDF and applied for developing projects or for future investment.

Further EIB funding/technical assistance maybe available

- The EIB has indicated its willingness to discuss provision of supporting debt finance at the fund and/or project level.
- Subject to confirmation of the identity of the holding fund manager, access to EIB project structuring expertise.

An integrated policy approach

- By requiring that investment takes place within the context of an integrated plan for sustainable urban investment.

JESSICA IN EU MEMBER STATES

To date, 50 Evaluation Studies have been launched in 19 Member States, 31 of which are now completed. Requests for further studies are anticipated this year, with the majority expected to be finalised by 2011.

Outlined below is an illustrative selection of where the JESSICA concept is soon to be delivered across a variety of EU Member States.

Northwest Urban Investment Fund

The Northwest Urban Investment Fund (NWUIF) is a new £100 million fund to invest in urban development projects in the Northwest of England. The £100m fund includes £50m ERDF and the equivalent of £50m from the Northwest Development Agency (NWDA). Of the £100m fund, 60% has been allocated for the Merseyside area leaving the remaining 40% for Greater Manchester, Lancashire, Cheshire and Cumbria.

The fund will provide debt, equity and guarantees to support sustainable development projects in the Northwest's urban areas as defined under the Investment Frameworks for Action Areas 3.2 and 4.3 of the ERDF Northwest Operational Programme for (NWOP).

The fund will be seeded from a region-wide £100 million Holding Fund which will be managed by the EIB. The management of the Holding Fund will be overseen by an Investment Board ensuring the money is distributed according to the fund investment strategy. The Holding Fund will not directly invest in projects. This task will be undertaken

JESSICA Background and Objectives to the Study

by a small number of UDFs established on a regional level in line with the ERDF NWOP. The UDFs will channel the funds from the Holding Fund and attract additional money and land assets from other public and private sector sources to invest in projects.

The UDFs will be procured through a competitive tender process managed by the EIB. Each UDF must have a business plan of projects that is aligned to an Integrated Plan for Sustainable Urban Development. The UDF procurement process is due to be undertaken in March 2010 with initial projects likely to be implemented by the end of the year.

East Midlands Development Agency

The East Midlands Development Agency (EMDA) has recently confirmed the establishment of a £15 million UDF using the JESSICA mechanism.

The East Midlands UDF has been set up by the regional development agency and comprises £5 million of funding from EMDA and £10 million ERDF. EMDA hopes to eventually grow the fund to £20 million by attracting more public sector match funding.

London

In London, JESSICA will be used to invest in environmentally sustainable infrastructure projects. Investments made by the fund will take the form of loan, equity or guarantee.

The willingness to proceed with the implementation of the JESSICA initiative in London is representative of the capital's drive towards a fast-growing and low carbon economy. As part of the London ERDF Operational Programme (2007-13), it was agreed with the EC that a minimum of £100 million of ERDF and match funding will be invested in London via the JESSICA initiative.

The signing of a Memorandum of Understanding (MoU) between the LDA and the EIB was signed in December 2008 for the establishment of a JESSICA Holding Fund in London. The project is now undergoing a competitive process for the procurement of individual UDFs. Initial projects are expected to be implemented by the end of 2010.

Czech Republic

The EIB and the Regional Council of the Moravia-Silesia Cohesion Region (Czech Republic) signed on 22 July 2009 an MoU on the future creation of a JESSICA Holding Fund to support the regeneration and development of Moravian-Silesian cities. This is the first Memorandum of this type signed in the Czech Republic.

In this framework, the EIB will assist Moravia-Silesia in identifying suitable operators of urban development funds, which will subsequently invest in urban projects. The scheme will allow EU Structural Funds to be invested in a revolving way and will come under the JESSICA initiative.

The signing of this Memorandum follows the completion of a JESSICA Evaluation Study for Moravia-Silesia, funded jointly by the European Commission and the EIB. Moravia-Silesia is an industrial region with significant urban regeneration needs and the study identified considerable scope for the use of JESSICA as a way to use EU Structural Funds to attract private co-investment in strategic urban projects. The Moravia-Silesia Regional Council, which is the Managing Authority of EU Structural Funds in the region, intends to contribute approximately EUR 20 million to the JESSICA Holding Fund. A Holding Fund Agreement between the managing Authority and the EIB was signed on 08 February 2010.

JESSICA Background and Objectives to the Study

JESSICA IN LUXEMBOURG

The implementation of the JESSICA initiative in Luxembourg as a whole represents a unique opportunity for the EIB and the European Commission to harness public and private sector resources to promote schemes that will enhance the life opportunities for the people of Luxembourg for many years to come.

A JESSICA fund will be instrumental in achieving a range of policy priorities including building the knowledge based economy, improving business competitiveness, developing strategic infrastructure, creating an attractive business environment and building sustainable communities. The fund structure will be driven by a number of factors including:-

- Stakeholders' commercial requirements together with the funding/assets available to them for contribution into the JESSICA fund(s);
- Timing around such contributions;
- Commercial viability of projects identified for initial investment; and
- Costs of fund administration / efficiency.

STUDY OBJECTIVES

In summary, the core objectives the EIB requires as part of this evaluation study are:-

Objective 1: Establish value added of a revolving fund;

Objective 2: Identify Nordstad projects, partners and implementation requirements and consider possible expansion of fund to wider projects;

Objective 3: Scope the Fund Model;

Objective 4: Confirm legal constraints and opportunities; and

Objective 5: Set out an Action Plan for the Luxembourg JESSICA Fund.

In particular, this report is intended to evaluate Nordstad as a pilot project, and to consider whether it is suitable for Structural Funds support which could be financed through JESSICA. The key issues to be explored as part of this report are the anticipated size of the fund and what the fund can be invested in. Furthermore, the study is required to suggest a possible structure for a delivery vehicle and how this vehicle might be deployed in other areas of the Grand Duchy of Luxembourg.

REPORT STRUCTURE

The first section of this report has set out a general introduction to the JESSICA mechanism and the generic benefits of its implementation. In addition, this first chapter has also outlined the principal objectives of the study. The remaining content of the report can be broken down into the following six component parts:-

1. Context for JESSICA in Luxembourg

   In this section the context under which a JESSICA fund might be implemented is considered. This includes a review and analysis of the Luxembourg Operational Programme, identifying the most relevant investment opportunities for JESSICA intervention, as well as considering how the JESSICA pre-requisite for integrated plans for sustainable urban development can be fulfilled.

JESSICA Background and Objectives to the Study

Also provided within this section is a general evaluation of the planning and urban regeneration environment in Luxembourg, as well as background to existing co-financing models and the legal framework behind land assembly in Luxembourg.

A list of key participants involved in the urban regeneration sector in Luxembourg and a detailed review of the current property market in Luxembourg was provided as part of the Inception Report.

2. Legislative Provisions for JESSICA

This section provides a detailed review of EU rules governing JESSICA implementation. Consideration is made towards any potential State Aid and procurement issues.

3. Review of Potential JESSICA Projects

In line with core objective two of the Terms of Reference, this section provides a review of the Nordstad Masterplan, as well as the identification and evaluation of potential JESSICA projects. In the absence of detailed information being available on the principal pilot projects all financial estimates have been based on high level assumptions.

4. Deploying JESSICA in Luxembourg

This section is a central part of the report and explores the key considerations in deploying a JESSICA type structure in Luxembourg. Operational, financial, property and legal issues are all considered.

5. Way Forward

This final section provides an indicative timetable for implementing a JESSICA fund in Luxembourg.

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Context for JESSICA in Luxembourg

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Context for JESSICA in Luxembourg

European Investment Bank

INTRODUCTION

The purpose of this chapter is to provide the context under which a JESSICA fund might be implemented in Luxembourg. Having reviewed the background to the JESSICA initiative, the first part of this section highlights the specific aims, objectives and views of the key stakeholders and key existing issues in relation to potential JESSICA intervention.

The early part of this chapter provides detail around the Gothenburg and Lisbon Strategy which act as the build blocks for the Luxembourg Operational Programme 2007-2013. A review and analysis of the Operational Programme is then provided in order to set the parameters for identifying the most relevant investment opportunities for JESSICA intervention.

This is followed by a general evaluation of the planning environment in the Grand Duchy of Luxembourg and existing procedures for the preparation of integrated plans or strategies for sustainable urban development.

The final section considers key aspects of the regeneration environment in Luxembourg. The potential of applying urban development funds in the context of Nordstad is provided in the next chapter.

STAKEHOLDER AIMS AND OBJECTIVES

A key requirement at the onset of the study was to take into account the aims and objectives of the main stakeholders in order to establish a common understanding and interest in applying the JESSICA initiative to the country's urban agenda.

As discussed in the previous chapter, the European Commission (DG Regio) supported by the EIB have developed the JESSICA concept in order to create a viable mechanism for the funding and delivery of large physical regeneration projects which are beyond the capacity of delivery by public sector organisations and are not financially attractive to be undertaken by private sector developers on their own. The overall aim of the EIB is the delivery of major regeneration projects through facilitating the financial contractual arrangements and partnership procedures between the public and private sectors.

In view of the identified needs and constraints, the Directorate of Regional Planning (DATer) and the Government of Luxembourg expressed its strong interest in the deployment of the JESSICA instrument, in particular in the development of Nordstad. The Government also highlighted that the operation of a possible Nordstad pilot fund could be extended to other major urban development projects in Luxembourg, should the exercise prove successful.

In June 2008, the Ministry of Economy (the Managing Authority of the OP) formally requested the EIB to conduct an evaluation study in order to establish the rationale for JESSICA deployment in Luxembourg.

LISBON STRATEGY / GOTHENBURG STRATEGY

The Lisbon Strategy is an action and development plan for the European Union (EU). The aim of the strategy is to make the EU 'the most dynamic and competitive knowledge-based economy in the world capable of sustainable economic growth with more and better jobs and greater social cohesion, and respect for the environment by 2010'. It was adopted for a ten-year period in Lisbon in March 2000 by the European Council. The main fields are economic, social, and environmental renewal and sustainability.

Context for JESSICA in Luxembourg

The Lisbon Strategy is heavily based on the concepts of innovation, learning and social and environmental renewal. Under the strategy, a stronger economy will create employment in the EU, alongside inclusive social and environmental policies, which themselves are intended to drive economic growth even further.

The European Summit held in Gothenburg in June 2001 completed the Lisbon Strategy by adding an environmental dimension to it. This 'third pillar' of the Lisbon process, the others being economic and social reform, places a new emphasis on the protection of the environment and the achievement of a more sustainable pattern of development. The aim is to 'decouple environmental degradation and resource consumption from economic and social development by 2010'. The main priorities of the strategy are:-

- Combating climate change;
- Ensuring sustainable transport options;
- Addressing threats to public health; and
- Managing natural resources in a more responsible manner.

According to the mid-term review of the Gothenburg Strategy carried out in 2005, the EU will now pursue a 'stronger focus', a 'clearer division of responsibilities, wider ownership, broader support, a stronger integration of the international dimension and more effective implementation and monitoring' of the environmental policy in general, and the Gothenburg goals in particular.

LUXEMBOURG OPERATIONAL PROGRAMME 2007-2013

Delivered under the European Regional Competitiveness and Employment Objective, the Luxembourg's Operational Programme provides a framework for ERDF investment in Luxembourg for the period 2007-2013.

The Programme aligns with the strategic aims of Luxembourg's National Programme Framework and European Strategic Guidelines. The interrelation of these programmes is a requirement under European Law to form the basis of the Operational Programme.

The overarching aim is that targeted investment under the Operational Programme will lead to job creation, particularly in the fields of Research & Development (R&D) and Information and Communication Technologies (ICT). The investment is also intended to lead to the regeneration of existing disused industrial land and a reduction of greenhouse emissions. In addition to allocating specific funds towards technical assistance, the programme has two main priorities:-

PRIORITY 1: Stimulate growth and employment by means of investment in infrastructure required by economic operators, to promote new economic activities and to step up synergies between environmental protection and economic growth;

PRIORITY 2: Promote growth and jobs by stimulating knowledge / innovation and R&D based activities.

It is believed that these priorities have the potential to fall within the remit for potential JESSICA funding of Urban Regeneration and Renewal.

Financial Allocations

The budget for Luxembourg's ERDF Operational Programme has been apportioned to take account of EU policy and priorities, and the overall aims and objectives of the programme.

Context for JESSICA in Luxembourg

Consideration has also been made to the structure of the financial allocation which applied to the previous programme (2000-2006). At the time of the drafting of the programme, other financial instruments such as JESSICA had not been explicitly noted or considered.

Over the two separate Priorities and associated funds for technical assistance, the Operational Programme has an envisaged allocation of **€25 million**. This funding will be further match funded by a national public and national private contribution. The table below shows indicative national public and private contributions provided within the Luxembourg Operational Programme (2007-2013) these figures are based on the previous Operational Programme (2000-2006).

Operational Programme 2007-2013

Financial Allocations by Priority

PRIORITY	EU CONTRIBUTION	NATIONAL PUBLIC CONTRIBUTION	NATIONAL PRIVATE CONTRIBUTION	TOTAL
Priority 1	€12,116,960	€21,810,528	€14,540,352	€48,467,840
Priority 2	€12,116,959	€20,079,532	€2,423,392	€34,619,883
Technical Assistance	€1,009,747	€1,009,747	-	€2,019,494
TOTAL	**€25,243,666**	**€42,899,807**	**€16,963,744**	**€85,107,217**

Source: Luxembourg Operational Programme 2007-2013

The Programme has allocated 50% of the funding available to each of the Priorities, however a significantly higher private contribution has been envisaged for Priority 1. This is due to the more tangible nature of the Priority and the potential level of commercial returns that can be delivered.

The Operational Programme does not assume the level of funding allocations which will be deployed through a JESSICA structure. However, a detailed table is provided within the Programme outlining the proposed specific areas of funding allocation based on the two Priority Themes outlined above.

Luxembourg Operational Programme 2007-2013

Financial Allocations by Priority Themes

TECHNOLOGICAL DEVELOPMENT RESEARCH (RDT), INNOVATION AND ENTERPRISE		TOTAL
01	Activities in RDT and centres of research	€3,281,677
02	RDT infrastructure (including equipment, networks and research capacity)	€9,340,156
03	Improvements in technology and small business networks including other enterprises such as universities, research centres, science and technology parks)	€504,873
04	RDT support notably to businesses	€504,873
05	Services to aid the advance of companies and groups of companies	€504,873
06	Support to businesses in the promotion of products or schemes directly in support of the environment	€757,310
07	Investment in companies directly linked to research and innovation.	€252,437
09	Other actions aiming to stimulate research, innovation and business development	€1,009,747
01	Activities in RDT and centres of research	€3,281,677
INFORMATION TECHNOLOGY		
11	Information and communication technology (security, risk prevention, research, innovation etc.)	€504,873
12	Information and communication technology (TEN-TIC)	€252,437

Context for JESSICA in Luxembourg

14	Services and applications for companies (training, network establishment etc.)	€252,437
15	Other actions aimed at improving access to TIC and their utilisation efficiency by businesses	€252,437
11	Information and communication technology (security, risk prevention, research, innovation etc.)	€504,873
12	Information and communication technology (TEN-TIC)	€252,437
ENERGY		
39	Renewable energy: Wind	€252,437
40	Renewable energy: Solar	€504,873
41	Renewable energy: Biomass	€504,873
42	Renewable energy: Hydroelectric / Geothermal	€504,873
43	Efficient energy utilisation	€504,873
39	Renewable energy: Wind	€252,437
ENVIRONMENT AND PREVENTION OF RISK		
50	Regeneration of existing industrial and contaminated sites	€3,786,550
URBAN AND RURAL REGENERATION		
61	Projects associated with urban and rural regeneration	€757,310
TECHNICAL ASSISTANCE		
85	Preparation and consultancy studies	€757,310
86	Evaluation of studies: information and communication	€252,437
TOTAL		**€25,243,666**

Source: Luxembourg Operational Programme 2007-2013

It should be noted that the above funding allocations are allocated to either rural or urban areas. The proposed distribution and indicative annual financial allocations are as follows:-

Luxembourg Operational Programme 2007-2013

Financial Allocations by Zones

ZONE		TOTAL
01	Urban Zones	€16,408,383
02	Rural Zones (apart from mountainous areas, islands, or zones with very low population density)	€8,835,283
TOTAL		**€25,243,666**

Source: Luxembourg Operational Programme 2007-2013

Analysis and review of the Programme show that there is potential for the JESSICA initiative to be implemented against both Priority 1 and 2.

Priority 1

"Contribute to making Luxembourg more attractive for investment and employment"

The first priority includes the main principles of the Gothenburg Strategy, developed in the context of the principle of sustainable development at Community level.

The aim of this priority is to help strengthen the economic environment necessary for diversification and the development of each region's own potential, taking into account its restructuring needs and existing opportunities and environmental considerations.

Context for JESSICA in Luxembourg

The planned measures should aim to reconcile greater competitiveness with improving the quality of life. These measures should take into account land use policy and will be implemented in line with the priorities of the town and country planning scheme, the sector and regional planning schemes and the integrated transport and spatial development plan.

Based on the anticipated ERDF funds and national public and private contributions, €48.5m is available under Priority 1 eligible activities, identified under the themes below.

Priority 1 (Theme 1)

IMPROVE THE BASE INFRASTRUCTURE IN LINE WITH THE GROWTH IN THE ECONOMY AND TO PROMOTE NEW ECONOMIC ACTIVITY	
Priority Theme	Economic Activity
Technological Development Research (RDT), Innovation and enterprise ■ Advanced services to companies or groups of companies ■ Other activities aimed at stimulating research, innovation and small business enterprise **Urban and Rural Regeneration** ■ Projects relating to urban and rural regeneration **Information Technology** ■ Communications and information technology ■ Services for small businesses (electronic business, education, networking) ■ Other actions aimed at improving access to information technology for efficient utilisation in small businesses	■ Telecommunication stations ■ Construction ■ Commerce ■ Real Estate ■ Public Administration ■ Other services not specified

Source: Luxembourg Operational Programme 2007-2013

Priority 1 (Theme 2)

STRENGTHEN LINKS BETWEEN THE ECONOMY AND PROTECTING THE ENVIRONMENT	
Priority Theme	Economic Activity
Technological Development Research (RDT), Innovation and enterprise ■ Assistance to small businesses for the promotion of products and methods of production that respect the environment **Environment and prevention of risks** ■ Regeneration of industrial sites and contaminated areas **Urban and Rural Regeneration** ■ Projects relating to urban and rural regeneration **Energy** ■ Renewable energy: Wind / Solar / Biomass / Hydroelectric / Geothermal and others **Efficient energy utilisation** ■ Renewable energy: Wind / Solar / Biomass / Hydroelectric / Geothermal and others ■ Efficient energy utilisation	■ Energy Companies ■ Production and distribution of electricity, gas and heating ■ Construction ■ Public Administration ■ Activities linked with the environment

Source: Luxembourg Operational Programme 2007-2013

Priority 2

"Improve knowledge and innovation, both of which are growth factors in Luxembourg"

Context for JESSICA in Luxembourg

The aim of this priority is to create and improve infrastructures and competences for the development and/or strengthening R&D potential. This priority comprises two themes: to improve cooperation between public and private research; encourage capacity building and the development of research networks.

This priority supports the creation and development of innovative activities and R&D enterprises, in co-operation with other enterprises and public research centres or Luxembourg University. The overall aim is to: foster competitiveness; consolidate regional specialisations with added value and; reinforce their technological and economic position whilst respecting the principles of sustainable development and environmental protection.

Based on the anticipated ERDF funds and national public and private contributions, €34.6m is available under Priority 2 eligible activities, identified under the themes below.

Priority 2 (Theme 1)

SUPPORT INVESTMENT IN TECHNOLOGICAL DEVELOPMENT RESEARCH (RDT)	
Priority Theme	Economic Activity
RDT, Innovation and business enterprise ■ RDT infrastructure (including equipment, networks and research capacity) ■ Improvements in technology and small business networks including other enterprises such as universities, research centres, science and technology parks) ■ Services to aid the advance of companies and groups of companies. ■ Investment in companies directly linked to research and innovation.	Other non specified services

Source: Luxembourg Operational Programme 2007-2013

Priority 2 (Theme 2)

SUPPORT THE CREATION AND DEVELOPMENT OF INNOVATIVE ACTIVITIES AND R&D IN ALL WAYS	
Priority Theme	Economic Activity
RDT, Innovation and business enterprise ■ RDT activities in research areas ■ Support to RDT (including access to RDT services in Research Centres ■ Services to aid the advance of companies and groups of companies. ■ Other actions aiming to stimulate research, innovation and business development	Other non specified services

Source: Luxembourg Operational Programme 2007-2013

We have undertaken a high level review of the detail behind these programmes. Relatively little of the programme has already been committed to projects, and we estimate that an EU ERDF contribution of approximately EUR 5 million could potentially qualify for reallocation to JESSICA.

If we assume the fund is matched with national public sector investment of 100% (in practice, it may be more), that would give a JESSICA fund equity of around EUR 10 million. It may be possible to leverage the fund or introduce more than the matched funding, in which case the amounts available for investment through the UDF could be significantly greater.

LUXEMBOURG PLANNING SYSTEM

The Luxembourg planning system is structured over two levels: the government on the national level and the municipalities on the local level.

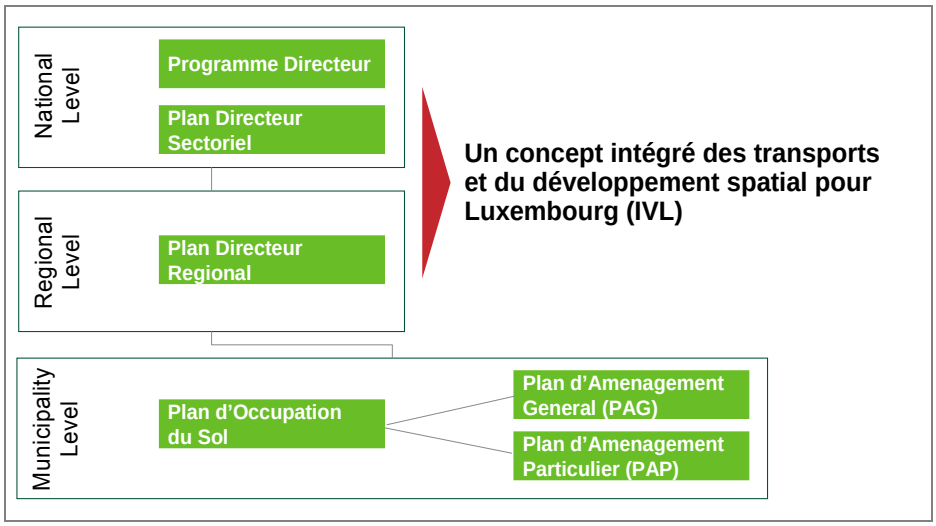
Context for JESSICA in Luxembourg

On a national level the key authority responsible for the development of spatial planning is the Ministry of Interior and Spatial Planning, which is also the supervising authority for the municipalities. The Ministry of Interior and Spatial Planning is responsible for setting the overall spatial objectives and principles. The overarching planning document in this regard is the *'Programme Directeur'* (National Spatial Planning Programme).

These principles are implemented through a combination of a *'Concept intégré des transports et du développement spatial pour le Luxembourg'* (Integrated transport and spatial development concept for Luxembourg), *'Plan Sectoriel'* (Sector Plan) and *'Plan Regional'* (Regional Plan) further described below.

An outline structural diagram of the Luxembourg planning system is shown below:-

Luxembourg Planning System

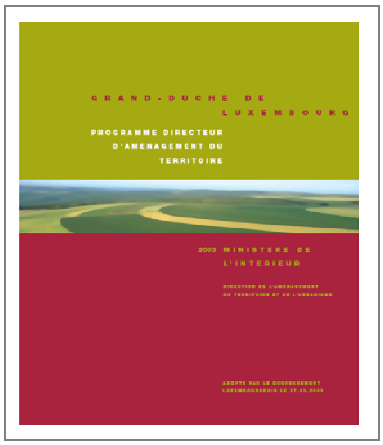


Source: CB Richard Ellis

Programme Directeur

Adopted in 2003 and valid for 5 to 10 years, this plan sets out the spatial objects for Luxembourg and provides examples on how the objectives could be implemented. It is a policy paper for sustainable development, a tool for spatial coherence and the application of the major principles of spatial planning.

The plan describes the co-ordination of the aims of the guiding Sector Plans and defines the principal spatial development guidelines according to the objective of sustainability. It is not a legally binding document but guides the approach and decisions of the Luxembourg Government and local authorities.



The programme is divided into three main policy areas covering the following fields: urban and rural development; transport and telecommunications; environment and natural resources. There are number of separate policies associated with each field. These are briefly outlined as follows:-

Context for JESSICA in Luxembourg

Urban and Rural Development

Policy Objective 1: To create and maintain dynamic, attractive and competitive towns, agglomerations and urban regions

Policy Objective 2: To diversify economic activities in the rural regions according to a sustainable development approach

Policy Objective 3: To develop urban and rural structures compatible with environmental demands according to the principle of sustainable spatial planning

Policy Objective 4: To create towns and villages responding to social requirements, offering high quality of life and underpinning social integration policy

Policy Objective 5: To promote polycentrism and concentrated deconcentration

Policy Objective 6: To develop an urban rural partnership in the spirit of sustainable development

Transport and Telecommunications

Policy Objective 1: To cut pollution by reducing traffic

Policy Objective 2: To transfer traffic to transport methods that respect the human and natural environment

Policy Objective 3: To guarantee and improve accessibility throughout the country

Environmental and Natural Resources

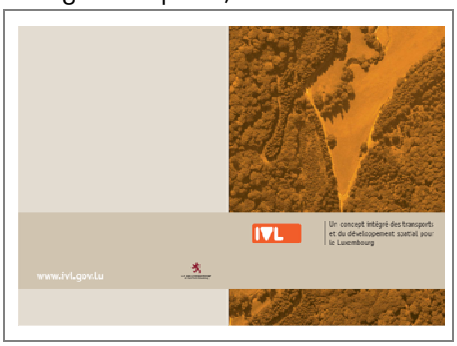
Policy Objective 1: To conserve, restore and develop the capacity of natural areas to fulfil both their ecological and their social and economic functions throughout the country in the long term

Policy Objective 2: To ensure sustainable management of land and natural resources throughout the country

Policy Objective 3: To safeguard and develop sectors of significant ecological importance and integrate them into a functional ecological network

Concept Integré du Transport et du Développement Spatial pour le Luxembourg (IVL)

Adopted by the Government in 2004, this document offers guidance on how to put into practice the essential targets set out in the National Spatial Planning Programme. As such, the IVL is considered as: a strategic/conceptual tool for considering the different development options; a working instrument for co-ordinating sector plans; and a framework for regional and local authority planning. Furthermore, the IVL is designed to serve as a new planning approach for establishing integrated thinking and co-ordinated actions over the longer term.



The plan focuses on six major goals in terms of concrete measures and key projects to be carried out. These are projects devised for individual areas and contain innovative concepts for showcasing

exemplary developments in spatial, transport and landscape planning which are intended to inspire follow on projects. The following key projects are proposed by the IVL:-

- The development in the area to the southwest of Luxembourg city on the basis of an interactive planning process;
- A new residential area in the South built close to the local public transport network;
- The regional park for the creation of the 'Zone Verte Interurbaine';
- The Nordstad development plan;
- The implementation of region-specific measures in rural regions, such as using farm buildings for new purposes; and
- Various projects for inner development in rural and urban areas.

Plans Regionaux / Sectoriels

Regional Plans offer the interface between Sector Plans and planning on a local level. Regional Plans are worked out by the Government and in close partnership with the different regions defined by the National Spatial Planning Programme. The local municipalities may form regional, multi-sectoral syndicates in order to implement the measures of the common action programme. It is understood that since not all Sector Plans are yet complete, the Regional Plans are not yet fully finalised and implemented at this stage.

Sector Plans are provided as mechanisms for co-ordination of the spatial dimension in specific sectors such as schools, waste disposal, transport and housing. These plans are elaborated in co-operation with the respective sector ministries. It is understood the majority of Sector Plans are currently in being finalised. These plans are intended to be legally binding instruments, which have direct influence on the plans regional or local level.

Pacte Logement

Falling within the remit of the Sector Plans is a key law known as the Pacte Logement. This law was passed in January 2007 in order to develop new tools and increase efficiency of existing ways of increasing housing supply and reducing land and house prices. By the end of 2009, 83 communes had signed the agreement.

The law states that the Government will participate in the financing of infrastructure related to new housing developments. In 2009, EUR 14 million was provided for such financing. Each commune, in the framework of the Pacte du Logement has to:-

- Establish a list of housing projects and infrastructure in order to reach expected population growth;
- Engage all legal tools to accelerate housing development;
- Plan at least 10% social housing; and
- Enforce a local tax on specific buildings which are not occupied and on land which has not been developed in order to avoid speculation.

As the commune and the state do not have a sufficient stock of land, a pre-emption right on behalf of communes has been set up (Vorkaufsrecht). This right is subordinated to different rules and the kind of properties on which this right can be applied. The right must be applied in order to fulfil the objectives described above.

Another part of the Pacte Logement is to favour the use of leaseholds in order to limit investment required to housing development. A capital gain tax exemption or decrease has been provided for vendors of land to the state or commune in or out of the pre-emption right.

Communauté Urbaine

The Communauté Urbaine law was the first step towards creating a collaborative agreement between different municipalities in Luxembourg providing easier access to government finance in order to achieve economic development and regeneration. The law is currently pending parliament.

Plan d'Amenagement General / Particulier

Land Use Plans are developed on a detailed level for those areas where particular conflicts of interest between different kinds of land uses are apparent. In contrast to the Sector Plans or Regional Plans the Land Use Plan has direct impact on the different parcels of land and is legally binding between third parties. Individual municipalities are responsible for preparing their own Land Use and Development Plans. The planning commission of the Minister of the Interior and Spatial Planning supervises both types of plans and is able to refuse them if they do not correspond to the aims of the law. In order to promote a mid level planning environment, the Government supports the municipalities in the rural areas to establish municipal development plans.

Whilst the Ministry of Interior and Spatial Planning is partially involved in the planning process on the national, regional and local level it is not responsible for the implementation of infrastructure and other associated development.

The law on protection of the environment completes the planning system described above. The Minister of the Environment is responsible for the implementation of the regulations of the act, which seek to promote a balanced management of green areas. In contrast to the building land defined by the municipal Land Use Plan, the green areas are not available for urban development and any amendments to existing municipal plans affecting the green areas need to be authorised by the Minister of the Environment.

Integrated Plans for Sustainable Urban Development

A requirement for the study is to assess how the JESSICA pre-requisite for having integrated plans for sustainable development are or can be fulfilled. In this regard, it is necessary for the projects to be planning led and sustainable. Having reviewed the Luxembourg planning system, it is clear that it satisfies the JESSICA requirement for an integrated and sustainable approach to development in Luxembourg. However, as not all aspects of the planning framework are formally adopted a close alignment with PAG's and PAP's at a local level will be necessary to undertake a detailed review prior to implementation of a JESSICA related project in order to fulfil the relevant IPSUD requirements.

LUXEMBOURG URBAN REGENERATION ENVIRONMENT

In determining the business plan for JESSICA in Luxembourg we have taken account of the prevailing property market conditions over the past few years. In order to assess the current urban regeneration environment in Luxembourg, this section provides a review of the recent economic environment in Luxembourg and an overview of urban regeneration issues facing the country.

Context for JESSICA in Luxembourg

European Investment Bank

Economic Environment

The Luxembourg economy has been relatively insulated from its impact of the global recession. The growth of the economy over the past decade has led to large employment gains benefiting both job seekers from Luxembourg and cross-border workers living in neighbouring regions of Belgium, France and Germany. Luxembourg offers a favourable climate to foreign investment. Successive Governments have effectively attracted new investment in medium, light, and high-tech industry. Incentives cover taxes, construction, and plant equipment.

Although Luxembourg is often considered the 'Green Heart of Europe', its pastoral land co-exists with a highly industrialised and export-intensive economy. In fact the general economy is largely dependent on the banking, steel, and industrial sectors.

Banking is the largest sector in the Luxembourg economy. The country has specialised in the cross-border fund administration business. As Luxembourg's domestic market is relatively small, the country's financial centre is predominantly international. Political stability, good communications, easy access to other European centres, skilled multilingual staff, a tradition of banking secrecy and cross-border financial expertise have all contributed to the growth of the financial sector. Germany accounts for the largest-single grouping of banks, with Scandinavian, Japanese, and major U.S. banks also heavily represented. More than 9,000 holding companies are established in Luxembourg. The European Investment Bank, the financial institution of the European Union, is also located there.

The productive agricultural sector in Luxembourg is small and highly subsidized, mainly by the EU and the Government, and employs about 1%-3% of the country's work force. Government policies also promote the development of Luxembourg as an audiovisual and communications centre.

According to the most recent OECD economic survey (2008), the performance of Luxembourg's economy has been exceptional over the past couple of decades. Living standards are reportedly among the highest in the OECD area and unemployment is relatively low, the public sector has hardly any debt and there is a surplus on the general government accounts. It is anticipated that in the short term, the Luxembourg economy will slow down as a result of the recession. The longer term perspective is that it is highly unlikely that the financial sector will continue to grow at the pace seen over the past decade. As a result the main challenge for the Luxembourg economy is to become less resilient on the financial sector in terms of employment and creation of tax revenues.

Luxembourg has efficient road, rail and air transport facilities and services. The road network has been significantly modernised in recent years with 147 km of motorways connecting the capital to adjacent countries. The advent of the high-speed TGV link to Paris has led to renovation of the city's railway station while a new passenger terminal at Luxembourg Airport has recently been opened. There are plans to introduce trams in the capital and light-rail lines in adjacent areas within the next few years.

Urban Regeneration Issues in Luxembourg

Luxembourg is currently facing a number of difficulties linked to urban planning, such as:-

- Low use of public transportation, partly due to low density of population in urban areas.
- No definition of specific activity zones which lead to mixed-use development (warehouse, retail and offices) in non-residential areas.

- Ambitious growth targets aimed at diversifying both the country's economic activity and the geographic base for that activity are going to put significant pressures on Luxembourg's existing infrastructure and will require significant future development.

In order to solve these issues the Government has set up urban development strategies which are quite new and therefore experiencing some difficulties. Among the different hurdles faced by urban regeneration we would highlight the following:-

- **Lack of land reserves (at regional and local level).** However, a number of different initiatives have been set up in order to measure land availability on a short and long term prospective.
- **A complex land assembly process.** This was put in place following a decision by the constitutional court (payment of indemnity before transfer of the property, leading lengthy process).
- **Speculative projects.** In the past, development has been undertaken by both the private and public sector with few or no economic / property market analysis.

LEGISLATION ASSOCIATED WITH URBAN REGENERATION IN LUXEMBOURG

Following a review and analysis of the Operational Programme (2007-2013) for Luxembourg, this section provides:-

- An overview of the role of the various councils, commissions and government owned bodies which ensure sustainable development in Luxembourg; and
- A summary of the key laws concerning the Land Assembly Process and relevant planning law concerning the recovery of infrastructure costs in Luxembourg.

Etablissements Publics

'Etablissements Publics' are decentralised public bodies, which have some administrative and financial autonomy. They are government owned and tasked to manage specific public services, to meet specific needs of the population and economy in Luxembourg under the supervisory of the State or municipalities. The principal organisations that concern the urban regeneration environment and have the potential to play a part in the JESSICA mechanism are outlined below.

Fonds de Logement

The Fonds de Logement is an autonomous government owned corporation (established in 1979) responsible for developing city neighbourhoods, social rented and affordable housing. Objectives of the Fonds are:-

- To acquire plots of land in order to develop housing for rent and for sale;
- Create land reserves in order to develop and extend urban areas over the mid and long-term;
- Create new urban zones; and
- Increase social rented housing stock.

The Fonds de Logement works in cooperation with local municipalities in relation to housing development and regeneration projects. Besides the acquisition and development of land,

the public body is also designed to create land reserves that may be included in the creation of new peripheral city areas.

The potential state allocation to the fund can extend to EUR 125 million per annum. The fund may also be authorised by the Minister of housing and finance to obtain, (under State guarantee), a loan of EUR 25 million per annum from a bank registered in the Grand Duchy of Luxembourg or from a pension institution under Social Security. The Fonds may also receive donations made for the benefit of the State, municipalities, hospices or public utilities. The Fonds is also exempt from all duties and taxes for the benefit of the State and its municipalities, with the exception of compensatory taxes. Key figures in relation to the Fonds recent annual expenditure are described below:-

(EUR Millions)	2004	2005	2006	2007	2008
Balance sheet	243,5	252,6	263,5	280,9	302,1
Capital	219,8	225,6	237,6	247,3	265
Land value acquisition	10,8	14,1	15,8	24,1	24,2
Constructions	144	149,1	167,4	171,3	188

Source: Fonds de Logement

The Fonds de Logement currently owns approximately 1,700 homes and is actively building on 23 sites across the country. An example scheme is the LDD project located in Dudelange spanning an area of approximately 34 hectares.

The state actively encourages public private partnerships to actively participate in the preparation and acquisition of land and the construction of affordable housing in partnership with the Fonds de Logement.

Fonds de Rénovation de la Vieille Ville de Luxembourg

Established in 1993, the principal aim of this government owned corporation is to accelerate and ensure a coordinated and balanced renovation of four principal areas of the old town of Luxembourg.

Fonds d'Urbanisation et d'Aménagement du Plateau de Kirchberg

Established in 1961, the principal aim of this government owned corporation is to accelerate and ensure a coordinated and balanced approach to development of the sites located on the Kirchberg Plateau.

Fonds Belval

Established in 2002, the principal aim of this government owned corporation is the provision of access and infrastructure enabling the delivery of the site Belval West located to the South of Luxembourg.

Luxembourg Legislative Bodies

Provided below is a summary of the role and structure of national legislation in Luxembourg in relation to the urban regeneration environment:-

- Conseil Supérieur pour le Développement Durable - established under the Act of June 25, 2004, the Council ensures the coordination of the national policy of sustainable development. The Council comprises 15 members from various sectors chosen in relation to their knowledge, competence and commitment to society and act independently. The Minister of Environment heads the secretariat for the Council.

Context for JESSICA in Luxembourg

- **La Commission Interdépartementale du Développement Durable** – The Commission works under the authority of the Minister of Environment and comprises 18 members delegated from various ministerial departments.
- **Le Conseil Supérieur de l'Aménagement du Terroire** – founded under the Act of May 21, 1999, the Council is responsible for advising the Government on significant options and considerations concerning planning strategy. The Council comprises 18 members and is under the authority of the Minister of Planning.

Land Assembly Process

Traditionally, land assembly in Luxembourg is undertaken via agreement and negotiation between associated parties. However, under the Plan d'Occupation du Sol (POS), land assembly can take place at the request of the State, Municipalities and Public Institutions in order to facilitate urban regeneration and renewal. The procedure of expropriation (land assembly) in Luxembourg is regulated as follows:-

- article 16 of the revised constitution of October 17, 1868;
- article 545 of the civil code;
- law of March 15, 1979 as amended, concerning expropriation for public purposes;
- law of March 4, 1896 concerning expropriation for public purposes;
- law of August 7, 1961 as amended, relating to the creation of funds of urbanization and installation of the "plateau de Kirchberg";
- law of August 16, 1967 as amended, which aim is the creation of a major roadway system of communication and funds of the roads (article 1st, 8 to 14 bis, 20 to 37);
- law of May 21, 1999 as amended concerning the general country planning of the territory (articles 20 to 22); and
- law of July 19, 2004 as amended, concerning communal planning and the urban development (articles 94 to 96).

Article 16 of the Constitution stipulates that no one can be dispossessed of its property except for public purposes (utilité publique) in the cases and in the manner established by the law and still receive compensation. Pursuant to case law, the compensation must not present the cost price of new buildings, but only their value at the time of dispossession.

The law of October 22, 2008 provided a particular pre-emptive right (droit de pre-emption) to the municipalities, to the State and to funds for the development of housing (Fonds pour le développement du logement et de l'habitat). This right applies to any onerous disposal of land envisaged by the law.

Article 545 of the civil code specifies that no one can be forced to give away its property, if it is not based on public purposes, and, moreover, against payment of appropriate damages.

Furthermore, Article 1 of the law of March 15, 1979 as amended, concerning expropriation for public purposes, stipulates that the expropriation for public purposes can only be carried out by authority of law.

Typically, the overall process takes a minimum of one year to be implemented and can lead to public inquiry or judicial review which may extend the timeframe up to three years depending on the complexity of the scheme.

Context for JESSICA in Luxembourg

European Investment Bank

Recovery of Infrastructure Costs

A key barrier associated with delivery of Nordstad and other wider projects in Luxembourg is the inability to recover infrastructure costs through planning tax or developer contributions in Luxembourg. Indeed, there is no existing planning legislation in place in Luxembourg for the recovery of infrastructure cost through development contributions. To create a new system it will be necessary for the State to implement the concept and ensure the necessary legislation is firmly in place. It has been recognised that there are legal avenues that could be explored in relation to implementing such a process in line with the current planning system.

Currently 25% of all development land in Luxembourg is required by local communes to be used for the implementation of infrastructure and public realm. It has been suggested that in the event that wider (more substantive) infrastructure is required this allocation of land could be applied outside of the development area. However, required changes to the existing legal framework and potential approaches to this will need to be explored in more detail prior to effective implementation.

CHAPTER SUMMARY

Outlined below is a summary of the key issues addressed in this chapter:-

- Luxembourg has the support of the Directorate of Regional Planning (DATer) and central Government in identifying the needs and constraints for the deployment of the JESSICA mechanism, in particular in the development of Nordstad.
- The JESSICA concept is stemmed around the needs and requirements of the Gothenburg and Lisbon Strategy and the Operational Programme of the individual region or Member State.
- Luxembourg's Operational Programme provides the framework for investment of European funding in Luxembourg for the period 2007-2013. JESSICA has the potential to fall within the remit of the two key priorities outlined within the Programme under the remit of Urban Regeneration and Renewal.
- Luxembourg has a relatively small ERDF Operational Programme financial allocation totalling EUR 25.2 million for the period 2007-2013. It is understood that very little of this programme to date been committed to projects. Of the total allocation, EUR 5-10 million (plus associated match funding) may qualify under the terms of the JESSICA initiative. Assuming a match funding contribution of 100%, the total JESSICA equity fund value (in the absence of a further private sector equity or debt contribution) could be in the order of EUR 10-20 million.
- Luxembourg has a strong planning framework, which provides a good proxy for the Integrated Plan for Sustainable Urban Investment which is a pre-requisite for the establishment of a JESSICA fund.
- Luxembourg is currently facing a number of difficulties linked to urban regeneration environment particularly with regards to the lack of land reserves (owned by the state), and a relatively complex land assembly process.
- Luxembourg has been relatively insulated from the impact of the global recession predominantly due to its favourable climate and incentives for foreign investment.
- There are a number of government owned corporations with administrative and financial autonomy that are responsible for the delivery of urban regeneration and

Context for JESSICA in Luxembourg

renewal in Luxembourg. The administration of all such bodies is dependent on the law that governs them. These and similar newly created bodies have a potential role within an overall JESSICA fund delivery model in Luxembourg.

- Traditionally land assembly is undertaken via agreement or negotiation between parties. However, compulsory land assembly can be applied to accelerate development in Luxembourg under the request of the State, Municipalities or public institutions.
- Under current legislation in Luxembourg, there is no existing framework in place for the recovery of infrastructure cost through development contributions. To create a new system it will be for the State to implement the concept and local planning authorities to put the necessary frameworks in place.

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WHAT CAN JESSICA INVEST IN?

JESSICA is intended to facilitate investments linked to an integrated plan for sustainable urban development (IPSUD). Such a plan is intended to set out the basis for the undertaking of a series of interlinked measures for the purpose of bringing about lasting improvements to the economic, physical, social and environmental conditions of a city or part of a city and how integration of such measures is to be achieved. The IPSUD should operate so that its impact can be shown to be more than the sum of its parts (e.g. the impact that measures contained within it would achieve if applied in isolation rather than as part of a as a whole). A key element is, therefore, how integration is shown to be achieved and it is a necessary requirement that this be built into any JESSICA intervention.

JESSICA operates on a basis of either a holding fund structure, where an effective fund of funds is set up to 'invest' in several urban development funds (UDFs) with funding applied from the European Regional Development Fund (ERDF funds) being applied at the holding fund level, and then passed down to the UDF and urban project levels, or being applied directly at the UDF level (depending on whether or not a holding fund is considered necessary or desirable).

Due to the need to demonstrate an integrated approach to urban development under JESSICA, projects into which UDFs can invest will need to link into the provisions of the IPSUD and the application of JESSICA funds (as the meaning of the acronym suggests) will, therefore, be intrinsically linked to urban/city areas and facilitating improvements to such areas. Use of JESSICA to fund investment in rural areas will be unlikely to be viewed as being consistent with the requirement to link investments into projects with the sustainable development of urban/city areas.

Typical projects which JESSICA funds are intended to target involve providing urban infrastructure (e.g. transport, water or energy facilities), protecting heritage sites or sites of cultural importance for tourism or other sustainable purposes, redeveloping brownfield sites, including sites clearance and decontamination; providing office space for SMEs or undertakings in the research and development sector; providing or enhancing university buildings, including medical, biotech and other specialised facilities and improving energy efficiency.

Use of JESSICA is required to be consistent with the agenda included within the ERDF programmes for Luxembourg for the period 2007-2013 (as set out in the Luxembourg Operational Programme).

Holding Funds and UDFs, whether set up under a holding fund or not, may cover a single region (i.e. a specific area covered by an operational programme), the whole territory of a managing authority, two or more regions or just a part of a region (i.e. a specific city area within that region).

In all cases the application of ERDF funds under JESSICA and any applicable match funding will need to be applied in compliance with the structural fund rules in general and those specific to financial engineering instruments (e.g. a holding fund and/or UDFs operating under JESSICA). These include the need for compliance with general EU Treaty requirements, such as State aid and public procurement rules. Details of the applicable EU legislative instruments, State aid and EU procurement requirements applicable to any JESSICA Intervention are set out below.

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Eligible expenditure in term of ERDF funds and national match funding incurred by the UDFs will need to be on the basis of equity, loan or guarantees into qualifying urban projects which are consistent with the IPSUD.

At the project level, UDFs will not be able to apply JESSICA funds into any projects where expenditure involving ERDF funds or matching funding regarding such funds would relate to any ERDF sensitive sectors. These include the following areas:-

- synthetic fibres;
- shipbuilding;
- coal;
- steel;
- agriculture;

For the most part these are not considered, in any event, to be areas where investment would be intended.

In addition, expenditure on housing is currently ineligible in respect of Member States, such as Luxembourg, which have acceded to the European Union (the EU) prior to the 1st May 2004 (Article 7 of Regulation (EC) No 1080/2006 as amended) except in limited circumstances link to environmental measures. The provisions of Regulation (EC) No 397/2009 (amending Regulation (EC) No 1080/2006 a) allow ERDF eligible costs to include expenditure on energy-efficiency improvements and on the use of renewable energy investments in existing housing subject to such costs not exceeding in total 4% of an applicable Member States' total ERDF allocation. In addition, it will be necessary for the Government of the Duchy of Luxembourg to define categories of eligible housing within its national rules, for the purposes of Article 56 (4) of Regulation (EC) 1083/2006. The decision to support such investments using ERDF funds in any part of the Duchy of Luxembourg is, therefore, within the exclusive jurisdiction of the Government of the Luxembourg, subject to the above detailed restrictions.

As provided for under Article 56(4) Regulation (EC) 1083/2006 it is, otherwise, for the Member State to set out what it considers as ineligible expenditure for the purposes of ERDF and other structural funds.

EU REGULATION AND COCOF

The basis on which any JESSICA intervention is required to operate is primarily set out within specific provisions within the following EU Regulations:-

- Commission Regulation (EC) No. 1828/2006 of December 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and of Regulation (EC) No. 1080/2006 of the European Parliament and of the Council on the European Regional Development Fund (and more specifically Section 8 on Financial Engineering Instruments) ("Regulation 1828");
- Council Regulation (EC) No. 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Funds and the Cohesion Fund and repealing Regulation (EC) No. 1260/1999 (and more specifically Section IV on Financial Engineering ("Regulation 1083");

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- Regulation (EC) No. 1080/2006 of the European Parliament and the Council of 5 July 2006 on the European Regional Development Fund and Appealing Regulation (EC) No. 1783/1999 (Regulation 1080/2006);
- Note of the Commission Services on Financial Engineering in the 2007 - 13 Programming Period dated July 2007 (COCOF 1);
- Guidance Note on Financial Engineering - COCOF 08/002/03 (COCOF 2);

The provisions of Section 8 of Regulation 1828 set out in detail provisions applicable to all financial engineering instruments (Article 43), additional provisions applicable to holding funds (Article 44) and additional provisions applicable to urban development funds (Article 46). The above detailed provisions set out the information that which must be contained within the various documents relating to the application of ERDF funds towards financial engineering instruments (at the holding fund and UDF levels), including the applicable funding agreement and the business plan setting out the basis on which the financial engineering instrument shall operate. The provisions make it clear that investments made in projects by UDFs must, in all circumstances, only be by way of equity, loan or guarantees. Under JESSICA only the application of the ERDF funds and national match funding held by the UDF through these mechanisms will amount to eligible expenditure for the purposes of Article 78 of Regulation 1083. The EC has indicated that it may be possible in the context of co-investment models for private funding at the project level to also amount to declared expenditure under Article 78(6) where there is in place a legally binding agreement with the financial engineering instrument (i.e. a UDF) to make an investment directly at the project level with such expenditure being viewed as having been contributed to the financial engineering instrument (i.e. a UDF) (a legal commitment to the project to provide the investment is not deemed sufficient) .It should be noted that it is only permissible to declare such investment as eligible expenditure where all of the following criteria are met in full:-

- there is documentary evidence of the legal agreement between the private parties and the financial engineering instrument (i.e. a UDF) concerning their contribution to the implementation of the co-financing operation;
- overall financial responsibility for the operation remains at the level of the financial engineering instrument (i.e. a UDF);
- the expenditure paid by the private bodies is supported by receipted invoices or where this cannot be done by accounting documents of equivalent probative value;
- the expenditure paid by such private bodies is reported formally to the level of the financial engineering instrument (i.e. a UDF) where responsibility rests for verifying the reality and eligibility of the expenditure claimed before declaring it to the managing authority or the paying authority;
- the audit trail is maintained down to the level of the payment of match funding to the enterprise.

In all other circumstances such expenditure will not be deemed eligible for the purposes of Article 78(6) of regulation 1083 or on closure.

The provisions of Section 4 of the Regulation 1083 set out the basis on which ERDF funds can be applied at the holding fund level and it is here that reference is made to a holding fund being a fund set up to invest in several venture capital funds, guaranteed funds, loan funds and UDFs (in effect a fund of funds). In particular, reference is made at Article 44 to a holding fund being implemented (and funds applied to it) either by way of:-

- a services contract (Article 44(a)); or
- a donation in the form of a grant to either the EIB (Article 44(b)(i)); or
- a financial institution, without a call for proposals, if this is pursuant to national law compatible with the Treaty (Article 44(b) (ii)).

Further explanation as to what is intended by the options set out in Article 44 of Regulation 1083 is set out within COCOF 2, including reference to distinguishing factors between grants and public service contracts, with an understanding of such a distinction being considered important in determining which route to take in terms of implementing and applying fund to the holding fund (or a UDF in the absence of a holding fund).

As the basis on which JESSICA is intended to operate is by way of the generation and recycling of returns made from investment of structural funds, the application of Article 55 of Regulation 1083 (which would operate so as to reduce levels of funding to take into account any resultant interest or gains) would operate on a basis contrary to the intentions of JESSICA. It is therefore made clear within COCOF 2 that the provisions of paragraphs 1-5 of Article 55 do not apply to the application of ERDF through financial engineering instruments under JESSICA. As a result the revenue generating nature of JESSICA financial engineering instruments does not affect the amount of ERDF that can be applied via such instruments.

In addition, it is confirmed within COCOF 2 that there is nothing to preclude ERDF funds (and any applicable match funding), on the basis of JESSICA, from being investing in projects which include an element of ineligible expenditure (e.g. a housing development - see above regarding Regulation 1080 as amended) subject always to there being sufficient elements of eligible expenditure to cover the totality of the ERDF funds (and any applicable match funding). In such circumstances there would need to be a clear audit trail to enable eligible expenditure under ERDF to be distinguished from ineligible expenditure so as to ensure that ERDF and any match is only applied as against eligible expenditure. COCOF 2 also confirms that match funding may be achieved by way of in kind contribution (e.g. property rights) subject to these being correctly valued.

STATE AID

It is a well established principle that ERDF funds must be applied in a manner consistent the provision of Articles 86 - 88 of the EU Treaty which relate to the provision of State aid.

Under the provisions of Article 87(1) of the EU Treaty the application of any measure amounting to State aid (as defined within Article 87(1)) is prohibited unless and until approved by the European Commission (the EC) on the grounds of compatibility with the Treaty.

The provisions of Article 87(1) of the EU Treaty set out the criteria that must be met in order for a measure to amount to State aid. If any one of these criteria is not met then the measure in question cannot be deemed to be State aid and thus would not require prior approved by the EC.

In respect of funds set up under JESSICA and investments made using such funds, the key criteria under Article 87(1) are the necessity for there to be a selective benefit to an "undertaking". In particular, both the European Court of Justice and the European Commission have indicated on numerous occasions that a 'selective benefit' will not be provided to an undertaking where State resources are applied on purely commercial terms. This principle can be applied to the application of funds at the various levels under JESSICA

and in particular in respect of investments (in the form of equity, loans and guarantees) required to be made by UDFs in urban projects/PPPs

Under the so called Market Economy Investor Principle (MEIP) where State resources are applied in a manner consistent with those that a prudent private sector investor of a similar size and in similar circumstances would be prepared to make, State aid issues are deemed not to arise. In effect the relevant funds are being applied on market terms and thus do not selectively benefit the recipient entity. The most effective way of demonstrating this is by the public funds being invested on exactly the same terms (i.e. on a *pari passu* - equal risk and reward - basis) as any private sector funds are invested at the fund or urban project/PPP level.

In terms of aid issues arising out of 'equity' investments (which are expressly stated to mean only the acquiring of shareholdings) and quasi equity instrument under JESSICA, the Community Guidelines on State Aid which promote risk capital investments in Small and Medium Sized Enterprises (2006/C 194/02) (SARC) provides a useful basis for analysing whether aid issues could arise in relation ERDF funds applied under JESSICA (be it on the basis of the involvement of a holding fund or not).

Under SARC reference is made to aid in any risk capital fund arrangement potentially existing at various levels. In the context of JESSICA these would be the funds themselves (and any private investors in such funds), the fund managers and the recipients of any investments made by the fund(s) (e.g. the urban project).

Aid at the fund level

At the holding fund level aid issues will only rise if the fund itself can be viewed as benefiting from ERDF and other public funds applied to it.

Section 3.2 of SARC expressly states:-

"In general, the Commission considers that an investment fund or an investment vehicle is an intermediary vehicle for the transfer of aid to investors and/or enterprises in which investment is made, rather than being a beneficiary of aid itself. However, measures such as physical measures or other measures involving direct transfers in favour of an investment vehicle or an existing fund with numerous and diverse investors with the character of an independent enterprise may constitute aid unless the investment is made on terms which would be acceptable to a normal economic operator in a market economy and therefore provide no advantage to the beneficiary."

Within the provisions of COCOF 1 reference is further made to a holding fund which operates in a manner consistent with Section 3.2. of SARC being simply viewed as initiating investments and acting as an intermediary vehicle and thus not a beneficiary of aid, notwithstanding the transfer of funds to it as a grant (e.g. on the basis of Article 44 (b) of Regulation 1083). If the holding fund (or URF) operates in a manner other than an intermediary vehicle then aid issues may arise in terms of the provision of public funds (including ERDF) to the holding fund. This is relevant to the application of the State aid rules to returns on investments made using ERDF and public match funding as if these are argued not to be State resources then the Holding fund or URF is likely to be viewed as something more than an intermediary vehicle.

In principle, it is considered that the same analysis can be applied at the UDF level, if a UDF itself operates as the 'intermediary' vehicle. It is, however, considered that where the UDF (or potentially a holding fund) involves an element of private sector investment then potential aid issues would arise (with the fund not as result likely to be viewed as acting

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simply as an intermediary vehicle) in the form of aid to both the fund and investors into that fund, unless public funds were applied to it on terms which were consistent with MEIP (e.g. on a pari passu - equal risk and reward basis - with any such private funds). If aid is found to be present at this level this would generally result in State aid flowing all the way through the structure and as a result down to the urban project/PPP level, even if investments made by the UDFs operate on the basis of purely commercial considerations.

It should be noted that such aid issues at the fund level will not, generally arise at the fund level if public funds are applied on the basis of a public services contract award in compliance with applicable EU and national procurement rules

Aid at the fund management level

In respect of aid and sums paid to remunerate a fund manager, Section 3.2 of SARC expressly refers, in the context of risk capital funds, to the following:-

"Aid to the funds managers or the management company will be considered to be present if their remuneration does not fully reflect the current market remuneration in comparable situations. On the other hand, there is a presumption of no aid if the managers or management company are chosen through an open and transparent public procurement or if they do not receive any other advantages granted by the State."

Under the provisions of Section 3 of COCOF 1 express reference is made to the:-

"Ceilings for management cost of the holding fund, capped at a yearly average of 2% in accordance with Article 43(4) of Regulation 1823/2006, reflect current market remuneration"

On the above basis a management fee applied which is consistent with the ceilings set out within Article 43(4) of Regulation 1828 (or the figure has been set as a result of an opening competitive procurement procedure) should not raise State aid issues.

Aid at the project level

In terms of aid at the urban project level and at the UDF level where this involves private sector investment, State aid issues are likely to arise where it cannot be demonstrated that the ERDF funds will be applied in a manner consistent with MEIP and in particular on a pari passu or an more preferential basis than those of the private sector co investors. By way of example the provision of a priority return to the private sector over that of the public sector investment (i.e. the investment utilising the ERDF) is likely to be viewed as providing State aid as it de-risks the position of the private sector investors as against that of the public sector investment thus granting a clear benefit. Within SARC it is stated that:-

"an investment to be effected pari passu between public and private investors, and thus not to constitute State aid, where its terms will be acceptable to a normal economic operator in a market economy in the absence of any State intervention. This is assumed to be the case only if public and private investors share exactly the same upsides and downsides and rewards and hold the same level of subordination, and normally where at least 50% of the funding of the measure is provided by private investors, which are independent from the companies in which they invest."

It is considered that if equity investments utilising JESSICA funds do not adhere strictly to MEIP (e.g. there is a need for priority returns to private sector investor at the UDF and/or the Urban Projects/PPP level) aid is likely to be viewed by the EC as being present and such aid would be required to be approved in advance of its grant by the EC.

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POTENTIAL BASIS ON WHICH AID PRESENT MAY BE APPROVED

As indicated above, State aid (in order to be lawful) must be approved in advance of its grant by the EC. Such approval may be obtained by way of one of the following methods:-

- the measure is consistent with the provisions of a Block Exemption Regulation;
- the measure is consistent with the provisions of an existing approved applicable scheme; or
- the measure is notified to and formally approved by the European Commission.

BLOCK EXEMPTION REGULATION - RISK CAPITAL MEASURES

In terms of compliance with a Block Exemption Regulation, the provisions of Article 29 of Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (the 'General Block Exemption Regulation') set out the terms for compatibility of certain aid measures in the form of risk capital. Such provisions, however, only apply in relation to risk capital schemes in favour exclusively of small and medium sized enterprises (SMEs). It is considered that due to the required linkage of investments under JESSICA to urban regeneration that it is unlikely that UDFs will be able to operate on such a limited basis (in addition such SME funds are already covered by the EC JEREMIE initiative). Article 5 of the General Block Exemption Regulation also expressly refers only to transparent forms of aid being covered, with State aid in the form of risk capital measures not being viewed as being transparent aid, unless it fulfils all of the conditions of Article 29 (which relates to risk capital measures in favour of SMEs only). On this basis is not considered possible (in terms of investments made under JESSICA in the form of equity rather than loans or guarantees) for aid present to be deemed compatible aid on the basis with compliance with one of the various measures under the General Block Exemption Regulation.

On the basis of the above the only circumstances where it is considered that State aid in the form of risk capital investments made under the JESSICA would not be required to be notified is where the amount of capital provided to each benefiting undertaking (e.g. the total amount of the investment) in each case is less than the applicable de minimis cap under the provisions of the Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to de minimis aid (OJ L 379, 28.12.2006) (the 'De Minimis Regulations'). Under the De Minimis Regulations an undertaking is able to receive aid, identified to it as De Minimis aid, up to a maximum of EUR 200,000 within any rolling period of 3 fiscal years. It is suspected that investment at limited to such levels may not be viable in most cases.

Existing Approved Schemes

In terms of existing approved State aid schemes within Luxembourg, a preliminary investigation of the EC State aid register has indicated that there are no applicable schemes which would allow for aid through risk capital schemes investing in entities of all sizes (rather than ones limited to SMEs). We are also not aware of any State aid approvals for schemes link to JESSICA regarding other Member States (the UK is still at a very preliminary stage in terms of State aid negotiations with DG Comp on the issue of State aid approval for various UK JESSICA fund.

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Notification and Approval

On the basis of the above it is considered that any State aid elements present as a result of the application of ERDF funds through JESSICA (on the basis that MEIP cannot definitively be stated to be being respected in all cases) would, in order to be lawful, have to be formally notified to and approved by the EC in advance of any investments being made. In the absence of any applicable framework or guideline documents relating to risk capital measures for enterprises other then SMEs, it is considered that such a notification would need to be based upon direct EU Treaty provisions. The most applicable EU Treaty provisions on which any such notification could to be based would be Article 87(3)(c), which refers to 'aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely effect trading conditions to an extent contrary to the common interest as being potentially compatible with the common market and thus approvable by the EC'; and Article 87(3) (b) which refers to 'aid to promote the execution of an important project of common European Interest or to remedy a serious disturbance in the economy of a Member State'. It is understood that the EC are more inclined towards the Article 87(3) (b) route.

It is considered that any notification (in order to stand a chance of gaining approval) would need to clearly demonstrate the following elements:-

- Does the aid in question meet a well-defined objective of common interest and if so how? On the basis that JESSICA is a EC initiative it is considered that this should be a relatively easy requirement to meet. The use of Article 87(3) (b) route would also lends weight to this;
- Is the aid well designed to meet the common objectives (i.e. does the proposed aid address the perceived market failure)?;
- Does the aid have the necessary incentive effect (i.e. does the aid change the behaviour of investors by encouraging them to invest in circumstances where they would otherwise not do so and thus facilitate urban regeneration in cases where this would not otherwise occur?);
- Is the aid measure proportional (i.e. could the same change in investment behaviour/urban regeneration be obtained with less aid?);

It will be necessary in any notification to demonstrate that the amount of aid (i.e. the level of subordination required from the public sector by the private sector) is the minimum amount necessary to cure that market failure and facilitate urban regeneration where it would not otherwise occur. As a general rule the EC will consider this to be the case where the level of required subordination is effectively market tested by way of a open and transparent competitive exercise (i.e. a competitive exercise in terms of the basis on which the private sector is prepared to invest at the various levels - as is applicable).

If the EC approve such aid on a basis similar to that cover by SARC, it is possible that a condition of such approval would be a reduction in the amount of State aid from other sources the end recipient entity may be eligible for (as is the case under SARC and Article 29 of the General Block Exemption). This could result in limits being placed on grant aid available to urban project than are invested in by UDFs through JESSICA.

Whilst in theory funding could be based on existing guidelines such as the Community guidelines in state aid for environmental protection or the Community Framework for State aid for Research and Development and Innovation Framework the problem remains as to how, where the aid is linked to risk capital instruments, aid can be shown to be within the

applicable maximum aid intensity levels set out within such guidelines and framework document.

INVESTMENTS BY WAY OF LOANS AND GUARANTEES

Loans

The application of State aid by way of publicly funded loans will only raise State aid issues if the terms of such loans are non-commercial in nature. In particular the EC will deem a public loan to involve State aid if the interest rate is below the applicable "Reference Rate" at the time of grant. The Reference Rate is calculated by way of a base rate set by the EC in respect of each member state (with the rate for Luxembourg currently amounting to 1,45% as from the 1st October 2009), together with an applicable margin based upon the credit rating of the recipient entity and the level of collateral provided in respect of the loan. The EC has indicated that the relevant margin for special purpose companies should be at least 400 basis points. As it is likely that investments would be made in relation to special purpose companies the minimum interest rate in order to avoid State aid issues arising is likely to be 5,45%. If an investment by way of loans is made on terms below this figure then it would almost certainly be regarded as containing State aid with the amount of the aid being the difference between interest payable if the reference rate was applied and that actually payable. As such aid is transparent (i.e. the amount is quantifiable in advance of it being provided) it can potentially be applied as compatible aid under the various measures set out within the General Block Exemption Regulations (subject to compliance with rules on eligible costs, maximum aid intensity levels and maximum aid ceilings). On this basis, such aid could be justifiable on the basis of the following measures under the General Block Exemption Regulation:-

- Environmental aid
- Aid for research and innovation
- Regional development aid (limited to regional aid assisted areas in Luxembourg)

Whilst there are other measures of compatible aid within the General Block Exemption Regulation these additional measures are not considered applicable to the regeneration agenda required under JESSICA and the likelihood that the majority of costs at the project level will be capital expenditure in nature.

Guarantees

Within the Commission Notice on the application of Article 87 and 88 of the EC Treaty to State aid in the form of guarantees ('the Guarantee Notice'), the EC set out circumstances where a guarantee scheme (involving State resources) will be deemed not to involve the grant of any State aid. These conditions generally operate so as to demonstrate that the scheme and guarantees under it are applied on commercial terms and include the need for:-

- the guarantee not to cover more than 80% of each outstanding loan or other financial obligation (other than where these relate to guarantees covering securities)
- the premiums charged under the scheme to be in line with market prices

Full details of the required conditions are set out in the Guarantee Notice.

Schemes which do not operate on the basis set out in the Guarantee Notice will be deemed to have the potential to grant State aid and, thus, must be notified to the EC for prior

approval. It should be noted that guarantees which relate to sums less than €1.5 million are permissible under the De Minimis Regulations.

A preliminary investigation of the EC State aid register indicates that a potentially applicable scheme in Luxembourg has been approved by the European Capital Commission (N128/2009) - which allows for the application of guarantee on preferential terms (i.e. the level of the premium applied) for a limited period of time (until the end of 2010) and which would be used to justify aid in the form of guarantees provided by the UDFs.

A further point to note is that the provisions of Article 46(2) of Regulation 1828/2006 expressly indicated that there is nothing to preclude urban projects which receive grant assistance from an operational programme from also being supported by UDF through investments (i.e. loan, guarantee or equity). This can be interpreted to mean that grant funding at the project level is still permissible even where a project is to be invested in through JESSICA.

GOVERNANCE STRUCTURE

Drawdown of ERDF funding into either a holding fund (if applicable) or into the established UDFs (where there is no holding fund) requires necessary national co financing to match the ERDF funds, which will be applied on the basis of a funding agreement with the applicable managing authority responsible for the application of ERDF. In kind contributions may act as such co finance, including in the form of property, where appropriately valued but such property cannot be applied directly to projects by the UDFs as they are required to invest by way of equity loans or guarantees only.

Appropriately matched ERDF funds can be drawn down in advance of actually expenditure (i.e. actual investments in specific projects by the UDFs) but must be demonstrated, by the end of 2015 (or such other date as the EC may stipulate), to have been applied as against eligible expenditure in the form of relevant investments by the UDFs (in the form of loans, guarantees or equity).

Whilst ERDF funds and any applicable match funding of the same must be applied only as against eligible expenditure, there is nothing to preclude urban projects invested in by UDFs containing elements of ineligible expenditure if there are sufficient elements of eligible expenditure to encompass all of the ERDF funds and applicable match funding. This requires the holding of ERDF funds separately from other funds, by way of a separate accounting system or use of separate accounting codes at the holding fund and UDF levels (as is applicable).

The provision of ERDF funds to a holding fund (or an UDF directly in the absence of a holding fund) is required under Article 44 of Regulation 1083 to be by way of one of the following routes:-

a. The award of a public contract in accordance with applicable public procurement law; or

b. In other cases, where the agreement is not a public service contract within the meaning of public procurement law, the award of a grant defined for this purpose as a direct financial contribution by way of a donation:-

   i. to the EIB or the EIF; or

   ii. to a financial institution without a call for proposal, if this is pursuant to a national law compatible with the Treaty.

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In terms of grant to a financial institution (but not the EIB), COCOF 1 indicates that such a law must operate so as to:-

- designate the financial institution in question;
- present the public policy objectives justifying the direct award of a grant to the relevant financial institution; and
- justify of the existence within the financial institution of the expertise necessary for the successful accomplishment of the Holding Fund task. This can be contrasted with the position whereby the grant is made to the EIB where no such national law is required to be in place in order for such a grant to be made.

Application of ERDF funds at the holding fund level (or the UDF level in the absence of a holding fund) by other means will not be permissible and will raise compliance issue in terms of the Structural funds rule and State aid.

PUBLIC PROCUREMENT RULES

Under the provisions of Article 44 (as detailed above) reference is made to the holding fund being implemented either by way of a public service contract or a donation in the form of a grant. In the event that the latter route is applied then as a general rule there is no necessity under the EC procurement rules for any competitive process to be undertaken. Clearly if the public services contract route is taken then the award of that contract will need to comply with both EU procurement law and Luxembourg national law on public procurement.

In addition Article 44.3 of Regulation 1823 requires that the holding fund manager should apply a transparent procedure for selection of financial intermediaries and to determine the amount of contribution to a UDF from the holding fund. Consideration will need to be given as to whether or not such a contract for the provision of funds will amount to a services contract and thus subject to the public procurement rules.

It is considered clear that the services of fund managers required in terms of operation of any UDF will be required to be competitively tendered in full compliance with EU and Luxembourg national law on procurement. Indeed, we are aware that there are conversations on-going in relation to national State Aid and public procurement issues. However, we would highlight that the shape of the potential JESSICA intervention will need to be agreed by the Commission prior to these issues being made clear.

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Identification of Appropriate Projects

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Identification of Appropriate Projects

INTRODUCTION

During the course of this evaluation study, a number of potential projects were reviewed in the context of the appropriate JESSICA criteria. In line with the project Terms of Reference the initial key projects to be considered were focussed on the Nordstad Masterplan.

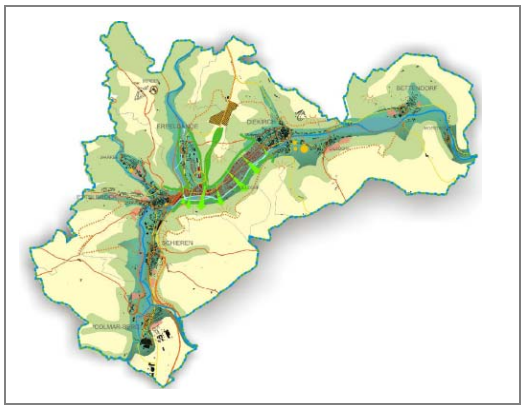
The selection of projects assessed as part of this study is non-exhaustive and has been prepared on an illustrative basis only. These projects do not relate to any decision on suitability of actual ERDF or JESSICA investment.

The first section of this chapter considers the Nordstad Masterplan within the context of the Nordstad Convention. This is followed by an evaluation of the proposed Nordstad projects for JESSICA intervention in view of their eligibility under appropriate ERDF and JESSICA criteria. In the light of the long term delivery plan for the Nordstad redevelopment, other more immediate potential investment opportunities were also therefore considered.

NORDSTAD MASTERPLAN

The Nordstad Masterplan has been developed in an effort to stimulate a more polycentric territorial development in Luxembourg. The polycentric development concept has been established by the Government of Luxembourg based on a policy of 'concentrated de-centralisation' to strengthen medium-scale centres of development and attraction (CDA's) south and north of the City of Luxembourg.

Whilst the development of areas within the southern region has already started, the development of Nordstad has been given renewed urgency by the Government to progress.



Nordstad covers the municipalities of Bettendorf, Colmar Berg, Diekirch, Espeldange, Ettelbruck and Schieren. An agreement between these six municipalities and the Ministry of Interior and Spatial Planning concerning co-ordinated and integrated inter-municipal development in Nordstad was signed in January 2006.

Drawing on public consultation and participation where possible, the principal objectives of the agreement are to:-

- Increase co-operation between the six participating municipalities.
- Develop and implement sustainable concepts for the future of the Nordstad area.

This has led to the formulation of a key strategic document for the future development of Nordstad, the Nordstad Masterplan. The Plan aims to build 3,000 residential units by 2020, increase the population by 8,000 inhabitants and re-organise an area of 50 hectares (ha) to serve for the creation of 7,000 jobs. In line with Objective 2 of the study, consideration has been made to the Nordstad Masterplan and its position within the overall planning framework. Despite it not representing a legal framework, the master plan constitutes an intermediate plan that will provide a basis for planning and for a prospective joint council of the Nordstad area. The main objectives of the Nordstad Masterplan are:-

Identification of Appropriate Projects

- Maintain a high quality of life and good sustainable development of the region, characterised by a combination of rural and urban environments, along with an improved and more efficient public transport network.
- Promote high quality and where possible waterside, living and working environments.
- Increase critical mass becoming the third largest agglomeration of the country.
- Promote the Nordstad image in order to reinforce the identity of the region.

NORDSTAD CONVENTION

On 26 April 2006, six municipalities of Nordstad and the State represented by the Minister for the Interior (Ministre de l'Intérieur et de l'Aménagement du Territoire) signed a convention (Convention pour un développement intercommunal coordonné et intégratif des communes de la Nordstad). The signing of the convention provides a basis for the first projects to be implemented in and around the priority axis Ettelburck - Erpeldange - Diekirch. The objectives of the Nordstad Convention are as follows:-

- To coordinate the actions with regard to a concerted urban development, coherent, rationale and balanced, respectful to the principles of a town planning, conceived on all the territories of the municipalities.
- to promote the economic competitiveness and the employment;
- to improve economic and social cohesion;
- to respect the natural environment;
- to improve the transport and the networks; and
- to promote the development and quality of life.

Following a meeting between the six municipalities on 22 May 2008, the important phase of converting the concepts into more projects began. However, in each case detailed feasibility and appropriate methods of financing is still required before taking any of the individual project forward.

NORDSTAD PILOT PROJECTS

The Nordstad Strategy Conference that took place in July 2007 provided an opportunity for the general public to be presented the potential pilot project themes behind the Nordstad Masterplan. The public meeting also served as to launch public involvement and show the overall manifestation of the cooperation of the local authorities, which is regarded as essential. The conference also provided an opportunity for 9 pilot project themes to be presented and discussed. It is anticipated that these themes would form a central component of the ultimate social and commercial delivery of the Nordstad Masterplan. The 9 project themes are as follows:-

Project 1: Residential development clusters and settlement nuclei

Project 2: Fridhaff intermunicipal trading estate

Project 3: Nordstad marketing

Project 4: Nordstad Youth Work

Project 5: School Development

Identification of Appropriate Projects

European Investment Bank

Project 6: Overall project for new mobility in Nordstad

Project 7: Open space development / local recreation and tourism

Project 8: Nordstad Central Axis (ZAN)

Project 9: Establishment of a syndicate/development company

One of the main tasks of the Nordstad Masterplan is to combine the municipal data into a whole for Nordstad in order to create a single Plan d'Amenagement General (PAG) for the Nordstad municipalities. Once an overall PAG has been created adjustments to the PAG can be made promptly and effectively within the overall planning framework.

The principle goal is to create a differentiated approach in terms of types of development, infrastructure and more specifically types of housing and tenure mix. It is clear that the development within the Central Axis will act as the key driver for the development of the area, with more recreational, leisure uses and housing being developed around the peripheral towns.

Key risk and mitigation factors in relation to development of the area are:-

1. **Highly fragmented land ownership** - could make it potentially difficult to implement larger scale development, instead a series of piece meal developments are likely to be created. It is understood that only a few areas are in public ownership.

   Mitigation - early implementation of effective land assembly arrangements.

2. **Flood risk -** represents a challenge to undertaking any development in the area especially in the lower regions of the flood plains.

   Mitigation - undertake detailed flood assessments and build appropriate flood defence measures with the potential use of JESSICA finance.

3. **High land prices -** despite the property market downturn, it is understand that land values are relatively high in the Nordstad region, this could lead to issues in terms of viability at project level.

   Mitigation - market assessments, potential JESSICA assistance where projects are on the margins of viability.

4. **Planning -** despite a comprehensive masterplan there is always an inherent risk that planning may not be achieved.

   Mitigation - ensure proposals are conforming with local PAGS which in turn need to conform with planning policy at the higher level.

5. **Economy -** as highlighted earlier in this report the strength of the economy remains a high priority for potential private and public investors.

   Mitigation - effective monitoring and using latest fiscal delivery mechanisms at appropriate levels of risk.

6. **Conflicting views -** political conflicting views may lead to projects being 'shelved' or not pushed forward which could lead to the full potential use of JESSICA funds being used.

   Mitigation - clear decision making process involving all key potential stakeholders

7. **Aging population -** concerns over an ageing population lead to a limited labour pool and developing social community.

Identification of Appropriate Projects

Mitigation - encourage younger population to relocate to the area by building new homes and facilities.

NORDSTAD PILOT PROJECTS EVALUATION

In the evaluation of proposed potential projects for JESSICA intervention, appropriate parameters on both an ERDF and a JESSICA were assessed. These parameters were based on the following:-

JESSICA Parameters

ERDF ELIGIBILITY	JESSICA CRITERIA
Corresponds with EU and national planning frameworks	Project delivery prior to 2015
Corresponds with Operational Programme 2007-2013 objectives	Potential to generate commercial return
Project viability	Public Private Partnership potential
Cost budget and cash flow projections	Sustainable / ethical development
Sustainable / ethical development	Integrated development

Due to the complexities associated with the Nordstad development, it necessitates innovative and flexible implementation structures and financing mechanisms. Following a number of discussions between Luxembourg's Directorate of Regional Planning (DATer) with local and international experts, the following key requirements have been agreed for implementation and associated financing:-

- Channelling of financing from many different sources and forms through appropriate structures: State, municipalities, banks, European Structural Funds and privately owned land etc.
- Association of a variety of players in various forms of Public Private Partnership: State, municipalities, banks and private individuals etc.
- The need for both a financing instrument and a development co-operation etc.

In light of the above requirements, DATer and the Government of Luxembourg have expressed a strong interest in the potential deployment of the JESSICA mechanism for the development of Nordstad. It is understood that the operation of a possible Nordstad fund could be extended to other major urban development projects in Luxembourg, should the exercise prove successful. Outlined below is a review of the 9 project themes in order to establish their potential fit within the overall JESSICA and ERDF parameters.

Project Theme Assessment

PROJECT / JESSICA CRITERIA	1	2	3	4	5	6	7	8	9
Corresponds with EU and national planning frameworks	✓	✓	X	✓	✓	✓	✓	✓	X
Corresponds with Operational Programme 2007-2013 objectives	X	✓	✓	✓	✓	✓	✓	✓	✓
Project viability	?	?	?	?	?	?	?	?	?
Cost budget and cash flow projections	X	X	X	X	X	X	X	X	X
Project delivery prior to 2015	X	X	X	X	X	X	X	X	X
Revenue potential	✓	✓	X	X	X	X	✓	✓	✓
Public Private Partnership potential	✓	✓	✓	✓	✓	✓	✓	✓	✓
Potential to generate commercial return	✓	✓	X	X	X	✓	✓	✓	✓
Integrated development	✓	✓	✓	✓	✓	✓	✓	✓	✓

Sustainable / ethical development	✓	✓	✓	X	X	X	✓	✓	X
TOTAL (Maximum 10)	6	7	4	4	4	5	7	7	5

Source: CB Richard Ellis

This analysis indicates there are three potential project themes which are a possible fit for potential JESSICA intervention, namely: Fridhaff intermunicipal trading estate; open space development / local recreation and tourism and Nordstad Central Axis.

NORDSTAD PILOT PROJECTS EVALUATION

Fridhaff intermunicipal trading estate

The development of the Fridhaff intermunicipal trading estate is intended to attract manufacturing enterprises from outside Nordstad.

Key points in relation to the existing site are outlined below:-

- The 28.5 ha of the planned estate are currently privately owned.
- The combination of refuse, sewage sludge, petrol station and tar depot give the site a negative image, which will need to be improved.
- An 85% financial grant from the Ministry of Economic Affairs would be available for the development of the Fridhaff intermunicipal trading estate if the Ministry's criteria for a trading estate were met.

In terms of the objectives for the site, the following is of particular note:-

- Only firms appropriate to Nordstad should be relocated to the estate.
- Plans aim to not only attract outside businesses but also offer relocation and expansion possibilities for local businesses.
- Particular importance is to be attached to the architectural design and landscaping of the development.
- Most areas of land are required to be purchased by the six municipalities, so as to be able to develop the trading estate. Therefore intermunicipal syndicate or development company may be established.
- Reserve Zone in southern part in order to cater for subsequent further expansion.
- Potential synergies may be realised with neighbouring estates.

Open space development/local recreation and tourism

As a gateway to the Ardennes, Nordstad has the potential to be a central point of departure for tourism in this area. The six municipalities of Nordstad and their surroundings are regarded as the cradle of tourism in Luxembourg. The problem is to maintain and further develop the characteristic landscape and settlement structure (valleys of the Sauer and Alzette, slopes and plateaus, which are largely unpopulated).

Overall, the tourist amenities are on the whole not sufficiently developed, and the amenities of the individual municipalities are not coordinated with each other. A joint strategic approach is needed to strengthen tourism in Nordstad.

Identification of Appropriate Projects

It is widely felt that particular importance should be attached to the development of day tourism. In this regard, the natural environment should be the centre of attraction, this should include:-

- Nature trails;
- Hiking huts;
- Hillside locations providing a range of activities.

Aside from day tourism, Nordstad also offers the opportunity to provide greater amenities for evening tourism such as pubs with music, discos, bowling alleys and a cinema centre, etc. In this regard, it is commonly viewed that "Nordstadthermen" in the Central Axis at the so-called Porte de Diekirch should be examined as the potential area to be de developed as Nordstad's core area for tourism. This might also be combined with pursuing a holistic marketing concept and identity for Nordstad. Finally, it has been considered that Nordstad should have an international presence.

Nordstad Central Axis

The creation of the Central Axis is of great importance for Nordstad. A key criterion of the strategy is the maintenance and strengthening of polycentrality as it is here that the majority of urban development is to be concentrated. Not only housing and office space but also wide varieties of public and private institutions are envisaged to be created in the Central Axis. This has considerable effects on the adjoining urban districts and municipal areas.

Central to the development of the Central Axis is the 'Boulevard Urbain' which is being designed as a public transport corridor connecting the existing centres of Ettelbruck and Diekirch. This corridor is also intended to lead to the integration of Erpeldingen and Ingeldorf. It is anticipated that the corridor will be used in a first phase as a bus lane, then in later phases these bus lanes can if necessary be refitted to cater for trams.

Our research indicates that the advantages which are to be achieved through the implementation of the Central Axis include: job creation; additional housing areas; office space; commerce and trade; and leisure opportunities.

As part of the evaluative process, the project team met with key consultants from KE Kommunalentwicklung Stuttgart GmbH and TEAM 5 in order to develop a more detailed understanding of overall concept and the key projects within the Nordstad masterplan.

The meeting provided clarity with regards to a number of key projects that are progressing as part of the Plan. The central development prospects for Nordstad are being brought together in pilot projects. The pilot projects are of particular importance for the further development of this area. They are intermunicipal and their implementation requires new forms of financing and organisation. These projects are divided into three projects which are progressing towards delivery stage (based on an 8 year timeframe), the remaining projects are still at the conceptual stage.

The potential key projects most likely to progress in the immediate future as part of the Nordstad Central Axis are:-

Identification of Appropriate Projects

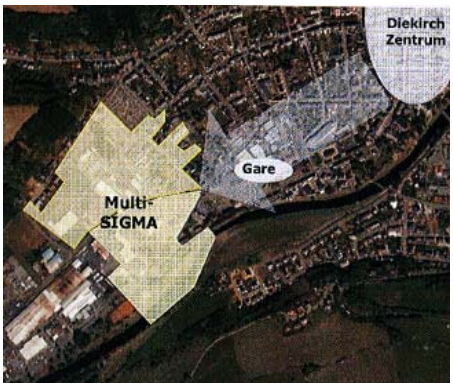
European Investment Bank

Nordstad (Ettelbruck) – Verband

Situated within the commune of Ettelbruck, this mixed-use scheme will comprise mainly retail and office accommodation. This is an important initiative within the Central Axis anticipating the creation of 200 jobs by 2016. The anticipated size of the development is 10,000 sq m to be developed on land formerly used by the Verband (an association of farmers). The key stakeholders are private landowners (Verband and Aral).

Nordstad (Diekirch) Multi-Sigma

The project is situated in the commune of Diekirch connecting the centre of Diekirch and its railway station. The project is divided into two principal parts: North and South. It is planned to build mainly residential buildings in the North, where as the South will comprise residential, office, retail, public administration and leisure accommodation. Key stakeholders include a private owner (Locarlux, Algama), commune of Diekirch, Grand-duchy of Luxembourg.



Nordstad (Erpeldange) - Laduno

This project comprises 45,500 sq m of development on 2.7 ha of land formerly used by the "laiterie du nord". It is situated on the commune of Erpeldange. A mixed-use is development is planned comprising a business hotel, a fitness and health centre, a conference centre, a cinema, a discotheque, offices, a bowling center, restaurants, shops and residential units. The key stakeholder is Luxlait.

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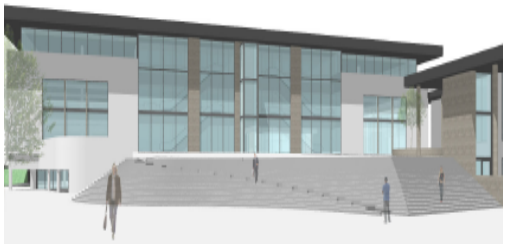
Identification of Appropriate Projects

European Investment Bank

Nordstad (Ettelbruck) – Market Place

The company Breevast and the commune of Ettelbruck want to reorganize the market place situated in front of the former Monopol store in order to create a shopping centre including a supermarket and two levels of shops on an area of 6,000 sq m. An additional floor should offer some residential units or office space. The key stakeholders include Breevast and the Commune of Ettelbruck.



CONCLUSIONS (NORDSTAD PROJECTS)

Whilst our research enabled us to identify a small number of potential eligible projects, we recognise a number of over-riding issues, which will need to be addressed at an early stage if JESSICA is to be successfully deployed in Nordstad:-

- The occupational strategy for the Nordstad area. As yet, there is no compelling marketing proposition for occupiers to relocate to the Nordstad area – in a meeting with the project masterplanners this was described as the lack of a 'big idea'. Further work needs to be undertaken on the occupation strategy and should focus on "additionality" as opposed to "relocation" i.e. how much of the occupational market across Nordstad will be driven by new inward investment and how much will be driven by relocation from other parts of the country.
- A lack of market-led research identifying the rationale for the individual projects, the potential commercial capacity and public interest in those projects. This is essential to underpin an analysis of potential investment return, which in turn is required to estimate the likely level of investment from the private sector.
- Limited detailed financial analysis has been undertaken on specific projects, and as such, we are only able to model the financial return from a JESSICA investment for Multi-Sigma.
- Unclear delivery timing for implementation of key projects. The range of projects to which JESSICA funding can be applied, must be undertaken by 2015, and hence a clear delivery plan underpinned by a good understanding of the connectivity of the various projects is essential.
- There is as yet, no Plan d'Amenagement General (PAG), for the Nordstad municipalities. Once an overall PAG has been created, it needs to be reviewed against the criteria for an Integrated Plan for Sustainable Urban Investment, to ensure it fulfils those criteria.
- The relevant land is in multiple ownership. We understand from the Ministry of the Interior that good progress is being made with negotiations to acquire the land, but this type of ownership pattern introduces considerable uncertainty to the development process, and raises the risk of ransom strips being retained. This is particularly the case as the compulsory purchase (expropriation) is both politically sensitive and legally difficult.

Identification of Appropriate Projects

European Investment Bank

Local Delivery Vehicle (LDV)

Given the majority of land in Nordstad is in multiple land ownership, this remains one of the obvious threats holding back the redevelopment of the area. However, as much of the land is under public sector ownership, this issue could potentially be addressed through establishing a single or number of Local Delivery Vehicles (LDVs). The role and basis for establishing LDVs in a regeneration context is outlined below:-

- The creation of a LDV provides an incentive for both the public and private sectors to invest in sites with the prospective of future returns and benefit from the value gain over the long term.
- The approach is flexible and could enable the public sector to realise greater potential from their developable land assets than other traditional methods. The vehicle is more likely to invest in projects than undertake direct development activities (although this can be an option).
- The partnership is likely to be a 50/50 joint venture using public sector assets as collateral to raise debt financing to develop and regenerate the site and thereafter a portfolio of projects. The joint venture is likely to be medium to long term, as the private sector partner should expect to take a long term view regarding profit.
- The outcomes of the vehicle need to be established between the partners through an agreed business plan, budget, governance and project approval procedure. All individual projects can then be delivered through a combination of equity, debt finance or grant funding where applicable. The assets can revert back to the public sector if the partnership does not progress them according to pre-agreed timescales through the use of 'options' which prevent land-banking, thereby assuring a more expedient delivery.

Tax Increment Financing (TIF)

Tax Increment Financing (TIF) is a delivery mechanism which involves forward-funding public infrastructure investment by borrowing against projected increase in tax revenues created by new property development.

According to the Council of Urban Development Finance Agencies, TIF is the primary means of funding economic development projects in the US. Over the last 12 months, there has been growing debate as to whether TIF could be adopted in the UK to re-stimulate regeneration and development activity.

Highlighted below are some key considerations regarding the potential applicability of the TIF concept in Luxembourg, particularly in the context of Nordstad:-

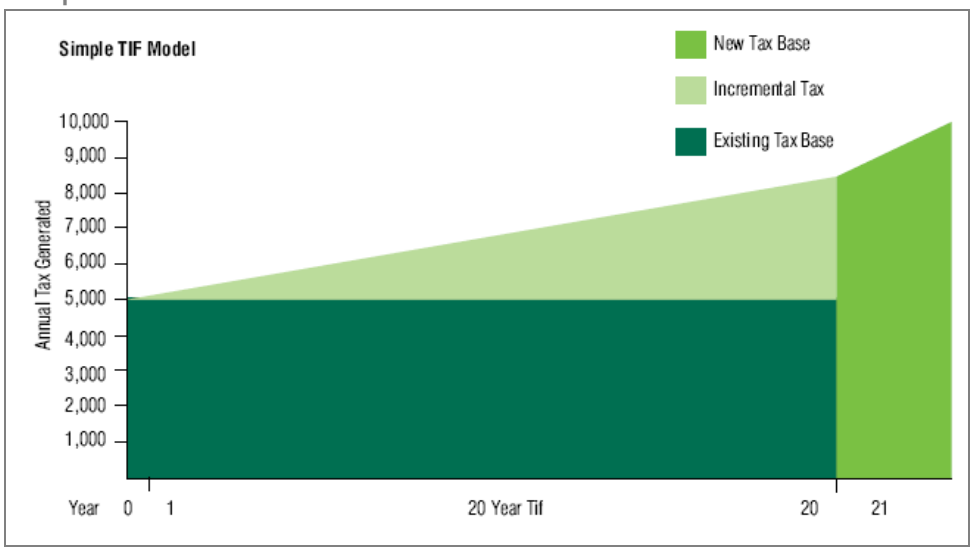
- Subject to deliverable tax revenue generating means, the TIF concept offers the ability to provide financing to cover gaps in development proposals, assist in the delivery of stalled developments and in the more specifically, in the context of Nordstad, has the potential to provide an 'element' of forward funding for infrastructure costs.
- There are a number of ways in which upfront infrastructure costs may be financed through TIF. The most commonly cited approach in the UK is that the proportion of the 'National Non Domestic Rate' is remitted to the local authority from the HMT Treasury. The finance is delivered through the issue of a form of municipality or local government bond which is then secured on the back of the projected tax increase. In the absence of securing that projected increase, the local authority issues a form of guarantee or pledge. A detailed assessment will need to be undertaken as to whether there is an

Identification of Appropriate Projects

appropriate tax mechanism in place in Luxembourg and if not, what legislative changes will be necessary to implement such a mechanism.

- The attraction of TIF is that because the initial tax base is frozen and the rise in tax revenues is incremental rather than new, schemes can be delivered under the mantra of 'no new tax and no lost tax'. Additionally, in the long term, the municipality will have the benefit of the entire incremental tax in addition to the frozen tax base once the upfront infrastructure costs are repaid. A simple diagrammatic representation of a TIF model is set out below:-

Simple TIF Model



Source: CB Richard Ellis

- There is an ongoing debate as to whether Council Tax and Stamp Duty Land Tax could also be incorporated within TIFs in the UK. The principal issue with Council Tax is that a significant proportion is used to fund the provision of local services. Therefore, the proportion available for the TIF would be small unless services to Council Tax payers were to be reduced. Consideration would need to be made as to what types of tax could be incorporated within TIFs in Luxembourg.
- The length of financing or in simple terms the period during which it would be possible to divert the incremental tax is still a matter for debate in the UK. However, it is unlikely that any model which did not support a diversion period of at least 14 (and more likely 20) years would be viable.
- In considering implementation of the TIF concept in Luxembourg, there are a number of fundamental requirements to note:-
  - There is sufficient occupational demand for existing and proposed developments;
  - a suitable property tax is in existence;
  - a suitable mechanism and legislation is in place for recovery of national business rates; and
  - significant additional funding can be provided alongside the TIF mechanism to support the delivery of enabling infrastructure.

Identification of Appropriate Projects

Finally, it is important to note that TIF is not a viable means of funding in its entirety for large scale infrastructure projects. Nor is it a method of using public sector money to support schemes which, at their core, are undeliverable.

DELIVERY OF NORDSTAD PROJECTS

Many of the major regeneration projects which have been successfully completed across Europe have demonstrated the following attributes:-

- Strong political support at both the local and national Government level;
- Relevant Ministries have been appropriately aligned with Government policy and projects given appropriate prioritisation within the Ministries; and
- An integrated financing and delivery strategy which combines both existing and new financing streams across the area.

It is clear from our discussions with the various Ministries that there is a lack of alignment over the prioritisation and delivery of some of the Nordstad projects, and there will need to be a clear political direction from the Government if the Nordstad project is to proceed on anything like the scale envisaged in the outline masterplan. To progress further with a Nordstad pilot, we would recommend the following steps are undertaken:-

- The masterplanners should be asked to engage with the Government's commercial property advisers and the Ministry of the Interior to review the likely occupational market for Nordstad. The conclusions of this study should be reflected in an updated masterplan, which considers phasing, the inter-relationships between infrastructure (especially transport and flood defence) and development, and the balance of and timing of provision of residential and commercial space.
- There are a number of Government-funded developments (for example, specialised tertiary education establishments) which are scheduled for the Nordstad area, but which we do not think are properly reflected in the masterplan. A revised masterplan should incorporate all publicly-funded development projects.
- An overview financing model should be commissioned to reflect the revised requirements of the masterplan, and which identifies all potential public sources of funding (both revenue and capital, and both local and central) during the period covered by the plan. This will mean the funding gap can be calculated and a range of public and private measures identified to look to bridge that gap. We are aware that CEPS & ATOZ have already been commissioned to produce the financing model. In our view, the review of the occupational strategy and the subsequent review of the masterplan is a necessary first step to producing a financing model.

ALTERNATIVE PILOT PROJECTS

Whilst the above findings suggest a mid/long-term perspective for the implementation of Nordstad projects, our study showed significant potential for JESSICA to catalyse strategic projects on a national level in the short to mid-term. As part of the project Terms of Reference, we undertook a high level review of other projects across Luxembourg which could usefully benefit from JESSICA intervention.

These projects included: Belval Ouest; Fonderie de Rodange; Terre Rouge; Crassier d'Ehlerange; Junglinster; Portes de Hollerich; Luxembourg Central; Royal Hamelius; Ban de Gasperich; Mersch; Midfield; WSA; and Wiltz.

Identification of Appropriate Projects

A summary of key development schemes in Luxembourg are outlined below:-

Belval Ouest

The project is a Brownfield regeneration project which comprising approximately 1.3 million sq m of development over 69 ha. The project will combine residential, retail, leisure and office uses. The University of Luxembourg and Dexia will be implemented in Belval and a shopping centre has already been constructed. The project is developed by Agora, a joint venture of Luxembourg State and Arcelor Mittal.

Fonderie de Rodange

The Fonderie de Rodange, located near the Belgian and French border, is a mixed-use regeneration project spanning an area of 11.5 ha. The objective is to cater for small and medium sized companies (light industry and tertiary sector). The project is still at masterplanning and evaluative stage. The project is developed by Agora, a joint venture of Luxembourg State and ArcelorMittal.

Terre Rouge

The Terre Rouge project is a Brownfield development. The site is located in the commune of Esch/Alzette and partially in French territory.

The concept is to link the city of Esch to the project providing a mix of residential and administrative buildings. The site is being developed over an area of approximately 90 ha. A final design concept is yet to be concieved. The project is a Joint Venture (Agora) between the Luxembourg State and Arcelor Mittal.

Identification of Appropriate Projects

European Investment Bank

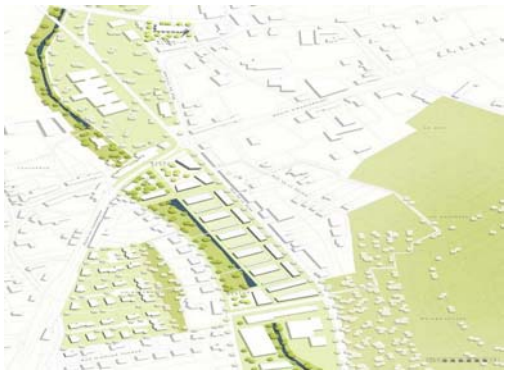
Crassier d'Ehlerange

The Crassier d'Ehlerange project is a Brownfield development, located near the zone of Belval over an area of 80 ha.

Preliminary feasibility studies were undertaken in 2002. The Ministry of Economy has acquired the land although no specific design concept has been developed. The project Masterplan is being led by the Ministry of Economy.

Junglinster

The principal objective of this project is the renovation of an existing shopping area with the creation of further public car parking. The project concerns the developing of approximately 3.5 ha of land situated in the centre of Junglinster. The development will be retail led leading to improved attractiveness of the city centre and regenerated green areas along the "Enz Noire" as well as a significant number of residential units. It is anticipated the start of works will be 2011-2012 with delivery post 2014.



Portes de Hollerich

The site comprises approximately 120 ha. The project is at the entrance of the City of Luxembourg, already included in the PAG of the city. The site will provide a connection to the TERN (Trans European Road Network). The goal will be to establish a link between Merl-Belair and the Cessange area. A masterplan is currently under preparation. The key stakeholders are the City of Luxembourg, and a number of private landowners.

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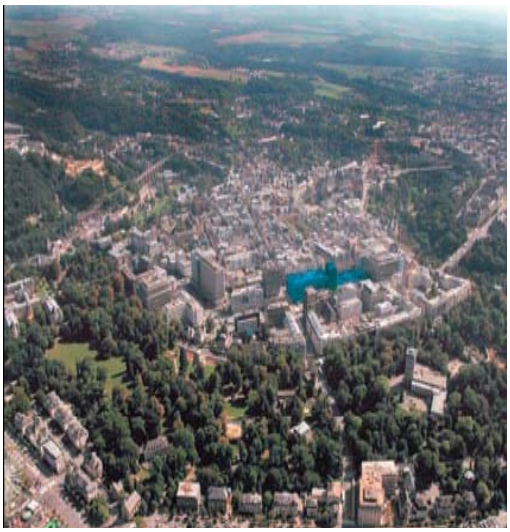
Identification of Appropriate Projects

Luxembourg Central

The project comprises the redevelopment of the station area of Luxembourg City over 27 ha. The objective will be to integrate the public transportation policy within the existing town planning. A masterplan is currently under preparation by the winning architect of a national urban design competition. The project will combine office, residential and retail uses. Key stakeholders include the City of Luxembourg and CFL.

Royal Hamilius

Situated near the business-orientated Boulevard Royal, the main Post-office and the busy pedestrian streets of the historical city centre, the Royal-Hamilius project covers an entire city block near the main city bus station. This will be a mixed-use development combining mainly shops arranged in an urban shopping gallery, offices, housing and public services. This redevelopment area in the heart of the city centre offers a high degree of flexibility, a variety of functional opportunities and architectural designs able to meet the prospective investors' ambitions and requirements. Key stakeholders include the City of Luxembourg and private landowners (La Luxembourgeoise, BdL).



Ban de Gasperich

The project, which covers 90 ha will comprise a mix of office, residential and retail uses. The PAG is currently being finalised and some investors have already taken a role within the project such as Auchan for the development of a shopping centre. The project will link the two districts Cloche d'Or and Howald. The majority of key stakeholders are private landowners (Promobe, Bouwfonds, Extensa).

Identification of Appropriate Projects

European Investment Bank

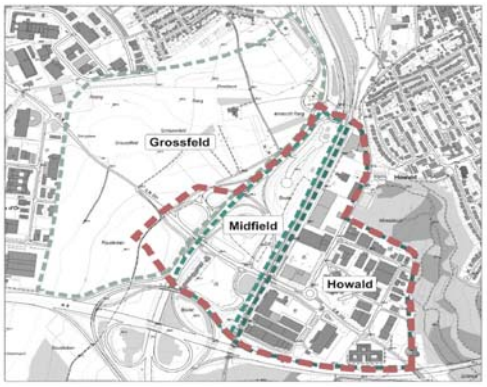
Mersch

The project consists of the redevelopment of an industrial area of 53 ha located near the railway station of Mersch. Two high schools are planned to be constructed and the zone will be attributed to mixed-use (residential, office and retail). A competition to define the town planning for the area has recently been launched. Key stakeholders include private landowners, local communes and the Ministry of Interior.

Midfield

The project area comprises the Midfield as well as Howald. Their size is 76.6 ha. One part of the land belongs to the city center of Luxembourg, the other part to the commune of Hesperange.

The plots of land situated in the Midfield area belong mainly to the state of Luxembourg, the plots of land in Howald belong mainly to private parties. There are no defined uses at this stage as a city planning competition has just been launched early 2010.



WSA

The project comprises the redevelopment of an old NATO warehousing site into a logistics centre. It corresponds with the efforts of the Government to diversify the economy. Apart from WSA, the strategy will be to develop three other areas: Contern; Findel; and Bettembourg. The project covers 50 ha and approximately 210,000 sq m of logistic space. The project masterplan is being led by the Ministry of Economy.

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Identification of Appropriate Projects

Wiltz

The development of 160,000 sq m of mixed-use buildings located in Wiltz and divided into four phases (Eurofloor, Baumaself, Geetz, Bahnhof). The plots of land belong to private owners and commune. The PAG is currently in the development phase. Key stakeholders include private land owners, as well as the local commune.

SHORTLISTED PILOT PROJECTS

In order to identify and select projects suitable for financing through a JESSICA fund structure, the project team worked closely with the Steering Committee. The project Steering Committee and associated project team were assigned the responsibility of qualifying and selecting the most suitable projects in relation to the setting up a JESSICA fund.

Following a detailed discussion with the Steering Committee at the interim stage of reporting, it was agreed that four Nordstad projects should continue to be evaluated as potential Pilot Projects for a JESSICA fund, together with a number of projects outside of Nordstad. The list of projects to be evaluated prior to the final shortlist of Pilot Projects was as follows:-

- Ettelbruck – Market Place (Nordstad)
- Diekirch – Multi Sigma (Nordstad)
- Erpeldange – Laduno (Nordstad)
- Ettelbruck – Verband (Nordstad)
- Central Axis 'Boulevard Urbain' (Nordstad)
- Belval
- WSA
- Junglinster
- Wiltz
- Mersch

The above projects were then evaluated according to the selection criteria of the structural funds, as well as on the basis of the specific selection parameters identified for JESSICA. Based on the criteria outlined within the previous chapter of this report, an assessment was made in order to shortlist the relevant Nordstad and alternative projects to three Pilot Projects for more detailed economic assessment and soft market testing with potential investors.

Outlined below is a table detailing a summary review of all of the above projects in order to propose three deliverable Pilot Projects to be taken forward for further more detailed assessment.

Identification of Appropriate Projects

PROJECT NAME	PROJECT TYPE	BARRIERS TO DELIVERY	POTENTIAL JESSICA INTERVENTION	OTHER ISSUES
Belval	Large mixed use	Bank financing due to speculative nature of development	Rental guarantees/mezzanine finance/loan	Investment needs to be project specific Development needs to be undertaken alongside Fonds du Logement residential Political barrier to investing in South of country
WSA	Logistics	Viable in its own right Private developer likely to proceed	None	Political barrier to developing in South of country
Junglinster	Retail led Regeneration	Speculative development Lack of occupiers Peripheral location	Predominantly does not fit with JESSICA criteria Likely to be developed on a local (communal) level Potential infrastructure investment	ATOZ tasked with financial assessment of scheme
Wiltz	Mixed use regeneration	Land assembly Remediation issues	Land remediation (with return on uplift in land value)	High political priority Early stages of development / masterplanning Lack of sufficient market data Potential to create small (1,000 to 3,000 sq m) commercial to let to emerging businesses to kick-start the development
Mersch	Mixed use (including two high schools)	Masterplan still in preparation Land assembly Relocation of current occupiers Remediation issues	Land remediation	Mostly strong private owners Timing issue for JESSICA Lack of market data Potential JV structure
Central Axis [Nordstad]	Infrastructure	Lack of private capital (due to low investor interest in location)	Infrastructure (establishing commercial return)	Opens number of development opportunities in Nordstad Key initiative Establishing financial return from infrastructure Infrastructure company now within the Ministry Full integration with National Planning Framework
Ettelebruck Market Place [Nordstad]	Retail led regeneration	Occupiers/location	Predominantly does not fit with JESSICA criteria Potential for infrastructure investment	Lack of market data
Multi-Stigma [Nordstad]	Mixed use	Land assembly/minimal JESSICA compliance	Infrastructure (via Central Axis)	Number of private owners/full integration with National Planning Framework
Erpeldange Laduno [Nordstad]	Mixed use	Land assembly/minimal JESSICA compliance	Infrastructure (via Central Axis)	Number of private developers/full integration with National Planning Framework

Identification of Appropriate Projects

Ettelbruck Verband [Nordstad]	Mixed use (mainly retail)	Mainly private developers Does not comply with JESSICA criteria	Infrastructure (via Central Axis) Infrastructure (funding of tunnel to link)	Number of private owners

Source: CB Richard Ellis

CONCLUSION

Based on the above analysis and following a discussion with the project Steering Committee three projects were agreed to be considered further as possible JESSICA Pilot Projects. These projects represented an appropriate division of themes concerning infrastructure, remediation and kick-starting delivery. The three selected pilots are:-

- Nordstad – Multi Sigma (Kick-Start Delivery)
- Nordstad – Central Axis (Infrastructure)
- Wiltz (Remediation)

5

JESSICA Pilot Projects

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JESSICA Pilot Projects

European Investment Bank

INTRODUCTION

In consultation with the project Steering Committee, the projects that best fitted with the criteria outlined in the previous chapter were agreed to be assessed in further detail in order to appraise the potential of JESSICA as an instrument for delivering ERDF investment in line with the Structural Funds Operational Programme 2007-2013.

In order to undertake a detailed assessment of the proposed Pilot Projects, the consultancy team liaised closely with the key stakeholders for each of the projects and the Ministry of Interior and Spatial Planning to capture key information and data in relation to the projects and their suitability for JESSICA.

The information requested included a description of the project; scheme plans; schedule and plan outlining existing land ownership; current planning position; cost information on capital and revenue (where available); perceived barriers to scheme delivery; potential scheme outputs.

Key Issues

It is evident from our study that JESSICA has the potential to be a powerful tool to facilitate urban regeneration in Luxembourg. However, it is clear that with a relatively limited amount of European funding available JESSICA is unlikely to create the conditions precedent for establishing a new commercial market in Nordstad or Wiltz. In short, the proposed amount of funding available to JESSICA is a considerably smaller than the required government intervention for the anticipated redevelopment of the Nordstad and Wiltz area.

Associated with the above and relevant to the three pilot projects are the following key issues that need to be addressed to promote effective delivery:-

- Occupier Strategy – detailed work needs to be undertaken on the occupation strategy and should focus on 'additionality' rather than 'relocation'. Particular consideration should be given towards the potential allocation of appropriate public sector occupiers.
- Enabling Costs – include planning costs, preparation of detailed masterplan, infrastructure, site assembly and remediation expenditure. These costs are all likely to be required to facilitate the delivery of serviced sites appropriate for market sale.
- Control Costs - based on a high level review, subject to a deliverable occupier strategy and sufficient enabling cost expenditure there is a potential for ERDF compliant, revenue generating development to be undertaken in both Nordstad and Wiltz. However, further debt finance will be required to bring schemes forward.

Overlying the above issues is the current lack of availability of debt finance to facilitate property development across Europe. This is likely to remain a major barrier to the development and regeneration going forward and is an area where JESSICA may be able to play a key role in Luxembourg. In essence, in order for any of the selected pilot projects to be brought forward, there will be a requirement for an additional element of direct public sector intervention in parallel with other public funding, and JESSICA investment.

JESSICA Pilot Projects

NORDSTAD – MULTI SIGMA

Multi-Sigma is a mixed-use development situated in the commune of Diekirch connecting to the centre of Diekirch and its railway station. The overall site area measures approximately 14 hectares. The focus of the scheme is to deliver a sustainable development enabling full integration of the Sûre River and the neighbouring countryside of the region, and maintaining the historic existing building facades.

The project comprises two parts: North and South. It is planned to build mainly residential buildings in the North and a mix of uses combining residential, office, retail, public administration and leisure in the South. Key stakeholders include a private owner (Locarlux, Algama), commune of Diekirch, and the Grand-duchy of Luxembourg.

The overall scheme will comprise residential, offices, retail and cinema facilities.

Multi-Sigma (land ownership)

Source: PROject sa

Location Plan

Source: PROject sa

In terms of planning, a general masterplan has been prepared for the whole of the Nordstad area which incorporates the Multi-Sigma development. Two separate urban planners (Dewey & Muller / Da Costa) have been appointed to deliver detailed masterplans for the both the North and South elements of the scheme over the next 6 to 9 months. It is anticipated that a development agreement will be signed between the key stakeholders in the next 6 months with works estimated to commence in Q1-Q2 2012.

Financial Analysis

In order to provide a quantitative assessment of the Multi-Sigma project we have undertaken a high level development appraisal. As noted above the proposed scheme comprises predominantly residential uses to the north and a mix of uses combining residential, office, retail, public administration and leisure in the South. Furthermore, approximately 60% of the South side of the site is owned by the public sector. We have therefore prepared a development appraisal assessment for the purposes of the South side only.

We have relied upon overall areas, build, infrastructure and remediation cost assumptions provided by PROject SA. All revenue assumptions are CB Richard Ellis' own. Our appraisal assumes a three phase scheme developed over an overall delivery timeframe of 5 years to allow for realistic phasing of delivery. The phasing and key assumptions behind delivery of the scheme are as follows:-

Multi Sigma – Development Phasing

PHASE	USE TYPE	KEY ASSUMPTIONS
Phase 1	Offices/Services	Assumes public sector occupier relocates
Phase 2	Retail/Housing	Assumes high demand from retail occupiers
Phase 3	Housing/Leisure	Assumes cinema operator

Source: CB Richard Ellis

The main principle behind the phasing approach is that any potential JESSICA allocation is directed towards the delivery of the offices and servicing of the site (assuming a pre-let to public sector occupier). We would also advise that the proposed quantum of development is likely significantly higher than the market take-up would be able to absorb.

Whilst our appraisal assumes significant enabling (site serving and infrastructure) and basement car parking costs we have made no allowance for land acquisition as the majority of the site is under public sector ownership. Based an assumed project IRR of 12%, our high level analysis shows the overall current funding deficit for the south side of the Multi-Sigma scheme to be approximately EUR 5 million. Assuming this deficit is addressed (potential through a JESSICA funding mechanism), and the additional assumptions outlined above are realised, a target IRR of 12% is likely to be achieved for the South part of the Multi-Sigma scheme.

Qualitative Assessment

In order to undertake a qualitative assessment on the Multi Sigma project the consultant team has considered the following key areas: project definition; viability; deliverability; JESSICA intervention; and the basis for returns from JESSICA.

- **Project Definition** – Multi Sigma plays a key role in the overall development of the Nordstad area. It creates a link between the centre of Diekirch and its railway station opening the opportunity for supplementary retail, commercial and residential space that cannot be fulfilled by the city centre.
- **Viability** – Having undertaken a high level development appraisal on the south side of the site (representing the most likely area for potential JESSICA intervention), based on current market expectations the site represents a significant funding gap. However, this assessment has been made using high level assumptions due to the lack of market data across the region and relatively high level development plans provided.
- **Deliverability** – concerning the overall deliverability of the project and associated with viability are issues surrounding highly fragmented land ownership across the site, planning and funding arrangements.
- **Intervention** – it is envisaged that JESSICA assistance could be used by means of injecting equity, providing rental guarantees or loans in order to kick start this project into delivery.
- **Basis for returns** – the anticipated mechanism for returns would be through rental income returns or sale of properties upon completion of development.

ERDF Eligibility Assessment

From the project outline it is noted that this will operate as effectively a mixed use development project containing elements of office, retail, leisure and residential. It is considered that at least elements of the project are consistent with the terms of Article 3 of

Regulation 1080/2006 in that they relate to "productive investment which contributes to creating and safeguarding sustainable jobs".

Subject to no elements of the office development falling within the State Aid restricted sectors (as set out within the 'Legislative Provisions' [Section 3] of this report) it is considered that there are no express bars in terms of the ERDF eligibility under the ERDF Regulations in terms of the office, retail and leisure elements of the project.

It is however noted that a significant element of the project relates to residential development and, as indicated earlier in this report, the costs associated with housing are not eligible (in certain Member States, including Luxembourg) for ERDF support, except where such expenditure relates to energy efficiency improvements and the use of renewable energy in existing housing. As indicated within Section 3 of this report, it is for the Member State to define the categories of eligible housing within their national rules on eligible expenditure (in conformity with the requirements of Article 56 of Regulation (EC) No 1083/2006 for the purposes of supporting social cohesion). It is unclear from the case study what, if any, costs relating to the residential element of the project would relate to expenditure on energy efficiency improvements and use of renewable energy in existing housing in terms of eligible housing as defined under Duchy of Luxembourg national eligibility rules.

As noted within Section 3 of this report, funding can be applied by way of JESSICA financial engineering instruments to projects which contain elements of both eligible and ineligible expenditure. This is the case where it can be demonstrated that there are sufficient eligible costs to cover the totality of the ERDF and required match funding to be applied to the project and that there is a clear audit trail allowing eligible expenditure under ERDF rules to be distinguished from ineligible expenditure. In order for this to be demonstrated the EC have indicated that applicable UDFs would be required to maintain separate accounting systems or use separate accounting codes for co-expenditure down to the level of the project. There is also the need for clear identification of the capital contributed from ERDF to the UDF and expenditure which is eligible under the structural funds so as to ensure that it is possible to verify that any expenditure declared to the EC as eligible expenditure is eligible under ERDF Regulations and any applicable national eligibility rules.

On the basis of the above, the fact that the project potentially contains elements of ineligible expenditure will not in itself preclude investments in the form of equity, loans or guarantees being made in the project by a UDF utilising ERDF and applicable match funding of the same. The presence of such ineligible expenditure will, however, clearly limit the amount of ERDF that can be applied at the project level due to the whole of the project costs potentially not being eligible (e.g. at least element, if not all, of the costs relating to the housing).

It is also expressly stated within the case study that it is only partially consistent with the Luxembourg Operational Programme and care will need to be taken to ensure that ERDF funding and match can be shown to be being applied in a manner consistent with the Operational Programme. In particular elements of the project, such as the reference to public administration, will need to be of a nature whereby they can be shown to directly relate to the objectives of the Operational Programme. Care will also need to be taken to insure that the project is consistent with the applicable Integrated Plan for Sustainable Urban Development ('the IPSUD') relating to the Duchy of Luxembourg, with Article 43 (b) of Regulation 1828/2006 expressly referring to the rules regarding use of financial engineering instruments such as under JESSICA relating to "public-private partnerships or other urban projects included in integrated plans for sustainable urban development".

JESSICA Pilot Projects

European Investment Bank

Overview and Conclusions

In summary, Multi-Sigma is an integral and worthwhile project within the overall redevelopment of the Nordstad area.

Our research has concluded that it is one of the projects that is furthest forward in terms of overall scheme development and planning. However, our high level analysis of the scheme has made us aware that there remain some fundamental issues to be addressed if it is to be considered further for JESSICA investment. These are as follows:-

- Only parts of the scheme are likely to qualify under ERDF eligibility criteria, the majority of these elements are located on the south side.
- Overall approach to scheme development and phasing needs to be addressed in detail prior to progressing further, particularly with regards to land assembly, and development of associated infrastructure and services.
- The current lack of occupational market in Nordstad remains a real concern and is likely to require detailed analysis and potential state intervention in relation to infrastructure and occupiers to facilitate delivery of development in the region.
- Based on high level financial analysis, the scheme will require a larger intervention than could be provided by the current JESSICA funds available in the 2007-2013 Operational Programme.
- In order for the overall scheme to be brought forward there is likely to be a significant requirement for an additional element of direct public sector intervention in parallel with other public funding, and JESSICA investment.

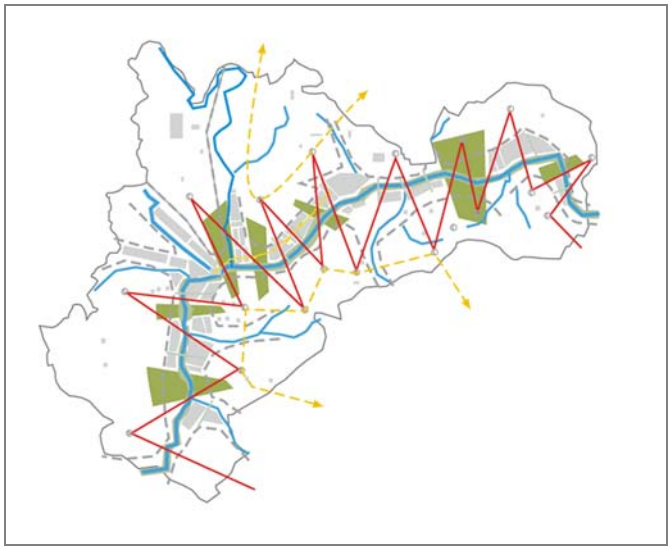
NORDSTAD – CENTRAL AXIS

The creation of the Central Axis is of great importance for Nordstad as this is where the development of Nordstad is to be concentrated. Not only housing and office space but also a wide variety of public and private institutions are to be created in the Central Axis. This will have considerable effects on the adjoining urban districts and municipal areas. The proposal is for a joint urban development venture, in which the development of the city is the focal point.

A first and essential challenge for the planners of the future Central Axis is to bring the two centres of Diekirch and Ettelbrück, closer together, and to weld them together in the medium and long term to form a consolidated city and settlement complex that also includes the villages of Erpeldingen and Ingeldorf and the municipalities of Colmar-Berg, Schieren and Bettendorf.

A key criterion of the strategy is the maintenance and strengthening of polycentrality. Within the overall plan the Nordstad municipalities must strengthen their settlement structures, consolidate core areas and accentuate their settlement margins relative to the countryside.

Nordstad – Central Axis



Source: Nordstad Masterplan

Preliminary analysis by Team 5 indicates the following advantages for the development of the Central Axis:

- Encourage a sense of community;
- Job creation;
- Additional housing areas;
- Office space;
- Commerce and trade; and
- Leisure opportunities.

The macro-regime introduced in the present masterplan uses the landscape as a primary regulating element between the areas that can be built on. Green strips opening out

towards the river form important landscape reference points at right angles to the river axis and provide retention areas. The Boulevard Urbain, the central axis between Ettelbrück and Diekirch, is thus divided into spatial sections. Because of the risk of flooding, it has been decided not to build along the Sauer. A side arm of the Sauer is being created in the confluence area of the Alzette/Sauer. The city is thus developing a direct link with the river.

There are a number of other areas which have been progressed and indeed proposed for development across the Central Axis. However, the priority is to establish a Mobility Plan which addresses the options for motorised private transport, public transport and slow traffic. Central to this mobility plan is the "Boulevard Urbain" which is being designed with a public transportation lane in the middle. It is planned that the corridor will be used in a first phase as a bus lane, then in later phases these bus lanes can if necessary be refitted to cater for trams. The relative importance of the Boulevard is being defined in due regard to the importance of the existing centres of Ettelbruck and Diekirch and also the integration ot the villages of Erpeldingen and Ingeldorf. In addition, the "value added of a new, shared transport corridor for the municipalities of Colmar-Berg, Schieren and Bettendorf is being considered.

Qualitative Assessment

In order to undertake a qualitative assessment on the Central Axis project the consultant team has considered the following key areas: project definition; viability; deliverability; JESSICA intervention; and the basis for returns from JESSICA.

- **Project Definition** – the "Boulevard Urbain" is integral to the delivery of the whole Central Axis redevelopment. It is anticipated the infrastructure development will free-up and release value for a number of sites which fulfill the JESSICA investment criteria and provide associated returns.
- **Viability** – the major concern surrounding the development of the "Boulevard Urbain" as with many infrastructure developments is around the viability and required forward funding to successfully deliver the project. We are informed that studies are currently being undertaken in relation to the anticipated costing for the development. These studies are due to be completed by the end of December 2009.
- **Deliverability** – concerning the overall deliverability of the project and associated with viability are issues surrounding land assembly, planning and funding.
- **Intervention** – it is envisaged that JESSICA assistance could be used as a means of forward funding the infrastructure development.
- **Basis for returns** – there is currently no adopted legislation for the recovery of large scale infrastructure through developer contributions or by any other means. It is anticipated the construction of the 'Boulevard Urbain' would have to be undertaken by the local communes with the assistance from the State.

ERDF Eligibility Assessment

It is noted that the main purpose of this project is the development of 'infrastructure', which is expressly referred to within Article 3 of Regulation 1080/2009 as being within the scope of ERDF assistance. It is, however, noted that reference is also made to both residential and office development potential.

It is considered, in principle, that there is nothing to preclude the application of ERDF funds towards such a project, although it is likely that any costs associated with residential

development (other than where linked to energy efficiency improvements and use of renewable energy in existing housing stock - see comments above re Nortstad) will be ineligible. In terms of transport infrastructure, it is clearly envisaged that ERDF funds are to be applied to such costs (and this is also the case in relation to use of ERDF in the context of JESSICA).

Notwithstanding the comments detailed above, it is noted that express reference is made to the difficulty of achieving commercial returns and this suggests that in order to make the project attractive to the private sector any returns in relation to ERDF and public sector match funding may be limited and potentially non-existent (in order to attract the necessary commercial investment). This suggests that there will be little returns to be recycled and potentially casts doubt on whether financial engineering instruments (such as JESSICA) are the most appropriate instrument for applying ERDF (e.g. would a grant be more appropriate) towards the project.

It is further noted that it is currently unclear as to whether or not use of ERDF funds in respect of the project would be consistent with the objectives of the Operational Programme. As indicated in respect of Nordstadt, care will need to be taken to insure that the project is consistent with the IPSUD.

Overview and Conclusions

It is evident from our research that the 'Boulevard Urbain' is integral to the delivery of the Nordstad Masterplan and in particular, the Central Axis. The creation of the Central Axis and the redevelopment of Nordstad as a whole are fundamental to achieving the country's aims of polycentric decentralization. In order for the overall scheme to be brought forward there is likely to be a significant requirement for an additional element of direct public sector intervention in parallel with other public funding, and JESSICA investment.

The Terms of Reference request for the study to consider financial analysis of the anticipated commercial performance of the pilot projects as well as a description of potential revenue generating capacity. However, due to the limited information that has so far been prepared on the proposed Central Axis development, we have been unable to assess the anticipated commercial performance of the Central Axis project.

We understand there is currently no existing planning legislation in place in Luxembourg for the recovery of infrastructure cost through development contributions. However, we outline below options for progressing financial delivery mechanisms for the development of the 'Boulevard Urbain':-

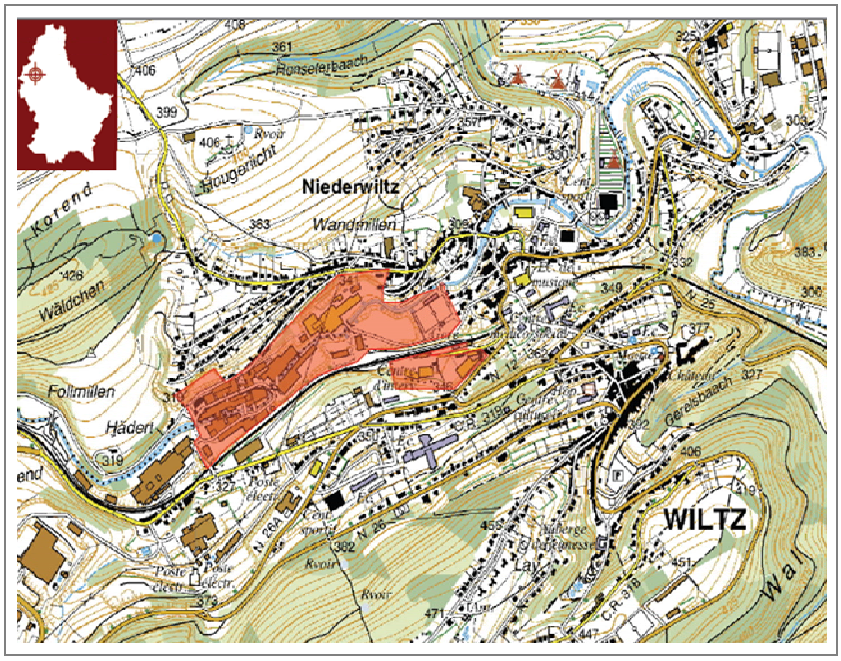
- Review the implementation of an appropriate mechanism for recovery of infrastructure via an appropriate planning tax.
- Explore opportunities/appropriate legal avenues for implementing such a process within the current planning system (having undertaken a high level review, potential areas within the current legal framework have been reviewed).
- Enable the adoption of such a system to form part of the wider national development framework.
- Draft detailed business case for consideration by the State followed by final Ministerial and Government approval.

JESSICA Pilot Projects

WILTZ

The proposed development comprises 160,000 sq m of mixed-use buildings located in Wiltz. The PAG is currently in the development phase. Key stakeholders include private land owners, as well as the local commune. It is understood the site has significant remediation issues and infrastructure requirements prior to delivery.

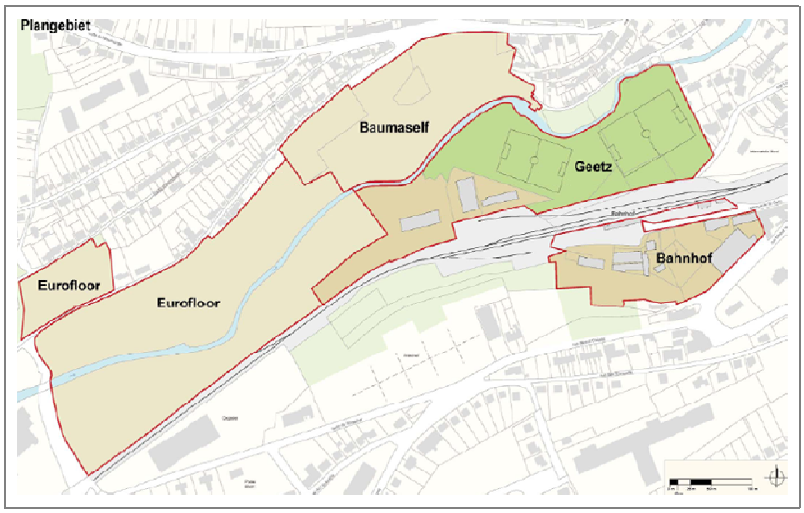
Wiltz – Location Plan



Source: PROject SA

The development has been divided into four phases (Eurofloor, Baumaself, Geetz, Bahnhof). The proposed phasing plan and existing uses on each of the occupying sites are as follows:-

Phasing Plan – Existing Uses



Source: PROject SA

JESSICA Pilot Projects

European Investment Bank

Existing Use – Site Areas

PHASE	AREA (SQ M)	LAND OWNER	EXISTING USE
Eurofloor	78,000	Private	Industrial
Baumaself	29,000	Commune	Industrial
Geetz	43,000	Private / Commune	Sports pitches / Industrial / Communal
Bahnhof	21,000	Private / State	Mixed use
TOTAL	**171,000**		

Source: PROject SA

The plots of land belong to private owners and the commune. The total area of the site is 17ha (36 acres). We have been provided with preliminary studies proposing two alternative options:

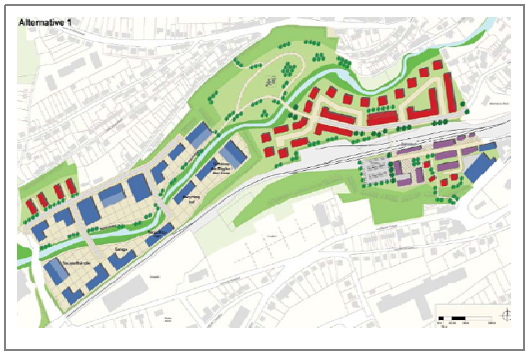
Option 1

Eurofloor: Industrial
Baumaself: Green Space
Geetz: Residential
Bahnhof: Mixed-use (40% residential / 60% commercial)

Option 2

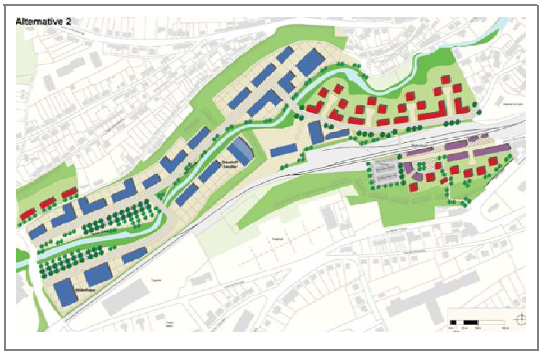
Eurofloor: Industrial
Baumaself: Green Space
Geetz: Residential and Industrial
Bahnhof: Mixed-use (60% residential / 40% commercial)

Option 1



Source: PROject SA

Option 2



Source: PROject SA

For both of these development options draft revenue and cost assumptions have been prepared. These are outlined below:-

Option 1

COSTS	EUROFLOOR	BAUMASELF	GEETZ	BAHNHOF
Land purchase and acquisition costs	€1 325 000	€460 000	€500 000	€1 000 000
Planning and Management	€427 500	€157 500	€245 000	€193 750

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Development Costs	€11 012 300	€3 614 000	€3 796 000	€1 197 950
Other	€3 048 864	€953 010	€1 159 653	€404 269
Total Costs	**€15 813 664**	**€5 184 510**	**€5 700 653**	**€2 795 969**

REVENUE	EUROFLOOR	BAUMASELF	GEETZ	BAHNHOF
Industrial	€2 210 000	-	-	-
Residential	-	-	€6 984 000	-
Station	-	-	-	
Total Revenue	**€2 210 000**	**-**	**-**	**€1 605 500**

FINANCIAL GAP	EUROFLOOR	BAUMASELF	GEETZ	BAHNHOF
Financing costs minus revenue	**- €13 603 664**	**- €5 184 510**	**- €1 283 347**	**€1 190 469**

Source: PROject SA

Option 2

COSTS	EUROFLOOR	BAUMASELF	GEETZ	BAHNHOF
Land purchase and acquisition costs	€1 325 000	€460 000	€500 000	€1 000 000
Planning and Management	€427 500	€157 500	€245 000	€193 750
Development Costs	€11 459 240	€3 114 800	€3 597 100	€1 259 700
Other	€3 183 215	€916 772	€1 104 391	€430 26
Total Costs	**€16 394 955**	**€4 649 072**	**€5 446 491**	**€2 883 715**

REVENUE	EUROFLOOR	BAUMASELF	GEETZ	BAHNHOF
Industrial	€3 380 000	€2 132 000	-	-
Residential	-	-	€6 696 000	
Station	-	-	-	€2 200 000
Total Revenue	**€3 380 000**	**€2 132 000**	**€6 696 000**	**€2 200 000**

FINANCIAL GAP	EUROFLOOR	BAUMASELF	GEETZ	BAHNHOF
Financing costs minus revenue	**- €13 014 955**	**- €2 517 072**	**- €1 248 509**	**€683 715**

Source: PROject SA

We are advised that these development and density plans have been prepared at a very early stage without the knowledge of market and traffic studies which are currently on-going.

Qualitative Assessment

In order to undertake a qualitative assessment on the Wiltz project the consultant team has considered the following key areas: project definition; viability; deliverability; JESSICA intervention; and the basis for returns from JESSICA.

- **Project Definition** – The proposed masterplan development at WIltz is mixed use and includes a number of private land owners as well as local communal land. The proposed development has been identified to revitalize and open up the much 'disregarded' areas to the north of Luxembourg.
- **Viability** – based on the high level information provided, viability is a major concern in terms of bringing the development forward. Whilst the information provided is a very initial exercise, there remains a concern around the lack of comparable market data within the location. Further studies into potential occupiers and infrastructure requirements will be required prior to progressing with this project further.
- **Deliverability** – concerning the overall deliverability of the project and associated with viability are issues surrounding highly fragmented land ownership across the site, remediation requirements, planning and funding issues.
- **Intervention** – it is envisaged that JESSICA assistance could be used by means of injecting equity, providing rental guarantees or loans in order to assist with required remediation and assist delivery.
- **Basis for returns** – the anticipated mechanism for returns would be through rental returns or sale of properties upon completion of development or development contributions towards the necessary remediation requirements.

ERDF Eligibility Assessment

As in respect of Multi Sigma, it is noted that this project refers to mixed use development and elements of the project can certainly be viewed as being consistent with the provisions of Article 3 of Regulation 1080/2006. It is, however noted that reference is made to up to 520 residential units and as indicated previously with Multi Sigma, costs associated with housing (other than those linked to very limited environmental costs) are ineligible. Other elements of the project including the office and retail elements (subject to these not relating to entities which operate within restricted sectors which is considered unlikely) are considered to be eligible under the EC ERDF eligibility rules and as such there should be no specific bar under such rules for a UDF to make investments utilising ERDF and appropriate match funding into such a project. This is subject to there being sufficient eligible costs to cover the full amount of the ERDF and appropriate match funding and the presence of a clear audit trail in relation to the same (as referred to in the Multi Sigma case study).

It is also noted that reference is made to the project only partially corresponding with the Operational Programme and care will need to be taken to ensure that it can be demonstrated that ERDF and appropriate match funding is being applied in a manner consistent with the relevant Operational Programme and that it is covered by the IPSUD. It is noted that the project is intended to operate in four phases and in principle this will provide the potential ability to apply ERDF only to specific stages which are consistent with the Operational Programme and which contain the necessary elements of eligible costs.

Overview and Conclusions

Wiltz is a key project in the context of Luxembourg's aim of polycentric decentralisation. In the light of the high level analysis undertaken, whilst there is currently a funding deficit for the scheme it is evident that the key driver is the proposed residential development.

In theory, JESSICA intervention could be applied albeit (similar to issues highlighted with Multi-Sigma) a significant contribution is likely to be required. However, given the premature nature of the scheme there are a number of hurdles that need to be overcome prior to consideration of the implementation of JESSICA funds. Similar to the issues raised with Multi-Sigma, these are as follows:-

- Only parts of the scheme are likely to qualify under ERDF eligibility criteria, consideration will need to be made as to the type of uses proposed for the 'industrial' properties and whether they are eligible under ERDF rules.
- The scheme needs to be addressed in detail prior to progressing further, particularly with regards to land assembly, remediation and development of associated infrastructure and services.
- The current lack of occupational demand in the north of the country is of concern and is likely to require detailed analysis and potential state intervention in relation to infrastructure and occupiers to facilitate delivery.
- Based on high level financial analysis, the scheme will require a significantly larger intervention than could be provided by the current JESSICA funds available in the 2007-2013 Operational Programme.

6

JESSICA in Luxembourg

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JESSICA in Luxembourg

The first part of this chapter considers the concept behind a UDF and Holding Fund and the advantages of their implementation. The second part of this chapter considers the key issues to be considered and the way forward in the establishment of a National Development Fund (incorporating a JESSICA element) in Luxembourg.

What is an Urban Development Fund (UDF)?

A UDF is a fund attracting both public and private sector funding to deliver an integrated sustainable urban development. UDFs can be established to fund individual developments, certain aspects of major developments, or several developments can be combined into one fund. UDFs can be formulated at either a national, regional or local level in response to integrated urban development plans. The key attributes of a UDF are as follows:-

- Fund that invests in public/private regeneration projects.
- Combines locally owned public sector assets, land or equity with private sector equity (which can be further leveraged) creating economies of scale and mitigating risks to deliver major regeneration outcomes.
- Acts on an investment basis rather than traditional grant funding i.e. the public sector can expect to see a return.
- Can be established on a national, regional or local level.
- Captures returns through a variety of mechanisms:-
    - Gearing against Government leases;
    - Selling consented sites to fund other development;
    - Securing borrowings against pre-lets;
    - Using income producing assets to subsidise non-income producing assets;
    - Combining a portfolio of profitable with non-profitable development projects; and
    - Capturing land value from planning permissions.

UDFs are a key tool for the effective implementation of the JESSICA initiative. However, in order to be eligible for JESSICA funding, a UDF must have a comprehensive business plan and sound financial backing. The benefits of the establishment of a UDF include:-

- Acting as an incentive for the private sector to work alongside public sector investment;
- Risk reduction through spreading risk across both the public and private sector and different development sectors;
- Sharing of development profits without the need for complex overage arrangements;
- Effective leveraging of private sector funds;
- Holistic approach to regeneration drawing on the skills and assets of both the public and private sector in order to facilitate effective and timely delivery of projects;
- Potential for long term returns that can be either drawn out or recycled back into development fund;
- Competitive lending rates against government covenant strengths; and
- Economies of scale.

What is a Holding Fund?

JESSICA operates as a framework for implementing proposals for development funds and does not include a requirement that this needs to be done via a holding fund structure. The advantages of operating through a holding fund structure revolve around efficiency with the holding fund operating as an 'umbrella' fund which may have the benefit of yielding economies of scale by comparison with the costs of operating stand-alone financial instruments of equivalent value.

The holding fund operates so as to assess and select the UDFs into which funds held by the holding fund are to be passed and will require the necessary expertise to undertake such a role (as well as management of such funds and any returns on the same - although these could be passed through to a separate legacy fund - through an idle funds investment policy pending them being passed down to the UDFs). This perceived advantage of a holding fund and the provisions of Article 44 of Regulation 1083 strongly indicate that a holding fund structure is intended to operate as a 'fund of funds' (e.g. where more than one UDF sits below it). The Structural Funds regulations allow for a direct appointment of EIB as Holding Fund manager (optional).

Where there is only one intended UDF or only limited amounts of funding available then it is questionable as to whether or not a holding fund structure is desirable taking into account the costs associated with the set up and operation of the same.

ESTABLISHING A DEVELOPMENT FUND IN LUXEMBOURG

This report has involved a review and assessment of the Nordstad Masterplan to identify projects which could potentially form pilots for JESSICA investment. The report has identified a number of issues in using Nordstad as a JESSICA pilot, the most significant of which is the occupational strategy for the Nordstad area (which has not yet been sufficiently defined) and a lack of mature urban development projects.

The issues associated with Luxembourg's future economic growth targets, which are aimed at diversifying both the country's economic activity and the geographic base for that activity should be addressed in a co-ordinated manner. Luxembourg's spatial development policy must adequately reflect the country's sustainable economic development plan, both of which should in turn be underpinned by a sound financial strategy.

Luxembourg's strategic development objectives are ambitious and will require significant public and private sector collaboration to deliver. That collaboration will need to encompass both finance and skills.

Developments of the magnitude currently under consideration in Luxembourg will require co-ordination and prioritisation, a clear timescale for delivery, consensus, innovative delivery structures and an appropriate range of legal powers and controls.

It is our recommendation that the Luxembourg Government adopts a National Development Fund which incorporates an element of JESSICA funding and is underpinned by a sound financial implementation strategy to leverage best value for the public sector's contribution. This chapter considers precisely how JESSICA should be taken forward in the context of Luxembourg urban regeneration environment.

The areas to be discussed are as follows:-

- The requirement for an integrated **National Development Plan** to promote and combine the objectives of the existing planning system.

- The establishment of a **National Development Fund** which incorporates an element of JESSICA funding.
- The creation of a **National Development Agency** through the establishment of a new or existing structure with the responsibility for implementing the National Development Plan.
- The **relationship of the National Development Fund and Development Agency** with other Luxembourg public and private entities and/or organisations.
- The role of **Local Delivery Vehicles** to give added focus and a sense of local ownership to complex projects delivered by major shareholders.
- Consideration as to appropriate **governance arrangements** needed to allow the Agency to fulfil its mandate.
- A review of the required **financial strategy** and business plan for the proposed Development Fund.
- A review of the potential **capacity and appetite for private sector partners** to participate in the Development Fund model and enter into a JESSICA fund type arrangement.

National Development Plan

The existing planning system is structured over both a national and local level enabling a direct interface between central and local government concerning the overall development and regeneration strategy. A new National Development Plan is required to promote and combine the objectives of the existing planning documents.

Luxembourg has adopted a series of ambitious growth targets in recent years aimed at diversifying both the country's economic activity and the geographic base for that activity. The delivery of anything like the number of new jobs envisaged is going to put significant pressures on Luxembourg's existing infrastructure and require significant future development.

The issues associated with this projected growth need to be addressed in a co-ordinated manner, ensuring the country's spatial development policy adequately reflects the country's sustainable economic development plan, both of which are in turn underpinned by a sound financial strategy.

A National Development Agency is required to promote and deliver a National (integrated) Development Plan (the 'Plan'). The Plan will act to combine the objectives of the 'Programme Directeur', 'Concept Integré du Transport et du Développement Spatial (IVL)', 'Plans Regional / Sectoriel' and layout the framework for the Grand Duchy's future development requirements. The Ministries of Finance, the Economy and Sustainable Development should collaborate closely to devise the Plan.

The Plan should reflect the desired sectors in which growth in jobs is likely to arise and the desired regional distribution of those jobs. It should include scenario modelling which considers, inter alia, how different models of Government intervention can influence the diversity and the location of jobs created.

The benefits of this approach are:-

- Large-scale development schemes can be timetabled;
- Each development has a clear occupational strategy;

- Competition between competing development schemes is eliminated;
- The infrastructure required by different types of occupier can be put in place in a considered and cost effective manner;
- Government can budget for the capital expenditure;
- Investors can understand the potential investment opportunities; and
- An assessment can be made of the required technical skills needed by the Government to deliver this programme.

Typically the Plan would cover a 20-25 year period, but would be subject to regular review. The Plan has to be robust enough to withstand the many changes in Government which take place during this time period. Investors and occupiers need confidence that short term political considerations will not affect the ultimate long-term position (whilst recognising that the Government needs flexibility to deal with macro and micro economic fluctuations).

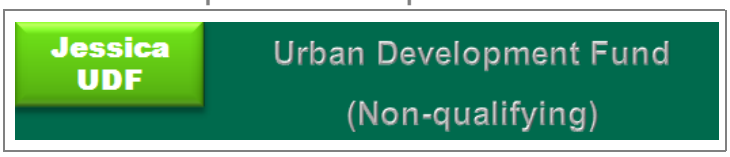
National Development Fund

In support of the JESSICA investment model, we recommend that a National Development Fund (the 'Fund') is set up to invest Government funds (and potentially other public and private sector resources) in development projects.

JESSICA would form an element of the Fund to fund certain qualifying projects. Investments in non-qualifying projects, and qualifying projects for which there is insufficient JESSICA funding, will be made by the rest of the Fund.

An illustrative structure diagram outlining the proposed role of JESSICA within a wider Fund is provided below.

National Development Fund – Proposed Structure



Source: CB Richard Ellis

Government funds in support of development would need to be made available through the National Development Agency on both an investment and grant basis (where projects cannot support an investment approach).

In making investments, the Fund will seek to operate in the following manner:-

- Using income and capital producing assets to subsidise unproductive assets;
- Gearing against Government leases;
- Capturing land value from zoning and planning consents;
- Selling consented sites to fund other development;
- Capturing future tax revenues to secure against current borrowings; and
- Securing borrowings/investment against pre-lets.

Benefits of Establishing a National Development Fund

The principal benefits of establishing a National Development Fund (incorporating a JESSICA element) are as follows:-

- Establishment of a long-term strategic, revolving, efficient fund with the objective of fulfilling the criteria of Luxembourg's strategic development agenda outlined within the National Development Plan.
- Ability to attract private equity investment for projects which potentially have a commercial return, or which are sufficiently de-risked to be attractive to the private sector.
- Ability to attract debt finance within the context of agreed Fund facilities. The EIB and Spuerkess have indicated they would both be interested in providing appropriate facilities subject to a detailed understanding of the Fund model and investment projects.
- Grant funding could sit alongside national development funding on some projects where commercial viable.

National Development Agency

We advise that a National Development Agency (the 'Agency') is created to implement a newly integrated National Development Plan. The Agency would be sponsored by the Ministère du Développement Durable et des Infrastructures and could take the form or an existing or newly established structure. The role of the Agency would be to:-

- To underpin the overarching National Planning Framework and advise on matters pertaining to the Grand Duchy's National Development Plan and its subsequent review;
- Have responsibility for the implementation of the National Development Plan; and
- Have a substantial budget (awarded on a 3-5 year funding cycle) which would underpin its ability to deliver the development objectives of the Plan.

The terms of reference of the Agency would be:-

"To support Luxembourg's economic development by the promotion, and the development, of high quality, attractive places to live, work and enjoy, either by creating new communities or by improving existing ones."

The benefits of establishing the Agency are:-

- The Agency would give the delivery of the National Development Plan a focus which the three relevant Ministries (all of which have a number of other major objectives to deliver) are unlikely to be able to give.
- The specialist skills and expert knowledge required to deliver developments of the type required in Luxembourg can be acquired and focused within one agency, rather than distributed across the country. Those skills can then be made available to stakeholders as required.
- Strong partnerships will be required to deliver Luxembourg's required development. Those partnerships will cross the public sector and the public/private sector. The Agency will foster the creation of those partnerships.
- Procurement and efficiency savings are likely to be achieved across the Grand Duchy's annual development spend.

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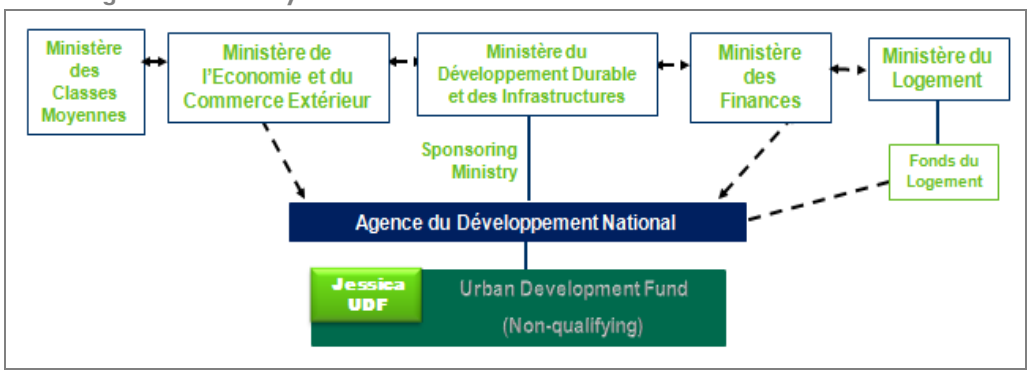
Working Collaboratively

Whilst the Agency could take the form or an existing or newly established structure, its relationship with other Luxembourg agencies would need due consideration. The Agency's role would be to join-up and work collaboratively with existing agencies. The Agency would need to have a broad national approach. Our subsequent proposals assume all existing agencies and government owned corporations including the Fonds du Logement, Fonds du Kirchberg and Agora to work closely with the Agency.

The Agency would have a broad National approach and develop each area with an economic perspective, improving synergies between communes and development and growth in specialist industries. Outlined below is an illustrative diagram representing our proposed links with existing ministries and government bodies.

Working Collaboratively



Source: CB Richard Ellis

Local Delivery Vehicles

The role of Local Delivery Vehicles is to formulate the 'vision' for major development, to develop and own the business plan for delivery of the vision, and to implement the business plan. Typically, this would include:-

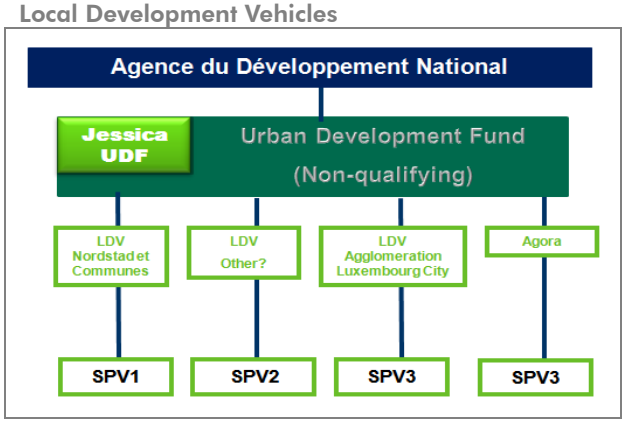
- Master planning and identification of funding streams;
- Establishing costs and negotiating funding of local infrastructure;
- Negotiation with landowners;
- Establishing regular liaison mechanism with investors and developers;
- Stakeholder consultation and liaison;
- Co-ordinating activities to facilitate speedy and effective planning, investment and development decisions;
- Land assembly powers; and
- In the case of developments of major regional importance, have plan making and development controls powers.

We recommend that each individual LDV develops, owns and implements their own business plan for delivery of projects in line with the wider principals of the National Development Plan. The main reasons and benefits in establishing LDVs at a regional or local level are as follows:-

- Provide an added focus and sense of local ownership to complex projects;
- Formulate the vision for major development institutions providing confidence to investors, developers and financiers;
- The political body becomes one step removed from day-to-day decision-making;
- Local stakeholders are properly represented in major developments;
- Specialist staff, not always available to municipalities, can be recruited; and
- Effective when dealing with projects which cross municipal boundaries.

Each individual LDV must be accountable to an appropriate stakeholder group – often local, regional and central government. LDVs can be established as legal entities or as informal partnerships without legal form. Outlined below is an illustrative diagram showing a potential LDV structure in the context of the wider National Development Agency.

Local Development Vehicles



Source: CB Richard Ellis

Financial Strategy

The National Development Plan will need to be underpinned by a sound financial implementation strategy which seeks to leverage best value for the public sector's contribution. The basis of the financial strategy underpinning the National Development Fund would be:-

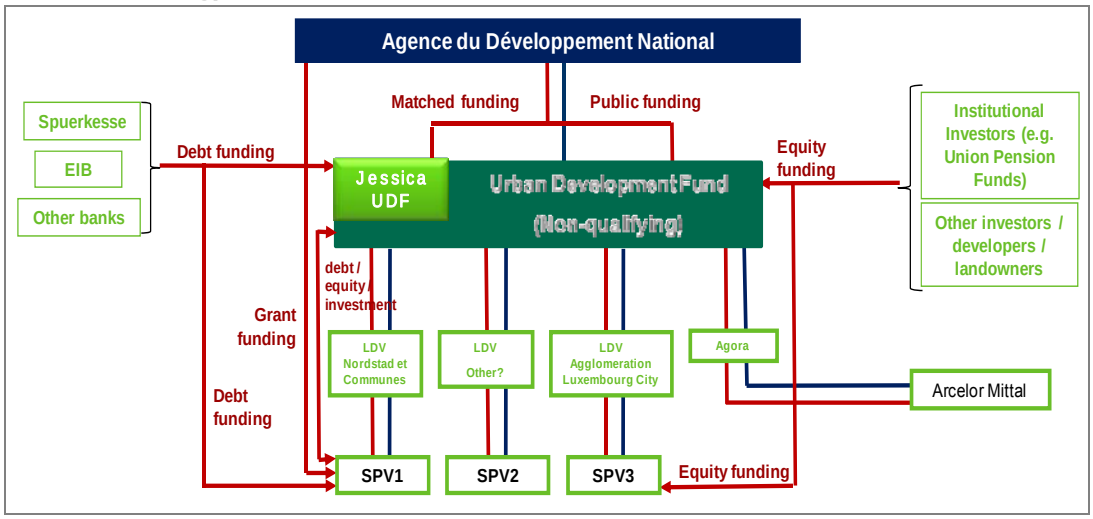
- All Government funding considered to be 'development related' would be routed through the Agency (with the exception of transport).
- The Agency's budget would be assessed annually within the context of a medium-term financial plan (3-5 years).
- The Agency would be expected to operate creatively to ensure best value per Euro of public sector spending. A measure of what constitutes 'best value' would be agreed.
- A key measure of performance would be the extent to which the Agency is able to attract private sector finance into major projects.
- The Agency would operate a presumption in favour of 'investment' models (debt/equity/guarantee) ahead of models involving public subsidy, except in so far as there are compelling public benefits reasons for public subsidy being used in lieu of investment.

JESSICA in Luxembourg

- The Fund would be able to seek to leverage additional finance through the following methods:-
    - Private equity – sought for projects which potentially yield a commercial return
    - Debt finance – can be provided at both project and fund level
    - Grant funding – can sit alongside development funding on some projects

Provided below is a diagram illustrating a potential delivery mechanism incorporating wider equity, debt and grant funding mechanisms.

Financial Strategy



Source: CB Richard Ellis

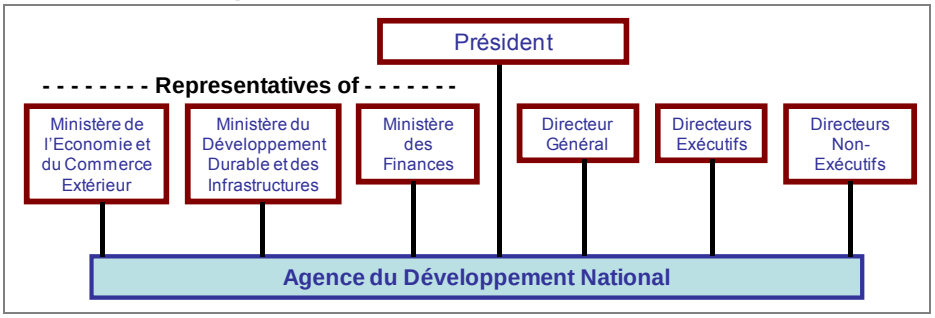
Governance Arrangements

Appropriate governance arrangements would need to be put in place to allow the Agency to fulfil its mandate. The Agency would comprise a Board of Directors (both executive and non-executive), supported by a delivery team. The Directors would have ultimate responsibility for the Agency's progress in delivering the agreed Plan.

As most of the political debate is going to focus on the agreement of the Plan before it is entrusted to the Agency to deliver, there is, in theory, no reason to have ministerial representation on the Board of the Agency, as the role of the Agency is merely to implement the agreed Plan. In this case, the Chief Executive/Chairman of the Agency would account directly to the 'Ministère du Développement Durable et des Infrastructures' for the Agency's actions. The Board of the Agency would then be made up of directors (executive and non-executive) with relevant expertise and interest in the development/regeneration/economic development/finance field.

If this level of independence proves unattractive, the three Ministries could each have representation on the Board of the Agency alongside the executive and non-executive directors. This option is illustrated overleaf.

Governance Arrangements



Source: CB Richard Ellis

Either way, the senior executives and directors of the Agency would be expected to work in a close and collaborative manner with Ministers and their civil servants.

A broad mix of qualitative and quantitative objectives would be agreed by the three ministries which reflect the objectives of the Plan. Progress against these objectives would be periodically assessed.

Legislative Provisions in the Context of Luxembourg National Law

The Terms of Reference request a review of the rules and governance procedures for the management of Holding Funds and individual UDFs under Luxembourg legislation. In practice, Bonn Schmitt Steichen has confirmed that the proposed fund and agency structure can be set up. Such a complicated area needs to be considered under a detailed legal review once the fund structure has been agreed by Luxembourg governing bodies. However, in the context of this report and following discussions with the Ministry of Sustainable Development and Infrastructure, outlined below is an analysis of the legal implications resulting from the proposed implementation approach.

Development Plan

The proposed National Development Plan will require a position within the overall national planning framework. We have considered three options concerning the implementation and legal status of the Plan. These options and their relevant legislative implications are outlined below:-

a. **To incorporate the National Development Plan as the opening Chapter of the existing (or updated) 'Programme Directeur'.** As the 'Programme Directeur' is not a legally binding document this will not result in any legal challenge. However, as a result this approach could significantly limit the political and financial 'status' of the Plan.

b. **To include the National Development Plan as a self-standing document within the 'umbrella' of existing Sector Plans.** This approach would require the Plan to have its own legislative framework in place. The legislative framework would most likely follow a similar format to the existing Sector Plans. The risk with this approach is that due the number of different plans already in existence (at Sector and Regional level) this may lead to conflicting plans.

c. **To incorporate the National Development Plan within the context of the Concept Integré du Transport et du Développement Spatial pour le Luxembourg (IVL).** This option would allow the objectives of the IVL to be incorporated under a wider National Development Plan. The IVL is not a legally binding document. Consequently, integration with a National Development Plan should be a relatively straight forward process. However, due to the limited legal standing this approach could significantly hold back the political

and financial 'status' of the Plan.

National Development Agency

Whilst the National Development Agency could be either a 'newly established or an already existing structure' it is likely that it will take the form of an 'Etablissement Public'. In this situation a law will be required to be registered with parliament then brought to chambers for final agreement. The timetable for this would be a minimum of 6 months. It is not anticipated that there will be any significant legal constraints to the setting-up of the Agency as it is likely to follow the format of similar structures outlined in Chapter 2 notably Fonds de Kirchberg or Fonds de Belval. However, we would highlight that in order for a National Development Agency to be implemented, it will require the full support of the Ministry.

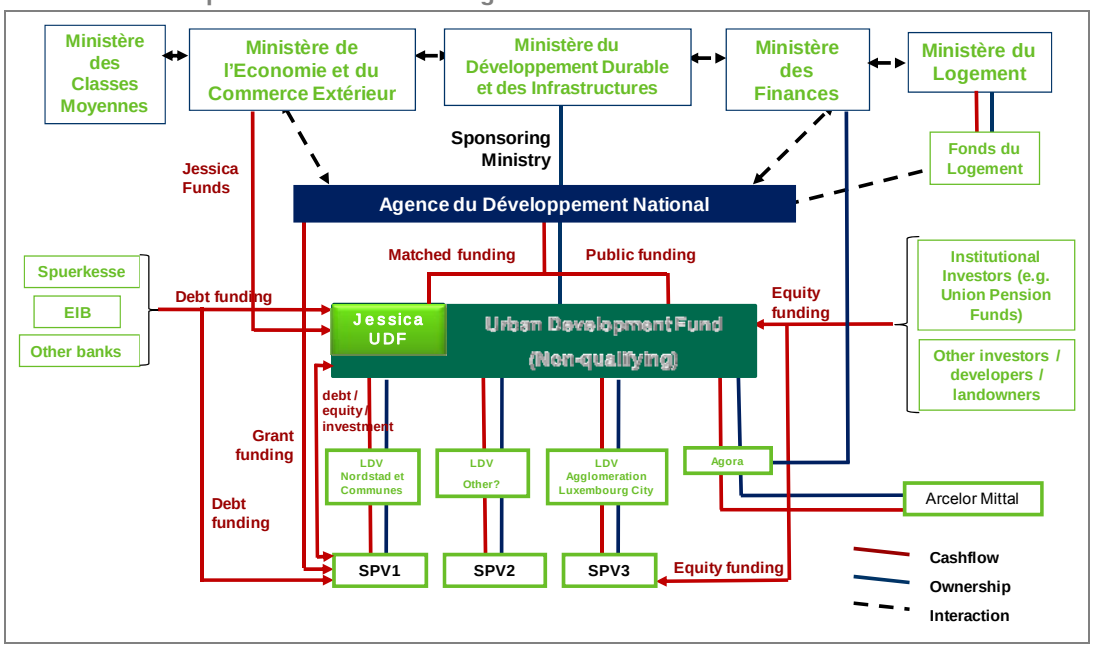
National Development Fund

The implementation of a National Development Fund will need to be compliant with the regulation on Funds, under the supervision of the Commission de Surveillance du Secteur Financier (CSSF). Following agreement of shareholders overall objectives and governance arrangements, the timeframe required for the instruction of the file by the supervising authority and the legal set-up of the fund would be a minimum of three months. However, this might have the potential to be expedited due to the role and impact of the Ministry of Finance in the establishment of the fund.

Organogram

The proposed National Development Agency would work to integrate the Luxembourg government ministries around an established planning framework. The organogram provided overleaf shows relationships of the Agency with other Luxembourg bodies alongside a proposed structuring model for establishing and delivery of a National Development Fund incorporating JESSICA. These relationships could be established in many ways.

National Development Fund – Structuring Model



Source: CB Richard Ellis

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Role of Respective Private Sector Partners

Whilst the potential pilot projects reviewed are still at a very early stage in development, initial market sounding has been undertaken in order to establish potential partners' capacity and appetite to enter into a JESSICA fund arrangement. The general principles that have emerged from these discussions are outlined below.

Leaseinvest

- Leaseinvest are a medium sized Belgian based company which focuses on development and investment roles. The company has approximately 320,000 sq m of property under direct management (EUR 530m).
- Their core approach to investment is a 'value added strategy' and typically seek IRRs of 12% to 15% over a 10 to 15 year investment period.
- They would require an 'active role' in the investment process and would need security on planning, exit and/or pre-let to invest.

Bannimmo

- Bannimmo are a medium sized Belgium based company also focusing on development and investment products. The company has approximately £250m under management.
- Bannimmo stated that they are not interested in participating in the JESSICA concept due to their short term rolling investment requirements.

Kanam Group

- Kanam Group is a large German open-ended fund operator with over EUR 15 billion currently under management.
- The fund operates and invests on an individual (not partnership) basis and therefore would not wish to participate in a JESSICA type structure.

TMW Promerica

- TMW have over EUR 1 billion of property under management worldwide and operates on a core strategy basis across a variety of sectors.
- TMW were currently not interested in the JESSICA structure due to the lengthy timeframes proposed and lengthy timetable for the delivery of the UDF.

Generali Lend Lease

- Generali Lend Lease has approximately EUR 3 billion under management and operate on a core, core + and value added strategy.
- Generali are interested in the JESSICA concept and investment at project specific level.
- Generali's IRR requirement is dependent on risk profile.
- The company's typical investment timeframe is 5-10 years.

Irish Life Investment Management Property Fund

- Irish Life is a typical and end investor focused on core strategy operations. The company currently operators across Europe and hold 50 properties under management.
- Irish Life is no longer interested in investing in Luxembourg.

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RECOMMENDATION

As this study has explored, Luxembourg strategic development objectives are ambitious and underpinned by relieving pressure on Luxembourg City and ensuring a more even distribution of economic activity across the country. As a result, there is a requirement for significant private and public sector involvement. Consequently, the proposed developments and urban planning require co-ordination and prioritisation, timing, consensus, and innovative delivery structures. In 2008, the Government of Luxembourg agreed to appoint the EIB to evaluate the potential implementation of the JESSICA initiative.

Based on the findings of this study, the Government of Luxembourg is recommended to deploy JESSICA. Overall, in order to implement JESSICA in Luxembourg and actively promote the policy of polycentric decentralisation, we suggest the establishment of a Luxembourg-wide Development Fund, with a JESSICA funding element to stimulate public and private investment in regeneration and development schemes.

To achieve this we would advise the setting up of a Holding Fund which would over the longer term act as the wider National Development Fund to enable the drawdown of relevant JESSICA funds within the required timeframe. A portion of these funds could then be invested to cover some of the Fund set-up costs. Close liaison will need to be undertaken with the EIB to ensure appropriate administrative procedures are adhered to.

Once the National Development Fund has been established, a criteria and appropriate business plan would need to be established for selecting projects for investment by the Fund. A key criterion will be that sufficient financial information is available to support the required fund modelling.

A portfolio of projects for initial funding can then be assembled from a 'call for projects', based on the mechanisms for creating value within the UDF already outlined within this report. This approach has the advantage of being fair to all municipalities in that any municipality is entitled to submit qualifying projects. Possible qualifying criteria might include:-

- Land assembly must be completed or close to completion.
- The project must have completed an appropriate point in the planning process.
- Projects must comply with the priorities of the Luxembourg Operational Programme to qualify for JESSICA funding i.e. stimulating growth and employment by knowledge/innovation and research and development related activities, or by investing in the infrastructure required to promote new economic activities and to improve environmental protection measures.
- Projects must be supported by detailed development appraisals.
- Projects must be endorsed by the relevant municipalities.

At this stage we would then suggest consider bringing existing and proposed Government investments in regeneration and development into the scope of the Fund. This would require appropriate engagement with investors on the basis of the modelled portfolio as part of a detailed market sounding process.

SUMMARY OF BENEFITS OF THE PROPOSED DELIVERY MODEL

The basis for establishing a new framework incorporating a National Development Plan, Agency and Fund model are to fulfil Luxembourg's challenging strategic development agenda. The proposed delivery model would allow this to be achieved through effective government co-operation, mobilisation of public and private resources, institutional investment and informed collaboration with existing landowners (particularly in the context of Nordstad).

The principal benefits of establishing the proposed delivery model incorporating a National Development Plan, Agency and Fund are as follows:-

National Development Plan

- The Plan would enable large-scale development schemes to be timetabled in a co-ordinated manner.
- A clearly structured and timetabled approach would enable competition between competing development schemes to be eliminated.
- The Plan would provide each development with a clear and deliverable occupational strategy in accordance with the specific priorities of the region.
- Infrastructure required by different types of occupier can be put in place in a considered and cost effective manner.
- Government can budget for all necessary capital expenditure for delivery of the proposed development Plan.
- The Plan would provide a base document enabling investors to understand all potential investment opportunities.
- A detailed assessment can be made of the required technical skills needed by the Government to deliver the proposed development programme.

National Development Fund

- The Fund would provide a long-term strategic, revolving, efficient fund with the objective of fulfilling the criteria of Luxembourg's planned development agenda outlined within the National Development Plan.
- Provides the ability to attract private equity investment for projects which have the potential to generate a commercial return, or which are sufficiently de-risked to be attractive to the private sector.
- Offers the ability to attract debt finance within the context of agreed Fund facilities. The EIB and Spuerkess have indicated they would both be interested in providing appropriate facilities subject to a detailed understanding of the Fund model and investment projects.
- Enables grant funding to sit alongside national development funding on some projects where commercially viable.

National Development Agency

- The Agency would give the delivery of the National Development Plan a focus which the three relevant Ministries (all of which have a number of other major objectives to deliver) are unlikely to be able to give.

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- The specialist skills and expert knowledge required to deliver developments of the type required in Luxembourg can be acquired and focused within one agency, rather than distributed across the country. Those skills can then be made available to stakeholders as required.
- Strong partnerships will be required to deliver Luxembourg's required development. Those partnerships will cross the public sector and the public/private sector. The Agency will foster the creation of those partnerships.
- Procurement and efficiency savings are likely to be achieved across the Grand Duchy's annual development spend.

7

Challenges to be Overcome

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Challenges to be Overcome

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CHALLENGES TO BE OVERCOME

To successfully implement a JESSICA type structure in Luxembourg, a number of challenges will need to be reviewed and overcome. These are as follows:-

Structuring Risks

Prior to proceeding with establishing a National Development Plan, Agency and associated Development Fund it will firstly be necessary to achieve political alignment in the proposed development model.

There will need to be a degree of certainty regarding the national fund contribution. This will be reviewed during the structuring process through further discussions with wider ministries, authorities and public sector banks.

A key part in the development of the fund and associated agency will be to establish public confidence through active promotion and stakeholder consultation throughout the structuring process. In parallel with this process will be the requirement to establish public and private sector confidence in deliverable, quality pilot projects.

Economic Risks

The current economic climate remains volatile. This is of particular concern in encouraging investment in property and the urban regeneration sector. The global economic climate should be measured, with interest rates and the availability still a major concern. Consideration should also be made to the more micro climate and the immediate location where the fund is intended to operate.

Property Market Risks

There is a real risk that there is a further downturn in the property market impacting on private sector interest in development and appetite for risk. Concerning Nordstad, a lack of occupational demand continues to be a risk. There is a requirement for decisive action to be undertaken by the Luxembourg Government in order to relocate public sector occupiers to kick-start regeneration and encourage further private sector development in the area. Finally, slow rental or capital growth is likely to deter investors in the fund.

Legislative Risks

A failure to comply with any material provisions within EU Regulations applicable to JESSICA (as well as the general principles set out in the EU Treaty, such as those relating to competition which including State aid and procurement) will generally trigger the ability of the EC to require the clawback of some or all of ERDF fund so applied.

Where there has been a breach of the State aid rules, clawback may not only operate as against the end beneficiary of such State aid but also against the original recipients of the ERDF funds (which it being a requirement that ERDF funds are applied in compliance with the State aid rules).

In respect of any failure to comply with applicable EU procurement rules, the EC have issued guidelines in determining the amount of financial correction to make to expenditure co-financed by structural or cohesion funds (such an ERDF) in the event of non-compliance with applicable EU public procurement rules These include clawback in the event of breach even where the relevant contracts are not subject at all or fully to the requirements of the Procurement Directive (i.e. they are below threshold or amount to Part B services) on the grounds of a breach of any of the EU Treaty principles. Clawback levels range between 5%

Challenges to be Overcome

and 100% of the applicable contract sum in the event of non-compliance regarding either the specific directive or the rules and principle of the EC Treaty as applicable to public service contracts e.g. Articles 28, 43 and 49.

A further risk in terms of the use of ERDF funds by way of financial engineering instruments (such envisaged by JESSICA) is a failure to spend, by the end of the applicable operations period, all such funds and applicable match funding as against eligible costs is not normally as issue as ERDF funds are only dawn down once eligible expenditure has actually been incurred). If it cannot be demonstrated that all such funds have been spent as against eligible expenditure (in the form of valid investments by way of equity loans or guarantees made by the UDF in eligible projects) then any unspent sums will be required to be clawed back.

On this basis it is necessary to ensure that at all levels there are contractual provisions in place which will allow for the recovery of ERDF funds should a breach result in an order of recovery of such funds from the European Commission or the European Court of Justice or should such any element of sums (appropriately matched) remain unspent.

8

Way Forward

CBRE
CB RICHARD ELLIS

WAY FORWARD

In summary, once the issues highlighted in the previous section have been overcome and operational efficiencies have been agreed a number of actions would have to be undertaken to lead to the effective implementation of a National Development Fund in Luxembourg which incorporates a JESSICA funding element.

Our recommended approach would be to proceed on two levels. Assuming these two work streams are undertaken in parallel, this will enable potential oven ready projects to 'go live' by late 2012. In turn, this would allow for the potential ERDF-JESSICA funds to be allocated and spent by 2015. For efficiency purposes, we would advise that the forthcoming work ensures a co-ordinated continuation of the work undertaken to date.

The two required core work streams are as follows:-

A. Establishing an appropriate Government framework drawing upon necessary resources to put together the National Development Plan, Agency and Fund.

B. Undertake a comprehensive review and prioritisation process of individual projects or strategic sites for consideration by the new Government framework.

Underlying our approach, we provide guidance below on the required individual priority work streams. This is provided for guidance purposes only and will be subject to detailed discussions within the Ministry prior to further progression.

Establishing Government Framework

A1 Undertake a detailed review of the legal and planning framework in Luxembourg for implementing the proposed National Development Plan, Agency and Fund.

A2 Obtain Ministerial / Government approval for National Development Plan, Agency and Fund structure (following approval, work on JESSICA fund structures could be started).

A3 Identify resource implications and assemble necessary Task Force to deliver appropriate framework.

A4 Formulate long term National Development Plan covering 20-25 year period.

A5 Obtain Ministerial / Government approval for proposed National Development Plan.

A6 Commission and undertake an economic appraisal in relation to the required strategy for implementing the above.

A7 Draft a detailed business case for the delivery of a National Development Agency - this should take into account: objectives; powers and structure; governance arrangements; resources; methods of intervention; and monitoring procedures.

A8 Associated with the above review available sources of funding from both private and public sectors. It will be necessary to confirm how public investment can be leveraged, recouped and reinvested through the fund.

A9 Finalise structure of National Development Fund (incorporating JESSICA element).

A10 Obtain final Ministerial / Government approval for Fund implementation.

Way Forward

A11 Instigate appropriate procedures for drawdown of European Funds. In parallel with this will be the requirement to set up necessary governance procedures, as well as a formal procurement of additional private sector funding partners.

Preparing and Prioritising Projects

B1 Review of potential projects in the light of the new National Development Plan including required financial modelling, and detailed viability assessments.

B2 Priority projects agreed and ready to 'go live' under umbrella of National Development Fund

In order to readily prioritise projects we advise the following process is undertaken:-

- Develop criteria for selecting projects for investment by the Fund.
- Call for projects to be submitted which meet the published criteria.
- A key criterion will be that sufficient financial information is available to support the required fund modelling.
- A portfolio of projects for initial funding can then be assembled based on the mechanisms for creating value within the Development Fund.
- Engage with investors on the basis of the modelled portfolio.

Possible qualifying criteria might include:-

- Land assembly must be completed or close to completion and have completed an appropriate point in the planning process.
- Projects must comply with the priorities of the Luxembourg Operational Programme to qualify for JESSICA funding.
- Projects must be supported by detailed development appraisals and endorsed by the relevant municipalities.

Timetable for Implementation

Outlined below is an indicative 'Timetable for Implementation' incorporating the two work streams. We would again highlight that this is provided for guidance purposes only and will be subject to detailed discussions within the Ministry prior to further progression.