Better Regulation in Europe

LUXEMBOURG

OECD

Better Regulation in Europe: Luxembourg 2010

Please cite this publication as:
OECD (2010), *Better Regulation in Europe: Luxembourg 2010*, OECD Publishing.
http://dx.doi.org/10.1787/9789264095113-en

ISBN 978-92-64-09510-6 (print)
ISBN 978-92-64-09511-3 (PDF)

Series/Periodical: Better Regulation in Europe
ISSN 2079-035X (print)
ISSN 2079-0368 (online)

Photo credits: Cover © Ronald Hudson/Fotolia.com

Corrigenda to OECD publications may be found on line at: *www.oecd.org/publishing/corrigenda*.

Foreword

The OECD Review of Better Regulation in Luxembourg is one of a series of country reports launched by the OECD Directorate for Public Governance and Territorial Development in partnership with the European Commission. The objective is to assess regulatory management capacities in 15 member states of the European Union (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, United Kingdom), including trends in their development, and to identify gaps in relation to good practice as defined by the OECD and the EU in their guidelines and policies for Better Regulation.

The project is also an opportunity to discuss the follow-up to the OECD's multidisciplinary reviews, for those countries which were part of this process, and to find out what has happened in respect of the recommendations made at the time. Austria, Belgium, Luxembourg and Portugal were not covered by these previous reviews.

Luxembourg is part of the third group of countries to be reviewed – the other two are Austria and Ireland. The reviews for the first group of Denmark, the Netherlands, Portugal and the United Kingdom were published in May 2009, and those for the second group of Belgium, Finland, Germany, Spain and Sweden in April 2010.

These country reviews will form the basis for a synthesis report, which will also take into account the experiences of other OECD countries. This will be an opportunity to put the results of the reviews in a broader international perspective, and to flesh out prospects for the next ten years of regulatory reform.

Table of Contents

Tables

Boxes

Abbreviations and Acronyms

ABBL	Luxembourg Bankers' Association
CCME	Co-ordinating Committee for Modernisation of the State
CCS	Simplification Co-ordination Committee
CES	The Economic and Social Council
CICPE	Inter-ministerial Committee for European Policy Co-ordination
CLC	Luxembourg Confederation of Commerce
CNSAE	National Committee on Administrative Simplification for Businesses (renamed CSA)
CSA	Administrative Simplification Committee
CSSF	Financial Sector Supervisory Commission
CTIE	State Information Technologies Centre
FCDF	Municipal Finance Fund
PDGE	Master Plan for E-Governance
PME	Small and medium-sized enterprises
RADL	*Répertoire analytique du droit luxembourgeois* (Analytical compendium of Luxembourg law)
SCL	Central Legislation Service
SCM	Standard Cost Model
SYVICOL	Union of Luxembourg Cities and Communes
UCP	Unfair commercial practices
UEL	Union of Luxembourg Enterprises

Country Profile – Luxembourg

Source : CIA Factbook, *www.cia.gov/library/publications/the-world-factbook/geos/lu.html.*

Country Profile – Luxembourg

The land		
Total area (km^2) :	2 586	
Agricultural (2008) :	86%	
Main city (thousand inhabitants) :	Luxembourg	89
The people		
Population (thousands, 2007) :	494	
Number of inhabitants per km^2 :	191	
Net increase (2006/2007) :	1.5%	
Total labor force (thousands, 2007) :	352	
Unemployment rate (% harmonised) :	5.3	
The economy		
Gross domestic product in USD billions:	39.0	
Per capita (PPP in USD) :	79 800	
Monetary unit:	Euro	
The government		
Executive power:	Hereditary constitutional monarchy	
Legislature:	Unicameral	
Date of last presidential elections	June 2009	
Date of next presidential elections:	2014	
State structure:	Unitary	
Date of entry into the EU:	Founding member (1957)	
Composition of the Chamber (number of seats) :	Christian Social People's Party - Parti populaire chrétien social (CSV)	26
	Luxembourg Socialist Workers' Party - Parti ouvrier socialiste luxembourgeois (LSAP)	13
	Democratic Party - Parti démocratique (DP)	9
	The Greens - Les Verts (Déi Gréng)	7
	Alternative Democratic Reform Party - Parti réformiste d'alternative démocratique (ADR)	4
	The Left - La Gauche (Déi Lénk)	1
	Total	**60**

Note: 2009 unless otherwise noted.

Sources: OECD Economic Surveys: Luxembourg 2010, OECD in Figures 2009, *OECD Employment outlook 2009* and *OECD Government at a Glance 2009*.

Executive Summary

Economic context and drivers of Better Regulation

Luxembourg has experienced a severe recession, as it was heavily exposed to the drop in world trade and the global financial crisis. Since the 1980s, the main driver of the economy has been the financial sector, which currently accounts for nearly 30% of GDP (or as much as 50%, taking into account that the sector is a major consumer of legal and real estate services). Unemployment has risen and the fiscal position has deteriorated. This follows a long period of continuous and rapid economic expansion, during which living standards rose spectacularly and the economy was transformed by the development of Luxembourg as a financial centre and by large flows of cross-border and migrant workers. While there are encouraging signs of recovery, the future growth path is likely to be weaker than in the recent past, reflecting the sluggish international recovery, structural factors and a loss of competitiveness.

In terms of regulatory governance, it will be particularly important to maintain sound regulation of the financial sector. Effective supervision and closer cross-border co-operation will help contain systemic financial risks, while strong national framework conditions will contribute to development of the financial sector. It would be timely to review the structure of supervision and co-operation between the financial supervisor and the central bank. The services sector would also benefit from greater competition – something that will require a re-examination of regulation in this area.

The spectacular growth of the financial sector can be attributed in part to a regulatory framework that has placed Luxembourg among the top-ranking financial centres and has encouraged financial enterprises to establish themselves in the country. The importance of appropriate regulation has thus been an important consideration in government policy for some years, as was pointed out to the OECD team in several interviews, and well before the issue was taken up by the European Commission and certain other EU countries. This awareness goes beyond the financial sector and indeed amounts to general recognition of the notion that effective regulation can be used to support competitiveness and for the economy.

However Luxembourg's comparative advantage in this area has been eroding in recent years, as other countries have moved forward and as regulatory frameworks have become progressively harmonised. Government and economic agents alike are fully aware of this erosion, and of the need for vigorous efforts, including on the regulatory front, to ensure the competitiveness of Luxembourg firms in general and in particular of SMEs, for which Better Regulation is an important aspect. Luxembourg businesses are fully supportive of this policy, but it must be admitted that this support has not fully translated into progress on the ground. There is still much to be done to improve the functioning of the domestic market, especially for SMEs.

Not surprisingly, the EU context has a strong influence. The government's policy of "administrative simplification" relies heavily on tools developed and implemented at the

EU and international levels. The government is aware that it must adopt a common methodology and work to common principles if this policy is to succeed. Luxembourg has understood that its small size demands a spirit of openness, and it recognises the danger inherent in a (re-) fragmentation of domestic markets within the EU.

Public governance framework for Better Regulation

The governance framework in Luxembourg is characterised by the following features:

- **Small government**. In keeping with the country's small size (the smallest of all the countries examined in this project), Luxembourg has a government of modest means. This facilitates the circulation of information, and officials and politicians are readily accessible to citizens. Policy development tends to be pragmatic. The country is also open to the outside world and to learning from positive experiences in other EU countries. Yet issues where economies of scale do not pertain – European obligations, for example – impose a heavy burden in relation to management capacities. Moreover, the structure of government, with 19 ministries, and a strongly rooted tradition of ministerial autonomy can obstruct the internal flow of information.
- **A relatively simple subnational structure**. There are two levels of government in Luxembourg: the central government and the municipalities or "communes". The communes are often very small, which has led to a reflection on the scope for reform of territorial organisation, in the recognition that this small size makes quality service delivery difficult. Progress on this score has been limited to date (see Chapter 8).
- **A stable political system**. The political system, while systematically based on coalition governments, is very stable. The Christian Democratic Party has been a partner in government since 1919 (except for the interval 1974-79), most of the time as senior member of a two-party coalition.

Developments in Better Regulation and main findings of this review

Strategy and policies for Better Regulation

Luxembourg is in the process of adopting a Better Regulation policy that is increasingly structured and complete. The term "administrative simplification" as used by Luxembourg must be understood in the broad sense. Beyond legislative simplification (and codification in particular) and cutting red tape, it includes other tools such as *ex ante* impact studies and growing attention to the transposition of EU directives. Major efforts have been made recently to structure these various initiatives around a central strategy designed to benefit the economy and (increasingly) citizens. To guarantee the future success of the programme, it will be essential to pursue this integration and to strengthen the linkage between *ex ante* impact studies, *ex post* assessments and the process of administrative and legislative simplification. Another link that should be strengthened is that of simplification, including legislative simplification, which relies heavily on the policy to promote e-Government.

There is strong political support for the current reform efforts. In the wake of the June 2009 elections, the government prepared a political platform that reflected a clear intention to move forward with regulatory simplification. Simplification initiatives were already in place, but they were piecemeal. The public support of the Prime Minister and the

decision to place the simplification unit within the Ministry of State sent a strong signal that this policy is important for the country and for post-crisis economic recovery.

On the ground, the strategy is geared mainly to businesses, but there is also an evolution towards integrating citizens and other stakeholders. A certain shift can be observed, with greater attention to involving citizens, consumers, associations, etc. Better use could be made of new technologies for engaging citizens in the simplification process, for example through e-consultation initiatives. Future support for the simplification effort will need to come, not only from businesses, but also from citizens and users, recognising in particular what this means for a population that comprises a large proportion of cross-border workers and immigrants.

Luxembourg may have been slower off the mark than most EU countries, but it is making up for lost ground and showing a strong willingness to assimilate good international practices. When it comes to *ex ante* impact studies, public consultations, transposition and implementation of EU directives and the central-municipal government interface, Luxembourg will have to make special efforts. *Ex ante* impact studies, in particular, need to be strengthened and taken more seriously in government, and the approach to public consultations should be modernised. A balance must be struck here – the reform process should not introduce procedures that are too cumbersome and difficult for a small country to apply.

The CSA's efforts to communicate progress in simplification are a first step, and one that should be reinforced. The strategy should not be the exclusive preserve of the CSA (Comité à la simplification administrative - Committee on Administrative Simplification), as the cross-cutting policy of Better Regulation has implications for the entire government apparatus, but the CSA is no doubt best placed to assume overall co-ordination and responsibility. As CSA resources are limited, tasks should be shared. It is also important to take every opportunity to highlight the contribution that Better Regulation can make to reviving the economy. Finally, it is important to recognise the real progress that has been made, as an encouragement to future efforts.

As in many other countries, the evaluation of regulatory policies is still a weak point, in the absence of clear and targeted objectives or indicators for measuring progress. Like many other EU members, Luxembourg needs to develop and implement performance objectives and indicators in the various fields of regulatory governance – and not only in relation to administrative burdens – as a way of enabling progress to be assessed objectively. The administrative culture is highly legalistic, and the contribution of an economic perspective and skills (without abandoning the legal focus) would facilitate progress in this area.

Work to date reflects real progress in specific areas such as the "one-stop shop", but the country still lags behind the leading EU states in this area. Luxembourg could benefit from experience in other EU countries to make up for lost ground. When it comes to the development of new regulations, for example, Germany and France could provide useful experience, against a context in which the government has difficulty recruiting staff with legal drafting skills. A dematerialised chain would allow the real-time processing of texts, from the initiating ministry through to publication, with shorter transmission times and enhanced security. The use of ICT in the conduct of public consultations should also be reinforced.

Institutional capacities for Better Regulation

Strengthening the CSA's position within government is an important step forward, and it sends a strong signal that Better Regulation is a key policy concern for the government. The announcement of a Better Regulation policy has been accompanied by a reinforcement of the CSA. Now that the CSA has been placed within the Ministry of State, at the very centre of government, its work is more visible, and its director now attends meetings of the Pre-Council, exercising *ex ante* control over the principles of regulatory quality and legal simplification. The change of name signals that its purview extends beyond the concerns of business.

A question arises, however, as to how to ensure that the strategy, and support for it, can be made to last. A significant part of the answer is to ensure that the various ministries assume ownership of their contributions, and to have them recognise the importance of the task for their objectives. In any case, the task must not be left solely with the Ministry of State. A sustained effort will be needed to raise awareness among stakeholders throughout government. Ministries do not all have the same understanding of what is meant by Better Regulation. The performance of different ministries varies widely, and some have come to a better appreciation of the issues at stake and are making better use of the tools internally. In some key areas, such as impact assessment, there remains considerable resistance overall.

The CSA, with its plenary, constitutes a structure with great potential. It is important to have a structure that can co-ordinate and support the work of the ministries, and that can also take a forward-looking view. Greater precision is needed concerning the – mutually reinforcing – mandates of the CSA and the Central Legislation Service. The CSA's membership in a "plenary" of business organisations constitutes a very useful vantage point *vis-à-vis* the outside world and the day-to-day realities of living with regulation. During the interviews, however, it was suggested that the makeup of the plenary could be expanded to bring in consumer organisations, trade unions and other groups representing civil society, either as full members or as observers.

Inter-ministerial co-ordination is vital to the success of the strategy. The CSA's comment warrants repetition: administrative simplification should be seen not as the preserve of a single horizontal service or a single official, but as a concern for all officials and all government departments. Administrative simplification is a responsibility that must be shared by all ministries. In order to institute and, above all, to carry out a coherent simplification policy, departments must work together. Every department must take charge of the procedures for which it is responsible. The mechanisms that have already been put in place – correspondent networks, co-ordination committees – should be used systematically to ensure a better flow of information and to overcome departmental insularity. Some EU countries have achieved success by appointing a minister or a senior official within each ministry to be responsible for follow-up, political support and taking stock of progress.

Parliament seems ready to support sound legislation and regulation. Parliaments in several other EU countries have for some time been showing a growing interest in better regulatory governance. In Luxembourg the relationship between the executive and legislative branches seems very close, reflecting in part the country's small size. The relationship has been strengthened recently as Parliament has been granted a greater role in negotiating EU directives. Continuing this trend in Luxembourg would be positive, for example, by submitting impact studies to Parliament. The impact assessment is an essential tool of any policy for improving the quality of regulation. The assessment would remain attached to the draft text and accompany it throughout the procedure until its adoption. This initiative would strengthen the link with Parliament.

Regulatory resources and expertise are modest. The resources directly available for regulatory governance are modest and need to be strengthened, despite the country's small size, in order to make swifter progress and to live up to the professed ambitions for Better Regulation. Several people interviewed by the OECD team stressed this issue. It is clear, for example, that ministries need more substantive support to help them with impact assessment. The relatively small size of government is also a problem for transposition within the guidelines set by European law. This may not be merely a question of resources, however: more importantly, there would seem to be a shortage of trained legal experts, compounded by a dearth of government professionals in other areas, such as economics. Thought should therefore be given to gearing university education more closely to government needs, so that specialised professionals can stay in Luxembourg and join the civil service, if they are interested, and to equip civil servants with specific knowledge, for example, in legal drafting or quantification methodology.

More generally, Luxembourg needs to pursue public administration reforms, without which the drive for Better Regulation may run out of steam. For example, a system of assessing performance against measurable objectives could also assist Better Regulation by making it part of the performance appraisal of civil servants, as is now starting to be done in some other EU countries. According to the Economic and Social Council, it would also be important, as part of administrative modernisation, to redeploy staff in light of new demands and mandates.

Transparency through public consultation and communication

Luxembourg has a generally successful tradition of seeking consensus which is adapted to the country and which generally functions well. The culture of public consultation has deep roots. It begins early in the process of developing regulations and relies on both formal and informal procedures. For example, *ad hoc* groups are often established to prepare drafts, with the support of outside experts as well as input from civil society. In comparison with the other countries examined, the OECD team received little in the way of unfavourable comment concerning consultation. The interviews did not, however, shed much light on the practice of seeking consensus.

The administration is readily accessible, but private citizens are less likely than businesses to take an active part in the development of regulations. The OECD team detected an awareness in some parts of the administration that the culture and the tools for sounding out public perceptions of regulation should be reinforced. On the other hand, it was not always clear just how this should be done. The team was told that citizens were more involved downstream than at the upstream stage of drafting, but that "civil society is more active and interested than it was ten years ago".

Luxembourg needs to broaden its approach to consultation so that the form it takes can be tailored to a particular case. Public consultation can take many forms – permanent structures, working groups, public debates with technical support via the Internet, the media, etc. ICT can be particularly useful for boosting participation by civil society and the general public, and for ensuring transparency of the kind that will strengthen a country's democratic foundations.

Luxembourg does not have a framework for public consultation to support ministries. A growing number of EU countries have established procedures, guidelines and training for ministries, to help them consult with the public more effectively.

Luxembourg has a very complete and accessible set of directories and databases concerning the law. They constitute an excellent starting point, and they incorporate the

good practices that have been instituted in most EU countries. However, if the law is to be truly accessible and understandable for every citizen, the work of consolidation and codification (discussed in Chapter 5) is crucial.

The development of new regulations

There is a shortage of up-front information and systematised processes for developing regulations. Internal consultation is a key element for the coherent evolution of the legislative framework. In much of the EU, such consultation is mandatory and formalised.[1] That said, the most useful approach is probably to combine formal and informal upstream consultation. Internal consultation is often entrusted to inter-ministerial committees (*ad hoc* or permanent) responsible for specific policy formulation, and it relies on ICT (for example, a government intranet) to make it effective. Recent years have seen a clear improvement in systematising the production of regulations, but implementing the process still seems to be highly decentralised. Luxembourg needs in particular to introduce an application for paperless production of regulatory texts – one that will carry the process from the sponsoring ministry through all the intervening stages to final publication in the *Mémorial* (for now, the procedure is entirely paper-based).

Legal quality control also requires attention. Upstream control of legal quality is not assured, and the resources currently in place are inadequate relative to the task. As one interviewee told the OECD team, "it is not a disaster, but we could do better." Legal quality depends above all on the work of the Council of State, which becomes involved in the procedure only very late.

There are no fixed deadlines for the Council of State to issue its opinion – an essential step before a regulatory draft can proceed. In practice, response times vary, depending on the text in question. This can hold up the legislative process for as long as two or three years. Many interviewees raised this issue, stressing the need for reform.

***Ex ante* impact assessments are a weak link in the regulatory process, and the CSA is now working to strengthen them.** There has nevertheless been progress. There is now an integrated impact assessment form, and it is being filled out more or less completely. The culture is slowly taking hold, but much remains to be done.

A better performance based on sound policy decisions must start with a clear political statement of the importance of impact assessment. As a first step, the government must demonstrate the political will to support the procedure, for otherwise stakeholders within the administration will not change their attitude. Other EU countries (*e.g.* Finland) have found it useful to communicate clearly in the government programme that this process is deemed essential. To reinforce the message, it would be helpful to draw the link between administrative simplification and impact assessments, as reducing red tape is already seen as important. The Cabinet could at the same time affirm its support. Luxembourg might consider whether a law would be useful to make impact studies mandatory (as France and Spain have done).

The requirements for impact assessments need to be reinforced. Impact assessments must take into account the "regulatory cycle", *i.e.* the planning, implementation and evaluation stages. Some very specific elements of this process, as discussed below, have proven their worth in other EU countries and should be reinforced in Luxembourg.

Strengthening the upstream institutional framework and sanctions is essential. There must be an organism responsible for guaranteeing the quality of impact studies before they are presented to Cabinet. This could be the CSA or the SCL, or a mixed body derived from both entities. In any case, it must be centrally positioned, with access to the

process of preparing policies and regulations, so that it can intervene promptly and decisively as "gatekeeper", *i.e.* it must have the power to reject an inadequate study and to insist on a proper assessment before a draft is submitted to Cabinet. In Luxembourg it is probably neither necessary nor useful to create a new body. Nevertheless, consideration should be given to strengthening the human resources available for this work. Their role should be clearly distinguished from the process of verifying general procedures for developing regulations. These are intended to ensure that formal procedures are duly observed and are concerned only marginally with the substance and the quality of the assessments, which is a separate task.

Ministries need more support if they are to produce high-quality impact assessments. As in most other EU countries, ministries are responsible for carrying out impact assessment, and this in turn gives them a sense of ownership. In order for results to come up to expectations, ministries need to be offered specialised training. The introduction of special courses could also be useful to strengthen networking amongst officials, forge links between ministries, and share experience. The CSA already offers courses, and it would be interesting to compare these with the ones provided in other small countries. For example, Ireland offers regular, well-structured courses that have been very well received and are attracting growing numbers of civil servants. Training needs to be backed by guidelines for ministries to use in preparing studies. Those guidelines could be part of the practical handbook on legislative and regulatory procedure, but whether they are instructions or not, should be supported by concrete examples, must be clear and – to promote a sense of ownership of the process by ministers and officials who "don't see the use of it" – should contain a forthright explanation of the logic and the importance of assessments for better regulatory governance.

The recently overhauled impact assessment statement seeks to correct some of the defects of the previous version; improvements should be pursued. The current impact assessment form was revised in 2010. The change took place after the OECD mission and thus could not be evaluated. The CSA has instituted a quantified assessment of administrative burdens, using the Standard Cost Model, but it should consider going further. For example, the environment and sustainable development do not figure among the areas covered by the assessment.

The stages of the process should also be reviewed. The process needs to be clearly targeted. A balance must be struck between the scope of application of the mechanism and the proportionality of the effort, with care taken not to make the process too cumbersome.

The mechanism contains no obligation for consultation with outside stakeholders, nor any requirement for publication. If impact studies are to be of real use in decision making, public consultation is essential in order to gather the necessary inputs. The current explanatory note highlights the importance of stakeholder consultation, which is the first item on the impact statement form. Releasing and publishing studies would reinforce the message to stakeholders that the process is taken seriously, and at the same time, allowing their contents to be shared with all parties involved in the regulatory production chain, in particular the Council of State and the Chamber of Deputies, which currently have no access to the studies.

Lastly, the mechanism must be evaluated if it is to be effective. Regular evaluation of the mechanism is essential for ensuring not only that the assessments are conducted properly, but that they are useful as tools for decision-making and provide the desired backing for optimal drafting of regulations. Evaluations should be planned systematically. The Court of Accounts (Auditor General's Office) might be willing to assist in this regard.

It would be useful to reinforce the message that the alternatives to regulation must be considered systematically, as well as the option of a risk-based approach, at a stage which is not too late in the decision-making process. Several participants stressed the need to take better account of the danger of producing too many regulations. There does not seem to exist a systematic assessment of the "zero regulation" option, and a risk-based approach to the development of regulations is not evident either – an approach that could also help limit overproduction. It is not enough to mention alternatives in the impact statement: the pressure has to be maintained.

The management and rationalisation of existing regulations

Legislative simplification is one of the priorities of Luxembourg's policy for Better Regulation, and well-developed codification work is underway. The government has launched a series of initiatives for legislative simplification. Bringing together all the rules concerning a given field within a single structure is considered a useful exercise, and one that should be pursued with appropriate resources. Another tendency is to roll successive laws into one umbrella law, as was done with the 1993 Financial Sector Act, rather than have a scattered series of laws. The OECD team found many interviewees who were decidedly in favour of legislative simplification, in particular through codification.

Nevertheless, efforts at legislative simplification are not systematised but instead take the form of *ad hoc* codification initiatives. The government should commit itself more thoroughly to a systematic policy of simplifying laws and regulations. Any legislative simplification programme must be conceived as a medium- and long-term policy, supported at the highest political level, and implemented by teams well staffed with experts, and jurists in particular, given the objective of cleaning up and rationalising the legal system, rendering the law more accessible, and ultimately making life easier for citizens and businesses. With a reinforced strategy for legislative simplification, implemented in sectors deemed priorities, the government will be able to ensure that the law is clear, less stratified and fragmented, and more readily accessible at lower cost.

Beyond codification, Luxembourg has not yet taken other measures that could be useful for legislative simplification. For example, Luxembourg should consider the advantages of deploying the instruments of a periodic simplification law and a "law-cutting" law. Such instruments engage both parliament and government in the simplification process, and associate regulatory cleanup, simplification and codification in a flexible and innovative form in which the law can evolve.

The current institutional arrangements are not able to provide the required support. The institutions at the centre of government, and the CSA in particular, should be strengthened to promote a more comprehensive programme for simplifying the law. The success of a simplification and codification programme will rely in large part on co-ordination and on the capacities of ministerial departments to work together in identifying priorities for simplification, preparing codes and consulting stakeholders. Above all, codification work requires smooth and constant inter-ministerial co-operation for co-ordinating texts and taking different positions into account, especially with respect to cross-cutting areas or those where jurisdiction is shared. The Irish Law Reform Commission (or for that matter, its British counterpart) could, for example, be a source of ideas for Luxembourg. This independent commission is charged with overseeing the coherence and quality of all regulations and proposing specific reforms to the government. Lastly, the simplification of laws and regulations is a technical undertaking and should be managed by a team of jurists fielded by the various ministries.

It is important to highlight the significant links between legislative simplification and other actions for improving regulatory quality. Legislative simplification and codification, through which the law can evolve, should be linked to programmes for cutting red tape. In addition, consultation and impact assessment are essential for assessing the effects and the innovative scope of legal codes and the impact of the policies pursued, through *ex post* evaluation.

ICT offers good support for legislative simplification, and its use could be strengthened. Consistent with the maxim that it is presumed one knows the law, legislative simplification can also benefit from the use of ICT to make the law more accessible to citizens. The *Legilux* site is an excellent starting point.

A realistic overall target has been set for reducing red tape, and the CSA has put in place several of the elements needed to monitor the programme. Following the 2009 elections, an overall target of 15% was adopted. A network of ministerial correspondents is in place, chaired by the CSA. *Ad hoc* working groups have been formed to deal with the four areas for which the government has set quantified reduction targets, and this is a good beginning.

The mechanism has no precise objectives and makes no provision for publicising the actual results for the ministries concerned. By no means, have all ministries yet signed on to the simplification agenda. The overall target represents an important step, but it needs to be accompanied by more precise objectives to ensure effective monitoring and evaluation of results and to put pressure on ministries to achieve them.

The link to impact assessments should be strengthened by quantifying burdens *ex ante*. Reducing administrative burdens is already an integral part of the *ex ante* impact study mechanism, but those burdens have no figures attached to them. Tools need to be developed to help quantify burdens *ex ante*, drawing on examples from other countries such as Sweden with its MALIN system, which allows ministries to quantify anticipated burdens.

Measures for citizens should be further strengthened. A programme for citizens is included in the government programme. This would bring greater visibility to the efforts of the government, which is already committed to this route, in particular through e-Government and the one-stop shops, for dealing with the administrative burdens that fall on the general public. Here, the example of the Netherlands could be useful.

Measures to reduce administrative burdens on government itself should also be considered. It would be useful to consider an initiative targeting the administration. In tight fiscal times, some countries have found that reducing burdens on the administration can not only produce savings but can also shift a portion of those savings to strengthening the services delivered directly to citizens and businesses (less red tape, more availability for the customer).

Compliance, enforcement, appeals

The enforcement of laws and regulations deserves special consideration. Risk assessment, co-ordination of inspections and a results-based implementation policy are all tools that can reduce unnecessary burdens on businesses presenting a low risk of non-compliance, and they can make the inspection system more effective and less costly.

Appeals channels are well-conceived, and, a mediator was instituted in 2004. The OECD team was not able to unwrap this in detail, but there would seem to be no major problems with the system. Knowledge of the system is acquired mainly by word of mouth.

It would be timely to consider the publication of information on channels of appeal against administrative decisions, taking into account the Luxembourg context, in which foreigners figure prominently among its population and workforce.

The interface between member states and the European Union

The small size of its government, in comparison with other EU countries, is a major challenge for Luxembourg. How can it best be organised to achieve optimal efficiency in the process of negotiating and transposing European directives? The fact is that Luxembourg has to deal with the same number of directives, and hence the same volume of work, as any other EU country.

The negotiating process does not seem to pose any major problems. The negotiating process unfolds in accordance with the EU framework, and Luxembourg focuses its efforts on the most important cases.

The real problem arises downstream, with transposition, where Luxembourg falls short of the target set by the European Commission.[2] A more structured approach was recently instituted, with an electronic support tool, to overcome delays in the transposition of directives. There has been some progress recently. Transposition is normally done via the legislative route, and there are no special provisions for "fast tracking" transposition such as those that exist in the United Kingdom and some other countries.

Nevertheless, Luxembourg "is transposing rather well" in terms of its rate of infractions. This is one of the lowest among EU members.

Overregulation could be a problem. "The whole directive and nothing but the directive" is the rule of thumb promulgated by the government, in an effort to reconcile the need not to go beyond what is strictly necessary for transposition and the need to be thorough enough to avoid infraction proceedings. This principle is well known throughout the administration, but there is no clear consensus on how to implement it. It would seem that some parts of the government are experiencing difficulties ("some ministries are drowning in texts"). Other participants suggested that the quality of transposition was rather good. The same officials are responsible for negotiating a directive and then transposing it. This is an asset, in principle, but when it comes to making a choice, priority will be given to negotiation. The problems with transposition were not clearly identified for the team but are probably of different types, and it would be useful to assess them. The government programme calls for an analysis of the current system of transposition in order to identify problems and develop solutions.[3]

The interface between subnational and national levels of government

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

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

Key recommendations

Better Regulation strategy and policies	
1.1.	Consider ways of integrating upstream and downstream actions, working with France and other countries that are addressing this issue,
1.2.	Consider ways of giving policy for Better Regulation a permanent status (see also the recommendations in Chapter 2).
1.3.	Ensure a balance between programmes for businesses and citizens in future development of the Better Regulation programme.
1.4.	Take steps to promote *ex ante* impact assessments, public consultation, and effective transposition of EU directives, as well as a policy for central/municipal regulatory management.
1.5.	Adopt a communication strategy in the full sense of the term, shared between key institutions at the core of government, and designed to explain the strong link between effective regulation, a sound and competitive economy, and a government that can deliver public services more effectively. Identify the opportunities and the vehicles (*e.g.* annual reports) for doing this. Consider expanding the CSA annual report and give it greater visibility.
1.6.	Adopt a clear policy for evaluating the different aspects of regulation based on clearly defined objectives and a strict timetable, in light of available resources. Give thought to who should conduct these evaluations.

Institutional capacities for Better Regulation	
2.1.	Confirm the CSA's lead role in regulatory policy, while clarifying the role of its close associates, in particular the Central Legislation Service (SCL). Review the makeup of the plenary to provide for broader representation by civil society stakeholders.
2.2.	Continue with the structures in place for ensuring inter-ministerial co-ordination. Ensure that the representatives in those structures are officials with sufficient rank to reinforce messages with their colleagues. Consider appointing a minister and/or a senior official within each ministry to ensure visibility and political support for those messages.
2.3.	Review the arrangements whereby the executive branch and parliament can share the information needed to maintain parliamentary interest in Better Regulation.
2.4.	Prepare a policy that ensures the availability of resources and training needed to support implementation of the various tools for Better Regulation, including legal drafting and impact assessments.

Transparency through public consultation and communication	
3.1.	Develop use of the Internet in a (initially) targeted and specific manner for certain consultations so as to take better account of public views, and to gain "in the field" experience, following the examples of other countries such as Portugal and Finland. Establish an electronic portal for these consultations.
3.2.	Establish guidelines for consultation. Share experiences among ministries to identify best practices and the most useful processes.

Development of new regulations	
4.1.	Strengthen upstream co-operation among ministries. Publish the government programme and any changes to it, in particular drafts of laws (and of important regulations) to give them greater visibility and allow stakeholders the chance to make their opinions known. Examine the potential of electronic systems for more effective data sharing between ministries and with parliament. Improve online tools. Make clear who will have the lead in implementing these mechanisms.
4.2.	Review the legal control process to have it start as soon as possible in the procedure. Review the structures and capabilities for quality control, by establishing a panel of jurists within government (following the United Kingdom's example) or a strengthened partnership with CSA or SCL in the early stages of the process of developing regulations, and boost their resources.
4.3.	Establish a timeframe for the Council of State to issue its opinions.
4.4.	Identify ways of reinforcing communication on the importance of producing impact assessments at the initial stage of developing regulations so as to avoid the need for *ex post* clean up. Consider how impact assessments can be made compulsory.
4.5.	Review and strengthen institutional arrangements for producing high-quality impact assessments.
4.6.	Review training courses for possible improvements, and ensure that they are part of compulsory training and are taken by the largest possible number of civil servants. Incorporate these into the revision of the general manual.
4.7.	Consider further changes to the impact assessment format. Review the standard form to include all fields important to decision making (*e.g.* the environment). Review the methodology to highlight the need for quantification, if possible, or at least for a sound qualitative evaluation of all costs and benefits of a proposed regulation.
4.8.	Make public consultation and publication of impact studies mandatory.

4.9.	Evaluate the impact assessment mechanism regularly, and publish the evaluations. These could be included in the CSA's published reports on progress with simplification.

The management and rationalisation of existing regulations	
5.1.	Confirm the importance attached to legislative simplification, as part of the effort to make laws more accessible. Review options for using approaches other than codification. Confirm the priority sectors.
5.2.	Strengthen institutional support for legislative simplification. Consider other possibilities that could work in parallel for moving forward faster and more systematically, such as instituting a law reform commission. Review legal capabilities within the ministries.
5.3.	Establish and publish precise quantified objectives for the ministries concerned in the administrative burden reduction programme. Strengthen contacts with other EU countries through groups established for this purpose in order to collect maximum information on experience that could be useful for Luxembourg.
5.4.	Confirm the intention to move forward with the programme to reduce red tape for citizens as soon as resources are available and the responsible body has been identified. Consider the possibility of a red tape programme for the government itself.

Compliance, enforcement appeals	
6.1.	Review the regulatory enforcement policy to identify potentially more effective approaches.

The interface between member states and the European Union	
7.1.	Evaluate the transposition procedure, for directives generally and for each ministry and/or sector, to identify where the problems lie. Consider whether existing legal provisions are one of the reasons behind transposition difficulties. Discuss the issue with other countries with limited means, such as Ireland and Finland.

The interface between subnational and national levels of government	
8.1.	With the support of SYVICOL (Union of Luxembourg Cities and Communes), consider whether to adopt an action plan and priorities for Better Regulation in areas of municipal responsibility.
8.2.	Build into the central policy for Better Regulation an aspect concerning the central/municipal link.

Notes

1. It should be noted in this context, that all draft laws and all proposals for laws are published in the form of "Parliamentary documents", which can be consulted on paper and at the website of the Chamber of Deputies (*www.chd.lu*), and which will include any amendments, the opinion of the Council of State, the report of the competent commission, and the opinions of professional associations.
2. However, the amended law of 9 August 1971 on the execution and enforcement of decisions and directives and the enforcement of regulations of the European Community in economic, technical, agricultural, forestry, social and transportation matters allows the transposition of certain technical provisions by Grand-Ducal decree.
3. In the future, electronic monitoring of transposition should make it possible to verify the extent to which the rule of thumb quoted above has been applied, in order to measure its effective observance.

Introduction: Conduct of the review

Peer review and country contributions

The review was conducted by a team consisting of members of the OECD Secretariat, and peer reviewers drawn from the administrations of other European countries with expertise in Better Regulation. The review team for Luxembourg comprised:

- Caroline Varley, Project Leader for the EU 15 reviews, Regulatory Policy Division of the Public Governance Directorate, OECD.
- Sophie Bismut, Policy Analyst, EU 15 project, Regulatory Policy Division of the Public Governance Directorate, OECD.
- Fiorenza Barrazoni, Director General, Department of Regulatory Simplification, Office of the President of the Council of Ministers, Italy.
- Maja Čarni Pretnar, Directorate of Electronic Administration and Administrative Processes, Ministry of Public Administration, Slovenia.

This team conducted interviews with Luxembourg officials and nongovernmental stakeholders in the City of Luxembourg, from 17 to 20 November 2009. Major initiatives and developments since that mission are referenced in the report, but have not been evaluated.

The team interviewed representatives of the following organisations:

- Central Bank of Luxembourg.
- Chamber of Deputies (General Secretariat).
- Insurance Commission.
- Financial Sector Supervisory Commission (CSSF).
- Council of State (*Conseil d'État*).
- Economic and Social Council.
- Court of Auditors (*Cour des comptes*).
- Ministry of State, Committee on Administrative Simplification.
- Ministry of State, General Secretariat of the Council of Government.
- Ministry of State, Central Legislation Service.

- Ministry of the Economy.
- Ministry of the Interior, Municipal Affairs Directorate.
- Ministry of the Civil Service and Administrative Reform.
- Ministry of Justice.
- Ministry of Health.
- Ministry of Foreign Affairs.
- Ministry of Finance.
- Ministry of Sustainable Development.
- Office of the Ombudsman (*Médiateur*).
- Union of Luxembourg Cities and Communes (SYVICOL).
- Union of Luxembourg Enterprises.
- Luxembourg Consumers' Union.
- University of Luxembourg.

Structure of the report

The report is structured into eight chapters. The project baseline is set out at the start of each chapter. This is followed by an assessment and recommendations, and background material.

- *Strategy and policies for Better Regulation*. This chapter first considers the drivers of Better Regulation policies. It seeks to provide a "helicopter view" of Better Regulation strategy and policies. It then considers overall communication to stakeholders on strategy and policies, as a means of encouraging their ongoing support. It reviews the mechanisms in place for the evaluation of strategy and policies aimed at testing their effectiveness. Finally, it (briefly) considers the role of e-Government in support of Better Regulation.

- *Institutional capacities for Better Regulation*. This chapter seeks to map and understand the different and often interlocking roles of the entities involved in regulatory management and the promotion and implementation of Better Regulation policies, against the background of the country's public governance framework. It also examines training and capacity building within government.

- *Transparency through consultation and communication*. This chapter examines how the country secures transparency in the regulatory environment, both through public consultation in the process of rule- making and public communication on regulatory requirements.

- *The development of new regulations*. This chapter considers the processes, which may be interwoven, for the development of new regulations: procedures for the development of new regulations (forward planning; administrative procedures, legal quality); the *ex ante* impact assessment of new regulations; and the consideration of alternatives to regulation.

- *The management and rationalisation of existing regulations*. This chapter looks at regulatory policies focused on the management of the "stock" of regulations. These policies include initiatives to simplify the existing stock of regulations, and initiatives to reduce burdens which administrative requirements impose on businesses, citizens and the administration itself.

- *Compliance, enforcement, appeals*. This chapter considers the processes for ensuring compliance and enforcement of regulations, as well administrative and judicial review procedures available to citizens and businesses for raising issues related to the rules that bind them.

- *The interface between member states and the EU*. This chapter considers the processes that are in place to manage the negotiation of EU regulations, and their transposition into national regulations. It also briefly considers the interface of national Better Regulation policies with Better Regulation policies implemented at EU level.

- *The interface between subnational and national levels of government*. This chapter considers the rule-making and rule-enforcement activities of local/sub-federal levels of government, and their interplay with the national/federal level. It reviews the allocation of regulatory responsibilities at the different levels of government, the capacities of the local/sub federal levels to produce quality regulation, and co-ordination mechanisms between the different levels.

Methodology

The starting point for the reviews is a "project baseline" which draws on the initiatives for Better Regulation promoted by both the OECD and the European Commission over the last few years:

- The OECD's 2005 Guiding Principles for Regulatory Quality and Performance set out core principles of effective regulatory management which have been tested and debated in the OECD membership.

- The OECD's multidisciplinary reviews over the last few years of regulatory reform in 11 of the 15 countries to be reviewed in this project included a comprehensive analysis of regulatory management in those countries, and recommendations.

- The OECD/SIGMA regulatory management reviews in the 12 "new" EU member states carried out between 2005 and 2007.

- The 2005 renewed Lisbon Strategy adopted by the European Council which emphasises actions for growth and jobs, enhanced productivity and competitiveness, including measures to improve the regulatory environment for

businesses. The Lisbon Agenda includes national reform programmes to be carried out by member states.

- The European Commission's 2006 Better Regulation Strategy, and associated guidelines, which puts special emphasis on businesses and especially small to medium-sized enterprises, drawing attention to the need for a reduction in administrative burdens.

- The European Commission's follow up Action Programme for reducing administrative burdens, endorsed by the European Council in March 2007.

- The European Commission's development of its own strategy and tools for Better Regulation, notably the establishment of an impact assessment process applied to the development of its own regulations.

- The OECD's recent studies of specific aspects of regulatory management, notably on cutting red tape and e-Government, including country reviews on these issues.

The report, which was drafted by the OECD Secretariat, was the subject of comments and contributions from the peer reviewers as well as from colleagues within the OECD Secretariat. It was fact checked by a Luxembourg.

The report is also based on material provided by Luxembourg in response to a questionnaire, including relevant documents, as well as relevant recent reports and reviews carried out by the OECD and other international organisations on linked issues such as e-Government and public governance.

Within the OECD Secretariat, the EU 15 project is led by Caroline Varley, supported by Sophie Bismut. Elsa Cruz de Cisneros and Shayne MacLachlan provided administrative and communications support, respectively, for the development and publication of the report.

Regulation: What the term means for this project

The term "regulation" in this project is generally used to cover any instrument by which governments set requirements on citizens and enterprises. It therefore includes all laws (primary and secondary), formal and informal orders, subordinate rules, administrative formalities and rules issued by non-governmental or self-regulatory bodies to whom governments have delegated regulatory powers.

Chapter 1

Strategy and policies for Better Regulation

Regulatory policy may be defined broadly as an explicit, dynamic, and consistent "whole of government" policy to pursue high quality regulation. A key part of the OECD's 2005 Guiding Principles for Regulatory Quality and Performance is that countries adopt broad programmes of regulatory reform that establish principles of "good regulation", as well as a framework for implementation. Experience across the OECD suggests that an effective regulatory policy should be adopted at the highest political levels, contain explicit and measurable regulatory quality standards, and provide for continued regulatory management capacity.

Effective communication to stakeholders is of growing importance to secure ongoing support for regulatory quality work. A key issue relates to stakeholders' perceptions of regulatory achievements (business, for example, may continue to complain about regulatory issues that are better managed than previously).

Governments are accountable for the often significant resources as well as political capital invested in regulatory management systems. There is a growing interest in the systematic evaluation of regulatory management performance – "measuring the gap" between regulatory policies as set out in principle and their efficiency and effectiveness in practice. How do specific institutions, tools and processes perform? What contributes to their effective design? The systematic application of *ex post* evaluation and measurement techniques can provide part of the answer and help to strengthen the framework.

E-Government is an important support tool for Better Regulation. It permeates virtually all aspects of regulatory policy from consultation and communication to stakeholders, to the effective development of strategies addressing administrative burdens, and not least as a means of disseminating Better Regulation policies, best practices, and guidance across government, including local levels. Whilst a full evaluation of this aspect is beyond the scope of this exercise and would be inappropriate, the report makes a few comments that may prove helpful for a more in-depth analysis.

Assessment and recommendations

Development of Better Regulation strategy and policies

Luxembourg is in the process of adopting a Better Regulation policy that is increasingly structured and complete. The term "administrative simplification" as used by Luxembourg must be understood in the broad sense. Beyond legislative simplification

(and codification in particular) and cutting red tape, it includes other tools such as *ex ante* impact assessments and growing attention to the transposition of EU directives. Major efforts have been made recently to structure these various initiatives around a central strategy designed to benefit the economy and (increasingly) citizens. To guarantee the future success of the programme, it will be essential to pursue this integration and to strengthen the linkage between *ex ante* impact assessments, *ex post* assessments and the process of administrative and legislative simplification. Another link that should be strengthened is that of simplification, including legislative simplification, which relies heavily on the policy to promote e-Government.

Recommendation 1.1. Consider ways of integrating upstream and downstream actions, working with France and other countries that are addressing this issue.

There is strong political support for the current reform efforts. In the wake of the June 2009 elections, the government prepared a political platform that reflected a clear intention to move forward with regulatory simplification. Simplification initiatives were already in place, but they were piecemeal. The public support of the Prime Minister and the decision to place the simplification unit within the Ministry of State sent a strong signal that this policy is important for the country and for post-crisis economic recovery.

Recommendation 1.2. Consider ways of giving policy for Better Regulation a permanent status (see also the recommendations in Chapter 2).

On the ground, the strategy is geared mainly to businesses, but there is also an evolution towards integrating citizens and other stakeholders. A certain shift can be observed, with greater attention to involving citizens, consumers, associations, etc. Better use could be made of new technologies for engaging citizens in the simplification process, for example through e-consultation initiatives. Future support for the simplification effort will need to come, not only from businesses, but also from citizens and users, recognising in particular what this means for a population that comprises a large proportion of cross-border workers and immigrants.

Recommendation 1.3. Ensure a balance between programmes for businesses and citizens in future development of the Better Regulation programme.

Luxembourg may have been slower off the mark than most EU countries, but it is making up for lost ground and showing a strong willingness to assimilate good international practices. When it comes to *ex ante* impact assessments, public consultations, transposition and implementation of EU directives and the central-municipal government interface, Luxembourg will have to make special efforts. *Ex ante* impact assessments, in particular, need to be strengthened and taken more seriously in government, and the approach to public consultations should be modernised. A balance must be struck here – the reform process should not introduce procedures that are too cumbersome and difficult for a small country to apply.

Recommendation 1.4. Take steps to promote *ex ante* impact assessments, public consultation, and effective transposition of EU directives, as well as a policy for central/municipal regulatory management.

Communication on Better Regulation strategy and policies

The CSA's efforts to communicate progress in simplification are a first step, and one that should be reinforced. The strategy should not be the exclusive preserve of the CSA (*Comité à la simplification administrative - Committee on Administrative Simplification*), as the cross-cutting policy of Better Regulation has implications for the entire government apparatus, but the CSA is no doubt best placed to assume overall co-ordination and responsibility. As CSA resources are limited, tasks should be shared. It is also important to take every opportunity to highlight the contribution that Better Regulation can make to reviving the economy. Finally, it is important to recognise the real progress that has been made, as an encouragement to future efforts.

Recommendation 1.5. Adopt a communication strategy in the full sense of the term, shared between key institutions at the core of government, and designed to explain the strong link between effective regulation, a sound and competitive economy, and a government that can deliver public services more effectively. Identify the opportunities and the vehicles (*e.g.* annual reports) for doing this. Consider expanding the CSA annual report and give it greater visibility.

Ex post evaluations of Better Regulation strategies and policies

As in many other countries, the evaluation of regulatory policies is still a weak point, in the absence of clear and targeted objectives or indicators for measuring progress. Like many other EU members, Luxembourg needs to develop and implement performance objectives and indicators in the various fields of regulatory governance – and not only in relation to administrative burdens – as a way of enabling progress to be assessed objectively. The administrative culture is highly legalistic, and the contribution of an economic perspective and skills (without abandoning the legal focus) would facilitate progress in this area.

Recommendation 1.6. Adopt a clear policy for evaluating the different aspects of regulation based on clearly defined objectives and a strict timetable, in light of available resources. Give thought to who should conduct these evaluations.

E-Government in support of Better Regulation

Work to date reflects real progress in specific areas such as the "one-stop shop", but the country still lags behind the leading EU states in this area. Luxembourg could benefit from experience in other EU countries to make up for lost ground. When it comes to the development of new regulations, for example, Germany and France could provide useful experience, against a context in which the government has difficulty recruiting staff with legal drafting skills. A dematerialised chain would allow the real-time processing of texts, from the initiating ministry through to publication, with shorter transmission times and enhanced security. The use of ICT in the conduct of public consultations should also be reinforced.

Background

Economic context and drivers of Better Regulation

Luxembourg has experienced a severe recession, as it was heavily exposed to the drop in world trade and the global financial crisis. Since the 1980s, the main driver of the economy has been the financial sector, which currently accounts for nearly 30% of GDP (or

as much as 50%, taking into account that the sector is a major consumer of legal and real estate services). Unemployment has risen and the fiscal position has deteriorated. This follows a long period of continuous and rapid economic expansion, during which living standards rose spectacularly and the economy was transformed by the development of Luxembourg as a financial centre and by large flows of cross-border and migrant workers. While there are encouraging signs of recovery, the future growth path is likely to be weaker than in the recent past, reflecting the sluggish international recovery, structural factors and a loss of competitiveness.

In terms of regulatory governance, it will be particularly important to maintain sound regulation of the financial sector. Effective supervision and closer cross-border co-operation will help contain systemic financial risks, while strong national framework conditions will contribute to development of the financial sector. It would be timely to review the structure of supervision and co-operation between the financial supervisor and the central bank. The services sector would also benefit from greater competition – something that will require a re-examination of regulation in this area.

The spectacular growth of the financial sector can be attributed in part to a regulatory framework that has placed Luxembourg among the top-ranking financial centres and has encouraged financial enterprises to establish themselves in the country. The importance of appropriate regulation has thus been an important consideration in government policy for some years, as was pointed out to the OECD team in several interviews, and well before the issue was taken up by the European Commission and certain other EU countries. This awareness goes beyond the financial sector and indeed amounts to general recognition of the notion that effective regulation can be used to support competitiveness and for the economy.

However, Luxembourg's comparative advantage in this area has been eroding in recent years, as other countries have moved forward and as regulatory frameworks have become progressively harmonised. Government and economic agents alike are fully aware of this erosion, and of the need for vigorous efforts, including on the regulatory front, to ensure the competitiveness of Luxembourg firms in general and in particular of SMEs, for which Better Regulation is an important aspect. Luxembourg businesses are fully supportive of this policy, but it must be admitted that this support has not fully translated into progress on the ground. There is still much to be done to improve the functioning of the domestic market, especially for SMEs.

Not surprisingly, the EU context has a strong influence. The government's policy of "administrative simplification" relies heavily on tools developed and implemented at the EU and international levels. The government is aware that it must adopt a common methodology and work to common principles if this policy is to succeed. Luxembourg has understood that its small-size demands a spirit of openness, and it recognises the danger inherent in a (re-) fragmentation of domestic markets within the EU.

Key developments in Luxembourg's Better Regulation agenda

The first steps toward Better Governance were taken in the late 1990s, with introduction of an impact assessment for draft bills. In the following years, however, attention focused primarily on simplifying administrative formalities that were depressing profits and hobbling the entrepreneurial spirit of SMEs. An important turning point came in 2004, when the government adopted "administrative simplification" as the explicit theme of its policy for Better Regulation, and established the CNSAE (now the CSA) to carry out that policy.

The field of action has recently broadened under the leadership of the CSA, which is now centrally placed within the government. The "administrative simplification" policy includes not only measures to simplify regulation and cut red tape but also renewed efforts to improve the impact assessments and to pay greater attention to EU aspects (negotiation and transposition of directives). Businesses are still the main target of these efforts, but measures aimed at the general public are growing swiftly.

The government programme adopted following the legislative elections of June 2009 includes a section on "administrative simplification" and the main projects associated with it. This represents a major step forward: not all EU countries have yet succeeded in giving such a high place to this policy within their government strategy. It is important, however, to "mind the gap" between principles and practice – that gap still yawns fairly wide.

Table 1.1. Key stages in Better Regulation policies in Luxembourg

1998	Introduction of a mandatory impact assessment for all draft bills before submission to the Council of Government.
1999	Introduction of a mandatory financial impact statement for every draft bill if it has budgetary implications.
2004	The government programme, set out in the wake of the legislative elections, declares that the government will give priority to simplifying administrative formalities.
2005	The Council of Government adopts the Master Plan for E-Governance (PGDE.).
2006	Survey of 500 SME chief executives on administrative simplification in Luxembourg (December 2005-January 2006). The Council of Government adopts a new version of the impact assessment report.
2007	The Committee on Administrative Simplification (CSA) publishes an action plan for simplification in favour of businesses (*Entfesselungsplang fur Betriber*). The government decides to apply the principle of transposing "the directive, the whole directive, and nothing but the directive". The Council of Government decides to apply the SCM (Standard Cost Model) methodology whenever the competent minister so requests.
2008	Third action plan for SMEs, containing 10 measures, the second of which is entitled: "instituting a real policy for reduction of administrative burdens and Better Regulation". Launch of the *www.guichet.lu* portal for businesses and citizens to access public services. The Council of Government adopts SCM as the standard method for measuring administrative burdens.
2009	The General Compendium of Legislation (*Relevé général de la législation*) is restructured as the Analytical Directory of Luxembourg Law (*Répertoire analytique du droit luxembourgeois,* RADL). The CSA publishes a report 2004-2009 on progress under the administrative simplification action plan ("simplification brochure"). The government programme, announced following the June 2009 legislative elections, again takes up the main projects for administrative simplification and Better Regulation, including establishment of a one-stop shop (*guichet unique*) on "urbanism". The government gives priority to administrative simplification and reinforces the CSA (the former CNSAE), transferring it to the Ministry of State and giving it a crosscutting dimension. In September the government adopts a national goal of reducing administrative burdens by 15% by 2012, in four priority areas (social security, the environment, urban development and VAT). The CSA applies the SCM model for the first time to a Social Security law (the employees' statute).

Guiding principles for the current Better Regulation agenda

"Administrative simplification" is still focused, in practice, on the needs of business, but the current government has given it a much wider scope, and the guiding principles are applied through the impact assessment report adopted in 2006, with a list of criteria that must be addressed when assessing draft laws and regulations (Box 1.1).

Box 1.1. Analytical criteria for impact assessments

The impact assessment must respect the following principles:

- "Think small first", to ensure that every new legislative or regulatory proposal is checked to determine whether exemptions are needed depending on the size of the firm or its sector of activity, instead of applying it horizontally without any specific targeting.
- Bear in mind the definition of "administrative burden" in the Luxembourg context, consistent with the European Commission's recommendation. It will be defined, then, as the cost imposed on a business (time lost, taxes, contributions etc.) in complying with the reporting and administrative obligations contained in new legislation.
- Pursue codification and recasting of laws: these procedures are supposed to make legal texts clearer and more understandable to the public.
- Transpose directives according to the principle "the whole directive and nothing but the directive", and justify any derogation from this principle in the preamble to the transposition bill.
- Consider whether existing authorisation and reporting systems can be eliminated or simplified. In 2006, the Council of Government decided to update the impact assessment form and the associated obligations for the initiators of laws and regulations.
- Reconcile the draft law or regulation with such criteria as general principles of law, readable and understandable texts, codification, consolidation, recasting, clear definitions, degree of detail, exemptions, frequencies, harmonisation, and online procedures.

Main Better Regulation policies

- **Legislative simplification.** This is one of the priorities of regulatory policy, with well-developed codification actions.
- **Reduction of administrative burdens.** An overall objective has been set to reduce administrative burdens by 15% in four priority areas. The role of e-Government in Better Regulation is being stressed.
- **Impact assessments.** The device is evolving, and the impact assessment form has recently been overhauled.
- **Managing the transposition of directives.** A more structured approach was recently instituted for monitoring transpositions.
- **Other measures.** A very complete set of directories and databases is in place to make the law accessible.

Communication on the Better Regulation agenda

The CSA publishes a regular re-port on its action plan.[1] A monthly e-newsletter on the latest developments in Better Regulation is sent out to members of the CSA plenary, to the

press and interested subscribers, and is posted at the website *www.simplification.lu.* Regular press releases provide information to the general public. The CSA plenary constitutes a standing source of information for professional organisations and administrations (see Chapter 2).

Ex post evaluation of Better Regulation strategy and policies

Generally speaking, there is no culture of evaluating public policies. The Court of Auditors has not done any specific audits of administrative simplification (this would seem to be a question of resources, at least in part). The Court stressed to the OECD team the lack of "indicators" for evaluating *ex post* the efficiency and effectiveness of public policies. On the other hand, the Competitiveness Observatory of the Ministry of Economy and Foreign Trade has 86 indicators for analysing competitiveness, under the three pillars of sustainable development: economic, social and environmental. This could be a starting point for preparing more precise indicators targeting progress with Better Regulation.

E-Government in support of Better Regulation

Background

The current e-Government strategy stems from a decision of the Council of Government, which adopted the Master Plan for Electronic Governance (PDGE) on 29 April 2005 and set up the Co-ordination Committee for Modernisation of the State (CCME) within the Ministry of the Civil Service and Administrative Reform to co-ordinate and implement that decision. The PDGE concerns broad groups of projects: basic infrastructure projects, horizontal training projects, re-organisation projects, and projects for an Internet presence. The concept of "virtual" one-stop shops also features in the administrative reform for modernisation of the State, co-ordinated by the CCME.[2] The PDGE provides as well for organisational and administrative overhaul in the various ministries, administrations (governmental or municipal) and other public agencies, and embraces measures of standardisation and the introduction of technological means. The thrust of the PDGE can however be influenced or redirected either by economic and social changes or by input and guidance from the different working groups within the CSA and the CCM.

The State Information Technologies Centre (CTIE) of the Ministry of the Civil Service and Administrative Reform has co-ordination and planning responsibilities in this field.

The CTIE has standing responsibility for preparing and updating the PDGE, and proposes global and horizontal strategies (Box 1.2). The government explained that the projects under way or pending would introduce electronic tools to facilitate and enhance collaboration and management among public agencies, and at the same time would offer more and better services to businesses and the general public.

Once they have identified the fields of e-Government interest where initiatives for simplifying formalities are considered timely, public agencies can either work through the CSA or turn directly to the CTIE, which has a Project Management Office to run projects. That office offers the following services:

- A standardised project management methodology (QUAPITAL-HERMES).
- An integrated IT tool for project and project portfolio management (Planview).
- Coaching and training in project management.

- A database of best practices for capitalising on experiences.

The e-Government managers within the administration are associated with the work of the CSA, through the portals and one-stop shops that have been instituted. To overcome administrative obstacles in the e-Government field, the CSA can rely on the skills of the CTIE.

Luxembourg is taking an active role in OECD work on e-Government, through the high-level e-Government managers' network under the aegis of the OECD Public Governance Committee.

Box 1.2. CTIE services

The CTIE offers the following services:

- Assessment of project requests for their conformity with the PDGE, their overall coherence, their priority and their relevance.
- Monitoring the progress of projects with respect to budget, scheduling and quality.
- Centralised reporting on the progress of projects and the project portfolio.
- Advice, training and assistance in project management.
- Business process management and reengineering.
- Assistance in project management for ministries and administrations.
- Quality assurance for projects, by verifying their conformity with the quality standards and criteria for the State as a whole.

The ICT role in Better Regulation

Greater use is being made of ICT for Better Regulation, but it is still limited in comparison to other EU countries, at least in certain fields. Luxembourg has not yet developed an application for dematerialising the process of preparing regulations, which is still done on paper. There is less use of ICT for public consultations than in other EU countries. When it comes to administrative simplification there has been more progress (see Chapter 5). For the Internet sites and one-stop shops, there are efforts not only to make data available to users but also to ensure interactivity (online processing). More generally, some countries have been fairly successful in using e-Government as a tool for changing cultures and mentalities within their administration, and this has reinforced efforts to implement new regulatory management techniques.

Notes

1. *www.mcm.public.lu/fr/admin/brochure/index.html.*
2. *Entfesselungsplang fir Betriber*, p.73.

Chapter 2

Institutional capacities for Better Regulation

Regulatory management needs to find its place in a country's institutional architecture, and have support from all the relevant institutions. The institutional framework within which Better Regulation must exert influence extends well beyond the executive centre of government, although this is the main starting point. The legislature and the judiciary, regulatory agencies and the subnational levels of government, as well as international structures (notably, for this project, the EU), also play critical roles in the development, implementation and enforcement of policies and regulations.

The parliament may initiate new primary legislation, and proposals from the executive rarely if ever become law without integrating the changes generated by parliamentary scrutiny. The judiciary may have the role of constitutional guardian, and is generally responsible for ensuring that the executive acts within its proper authority, as well as playing an important role in the interpretation and enforcement of regulations. Regulatory agencies and subnational levels of government may exercise a range of regulatory responsibilities. They may be responsible (variously) for the development of secondary regulations, issue guidance on regulations, have discretionary powers to interpret regulations, enforce regulations, as well as influencing the development of the overall policy and regulatory framework. What role should each actor have, taking into account accountability, feasibility, and balance across government? What is the best way to secure effective institutional oversight of Better Regulation policies?

The OECD's previous country reviews highlight the fact that the institutional context for implanting effective regulatory management is complex and often highly fragmented. Approaches need to be customised, as countries' institutional settings and legal systems can be very specific, ranging from systems adapted to small societies with closely knit governments that rely on trust and informality, to large federal systems that must find ways of dealing with high levels of autonomy and diversity.

Continuous training and capacity building within government, supported by adequate financial resources, contributes to the effective application of Better Regulation. Beyond the technical need for training in certain processes such as impact assessment or plain drafting, training communicates the message to administrators that this is an important issue, recognised as such by the administrative and political hierarchy. It can be seen as a measure of the political commitment to Better Regulation. It also fosters a sense of ownership for reform initiatives, and enhances co-ordination and regulatory coherence.

Assessment and recommendations

Strengthening the CSA's position within government is an important step forward, and it sends a strong signal that Better Regulation is a key policy concern for the government. The announcement of a Better Regulation policy has been accompanied by a reinforcement of the CSA. Now that the CSA has been placed within the Ministry of State, at the very centre of government, its work is more visible, and its director now attends meetings of the Pre-Council, exercising *ex ante* control over the principles of regulatory quality and legal simplification. The change of name signals that its purview extends beyond the concerns of business.

A question arises, however, as to how to ensure that the strategy, and support for it, can be made to last. A significant part of the answer is to ensure that the various ministries assume ownership of their contributions, and to have them recognise the importance of the task for their objectives. In any case, the task must not be left solely with the Ministry of State. A sustained effort will be needed to raise awareness among stakeholders throughout government. Ministries do not all have the same understanding of what is meant by Better Regulation. The performance of different ministries varies widely, and some have come to a better appreciation of the issues at stake and are making better use of the tools internally. In some key areas, such as impact assessment, there remains considerable resistance overall.

The CSA, with its plenary, constitutes a structure with great potential. It is important to have a structure that can co-ordinate and support the work of the ministries, and that can also take a forward-looking view. Greater precision is needed concerning the – mutually reinforcing – mandates of the CSA and the Central Legislation Service. The CSA's membership in a "plenary" of business organisations constitutes a very useful vantage point *vis-à-vis* the outside world and the day-to-day realities of living with regulation. During the interviews, however, it was suggested that the makeup of the plenary could be expanded to bring in consumer organisations, trade unions and other groups representing civil society, either as full members or as observers.

Recommendation 2.1. Confirm the CSA's lead role in regulatory policy, while clarifying the role of its close associates, in particular the Central Legislation Service (SCL). Review the makeup of the plenary to provide for broader representation by civil society stakeholders.

Inter-ministerial co-ordination is vital to the success of the strategy. The CSA's comment warrants repetition, "administrative simplification should be seen not as the preserve of a single horizontal service or a single official, but as a concern for all officials and all government departments". Administrative simplification is a responsibility that must be shared by all ministries. In order to institute and, above all, to carry out a coherent simplification policy, departments must work together. Every department must take charge of the procedures for which it is responsible. The mechanisms that have already been put in place – correspondent networks, co-ordination committees – should be used systematically to ensure a better flow of information and to overcome departmental insularity. Some EU countries have achieved success by appointing a minister or a senior official within each ministry to be responsible for follow-up, political support and taking stock of progress.

Recommendation 2.2. Continue with the structures in place for ensuring inter-ministerial co-ordination. Ensure that the representatives in those structures are officials with sufficient rank to reinforce messages with their colleagues. Consider appointing a minister and/or a senior official within each ministry to ensure visibility and political support for those messages.

Parliament seems ready to support sound legislation and regulation. Parliaments in several other EU countries have for some time been showing a growing interest in better regulatory governance. In Luxembourg the relationship between the executive and legislative branches seems very close, reflecting in part the country's small size. The relationship has been strengthened recently as Parliament has been granted a greater role in negotiating EU directives. Continuing this trend in Luxembourg would be positive, for example, by submitting impact assessments to Parliament. The impact assessment is an essential tool of any policy for improving the quality of regulation. The assessment would remain attached to the draft text and accompany it throughout the procedure until its adoption. This initiative would strengthen the link with Parliament.

Recommendation 2.3. Review the arrangements whereby the executive branch and parliament can share the information needed to maintain parliamentary interest in Better Regulation.

Regulatory resources and expertise are modest. The resources directly available for regulatory governance are modest and need to be strengthened, despite the country's small size, in order to make swifter progress and to live up to the professed ambitions for Better Regulation. Several people interviewed by the OECD team stressed this issue. It is clear, for example, that ministries need more substantive support to help them with impact assessment. The relatively small size of government is also a problem for transposition within the guidelines set by European law. This may not be merely a question of resources, however: more importantly, there would seem to be a shortage of trained legal experts, compounded by a dearth of government professionals in other areas, such as economics. Thought should therefore be given to gearing university education more closely to government needs, so that specialised professionals can stay in Luxembourg and join the civil service, if they are interested, and to equip civil servants with specific knowledge, for example, in legal drafting or quantification methodology.

Recommendation 2.4. Prepare a policy that ensures the availability of resources and training needed to support implementation of the various tools for Better Regulation, including legal drafting and impact assessments.

More generally, Luxembourg needs to pursue public administration reforms, without which the drive for Better Regulation may run out of steam. For example, a system of assessing performance against measurable objectives could also assist Better Regulation by making it part of the performance appraisal of civil servants, as is now starting to be done in some other EU countries. According to the Economic and Social Council, it would also be important, as part of administrative modernisation, to redeploy staff in light of new demands and mandates.

Background

The public governance framework in Luxembourg

The governance framework in Luxembourg exhibits the following features:

- **Small government**. In keeping with the country's small size (the smallest of all the countries examined in this project), Luxembourg has a government of modest means. This facilitates the circulation of information, and officials and politicians are readily accessible to citizens. Policy development tends to be pragmatic. The country is also open to the outside world and to learning from positive experiences in other EU countries. Yet issues where economies of scale do not pertain – European obligations, for example – impose a heavy burden in relation to management capacities. Moreover, the structure of government, with 19 ministries, and a strongly rooted tradition of ministerial autonomy can obstruct the internal flow of information.

- **A relatively simple subnational structure**. There are two levels of government in Luxembourg: the central government and the municipalities or "communes". The communes are often very small, which has led to a reflection on the scope for reform of territorial organisation, in the recognition that this small size makes quality service delivery difficult. Progress on this score has been limited to date (see Chapter 8).

- **A stable political system**. The political system, while systematically based on coalition governments, is very stable. The Christian Democratic Party has been a partner in government since 1919 (except for the interval 1974-79), most of the time as senior member of a two-party coalition.

Developments in the public governance framework

There are two elements to bear in mind. The first concerns the Constitution. Within its Committee on Institutions and Constitutional Review, the Chamber of Deputies is now analysing a general overhaul of the Constitution to make it more coherent and adapt it to the needs posed by the transformation of political and socioeconomic life. Moreover, the amendment of 19 December 2003 to Article 114 of the Constitution allows any proposed constitutional amendment to be put to a public referendum, at "popular initiative" (pursuant to the National Referendum Law of 4 February 2005) if 25 000 voters (out of a total of some 220 000) so demand. The first occasion for the first such a procedure came with the 12 March 2009 amendment of Article 34 of the Constitution, abolishing the Grand Duke's duty to sanction laws. A committee of five voters was constituted for this purpose, but it failed to assemble the required quorum for holding a referendum – only 796 voters supported the initiative.

A major administrative reform is now underway, spearheaded by the public service ministry. The government has announced that it will continue during the period 2009-2014 to modernise the State apparatus through a series of reforms concerning the status and careers of its agents, the functioning of administrations, and administrative procedures. These reforms will be pursued with a view to achieving "quality, effectiveness and transparency in public administration. They will respect the principle that officials' responsibility and commitment must have repercussions on the progress of their careers." Among other things, it is planned to move toward personnel and organisational management by objectives, drawing the link between measurable strategic objectives and

the working objectives of officials when conducting their annual appraisals. Moreover, there will be a regular quality assessment of public services, with participation by citizens and users (the guiding theme being to place the user at the centre). Administrations that have significant contact with the public will adopt "perception and service charters". Lastly, thought will be given to an approach based on the notion of "profession" with respect to the tasks performed by public agents. As the OECD team understands it, the backdrop to these reforms is a fairly conventional administration to some extent rooted in traditions. A determined effort will no doubt be needed to obtain the expected results.

Many of these reforms have to do with e-Government (see Chapter 1).

Institutional framework for devising public policies and regulations

The Grand Duchy of Luxembourg is a representative democracy, in the form of a constitutional monarchy with a Constitution that was promulgated in 1868. Following the constitutional amendment of 12 March 2009, the Grand Duke no longer sanctions laws but merely promulgates them. This measure reinforces the democratic functioning of State institutions: the Grand Duke, who has no political responsibility and is beyond the reach of political debate, no longer needs to declare his consent (sanction) for a law adopted by a parliamentary majority elected by universal suffrage.[1]

Box 2.1. The institutional framework for devising policies and regulations in Luxembourg

The Constitution of the Grand Duchy of Luxembourg was promulgated on 17 October 1868. The system introduced at that time resembles closely the Belgian constitutional system of 1831. It has undergone a number of amendments since its promulgation, the latest dating from 18 February 2003. The current constitution however still reflects the 1868 text to a large degree.

The executive power

The Grand Duke

The Grand Duke is "the head of the State, the symbol of its unity and the guarantee of national independence" (Article 33 of the Constitution). His powers are devolved upon him by dynastic succession. With the government and its responsible members, he constitutes the executive branch. The Grand Duke has no political responsibility whatsoever; responsibility lies with the ministers. In effect, any decision taken by the Grand Duke in the exercise of his constitutional powers must be countersigned by a member of the government who will then assume full responsibility for it. Moreover, any act that requires the Grand Duke's signature must first be submitted to deliberation of the Council of Government.

The government

The Government comprises a president, bearing the title of Prime Minister, and several members with the title of Minister. As Minister of State, the Prime Minister is empowered by the Grand Duke to organise the government, to serve as its president, to co-ordinate general policy and to see to co-ordination between the ministerial departments.

Each Minister has the direction of at least one ministerial department (there are currently 19). The Secretary of State generally has the direction of one or several ministerial departments, in whole or in part, by delegation of powers from the minister of the department to which he is attached , with the concurrence of the Grand Duke.

Ministerial responsibility is inseparable from the absence of responsibility of the Grand Duke. For an act of the Grand Duke to take effect, it must be countersigned by a member of government who assumes entire responsibility for such an act.

The ministers are responsible for acts of which they themselves are the authors, either individually or collectively. Responsibility for any measure taken in the Council is incumbent upon all the members of government involved in adopting such measure. However, a minister who has a dissenting vote

recorded in the minutes of the Council session is exempt from responsibility.

It is rare for officials to resign when there is a change of government.

The legislative power

The Chamber of Deputies

The parliamentary system in Luxembourg is unicameral. The Chamber of Deputies comprises 60 Deputies elected for a five-year term by universal and proportional suffrage. Its principal function is to vote laws. Members of the Chamber also have a right of parliamentary initiative, *i.e.* to submit draft bills, but this is not often used. Its sittings are public. The Chamber may take no decision unless a majority of its members is present.

The government as a whole, and the ministers individually, are politically responsible to the Chamber of Deputies for their actions. If the Chamber disapproves of the policy of one or more ministers or of the government it expresses that disapproval, either by a negative vote on the agenda item proposed by the government, or by rejecting the draft bill presented by the ministers. It can refuse to vote the annual budget, thereby making it in practice impossible for the government to run public affairs. Ministerial responsibility entails the obligation to resign if the Chamber denies a minister its confidence through a motion of censure. In practice, ministers will resign at the first hostile vote of the Chamber.

The Council of State

The Council of State comprises 21 councillors, 11 of whom are lawyers. The councillors are formally appointed and dismissed by the Grand Duke, on the recommendation of the government, the Chamber of Deputies or the Council of State. Members of the Council of State exercise that function in addition to their principal activity (for example professor, lawyer, business executives).

In Luxembourg's unicameral system the Council of State exerts the moderating influence of a second legislative assembly. It is required to voice its opinion on all items of legislation, *i.e.* on all draft and private bills tabled before the Chamber prior to voting by the Deputies. The Council of State may also waive the second constitutional vote by Parliament on a draft bill.

The judiciary

Luxembourg is a country of written French law. It has a Constitutional Court, and two orders of jurisdiction: the judicial and the administrative. The courts and tribunals are constitutionally responsible for exercising the judicial power and for applying only those general and local orders and regulations that are in conformity with the laws. The Constitutional Court is empowered to rule on the constitutionality of laws.

The Constitutional Court

The Constitutional Court has nine members. It rules on the constitutionality of laws, except for those approving treaties. It exercises abstract, *a posteriori* review upon reference for a preliminary ruling (*voie préjudicielle*). There is no appeal against its rulings. It cannot annul a law but can declare it unconstitutional and therefore without effect *erga omnes*.

Judicial jurisdictions

The District Courts handle civil and commercial matters. There are two judicial districts. They are organised with a correctional chamber and a penal chamber for hearing criminal cases. Civil and commercial affairs of lesser importance are handled by justices of the peace (of which the country has three).

The Superior Court of Justice has a Court of Cassation, which comprises a bench of five judges, and a Court of Appeals, divided into nine benches with a total of 35 judges. The Court of Cassation is empowered to hear challenges against rulings of the Court of Appeals and decisions of the district courts and justices of the peace. Appeal for annulment does not constitute a third recourse, but applies only to breaches of the law through exceedance of powers or breach of procedure, whether substantive or prescribed as grounds for nullity. The Court of Appeals hears decisions issued by the courts of first instance (the district courts).

The members of the *Parquet* (magistrates of the Prosecutor General's office) are appointed by the Prosecutor General to the courts and tribunals and exercise their functions under the authority of the Minister of Justice.

Administrative jurisdictions

The Constitution gives to the administrative jurisdictions the power to hear administrative and fiscal disputes, with the exceptions provided by law. The Administrative Tribunal decides, as the court of first instance, on appeals in cases of incompetence, acting in excess of authority, improper exercise of authority, breaches of the law or of procedures designed to protect private interests, appeals against administrative decisions in respect of which no other remedy is available in accordance with laws and regulations. The Administrative Court is the supreme administrative jurisdiction. It hears appeals against decisions of other administrative jurisdictions exercising their authority to set aside decisions, and arbitrates disputes between the government and the Court of Auditors.

The Court of Auditors

The Court of Auditors was instituted as an independent body in 1999 to oversee the financial management of the organs, administrations and services of the State. It conducts and publishes a general audit of the accounts of the State for the preceding fiscal year. At the request of the Chamber of Deputies, or at its own initiative, it may also issue special reports on specific areas of financial management.

The Ombudsman

The position of public mediator or Ombudsman was instituted on 1 May 2004. Reporting to the Chamber of Deputies, the Ombudsman is independent and takes instructions from no authority. He is answerable neither to the administration nor to the government. He is appointed by a simple majority of the Chamber of Deputies for a term of eight years, not renewable. His mission is to receive complaints from individuals or legal persons in a matter concerning them and involving the functioning of the administrations of the State and the communes, as well as public enterprises of the State or the communes, with the exception of their industrial, financial and commercial activities.

The Economic and Social Council

The Economic and Social Council (CES) was instituted in 1966 as a standing advisory body to the government to deal with problems in the steel industry and the consequent restructuring of the economic landscape. Its duty is to examine economic, financial and social problems affecting several economic sectors or the entire national economy. It may render opinions at the request of the government or at its own initiative. The council represents “the bone and sinew” of the nation.

The CES has representatives from business, the liberal professions, agriculture, public and private sector employees’ organisations, as well as members appointed directly by the government. Its presidency rotates between representatives of business, labour and government.

The independent administrative authorities.

There are a number of regulatory agencies, of which the following are examples: Financial Sector Supervisory Commission (CSSF), Insurance Commission, National Data Protection Commission, Luxembourg Institute of Regulation, Luxembourg Institute of Standardisation, Accreditation, Safety and Quality of Products and Services, Media Commission, Food Safety and Quality Agency, ASTA, Sanitary Inspection Division, Maritime Affairs Commission, and Central Bank of Luxembourg. Some of these agencies, such as the CSSF and the Insurance Commission, have their own regulatory powers and can issue rules. All are authorised to issue general regulations and make recommendations, they are responsible for enforcing the rules in their sector, they decide applications for licensing or authorisation, and they have powers of individual sanction. Generally speaking, they report to a minister or to Parliament.

Territorial organisation

In Luxembourg there is only one administrative layer below the central level: the communes. The country is divided into 160 communes.

Developments in Better Regulation institutions

In 2004, the Luxembourg government established a body devoted to simplifying administrative burdens for businesses, the National Committee on Administrative Simplification for Businesses (CNSAE). Placed initially under the Ministry of the Middle Classes, Tourism and Housing, it subsequently came under the control of the Ministry of State and was in July 2009 renamed the Administrative Simplification Committee. That

change reflected the government's intention to give it crosscutting authority and to expand its role beyond the field of business. It allows all questions involving regulatory quality to be handled within the same Ministry, close to the centre of government. Before 2009, these issues were handled by various structures depending on the subject involved (administrative simplification for businesses, e-Government, codification, administrative reform). Those structures are now placed under the authority of the same minister, and carry all the attributes of the Ministry of State. Luxembourg's institutional model, however, is based on a network that associates a "light" central unit, comprising the CSA and the SCL, with a network of ministerial administrations.

Table 2.1. Institutional capacity for Better Regulation: Main stages

2003	Law of 22 August 2003 instituting an Ombudsman.
2004	Following a government decision to give priority to simplifying administrative formalities, the National Committee for Administrative Simplification for Businesses (CNSAE) was established on 16 December 2004 under the Ministry of the Middle Classes, Tourism and Housing, in close collaboration with the Ministry of Economy and Foreign Trade.
2005	Establishment of the Co-ordination Committee for Modernisation of the State (CCM) within the Ministry of the Civil Service and Administrative Reform.
2006	Establishment of the Simplification Co-ordination Committee (CCS), to issue opinions on draft laws or Grand Ducal regulations that create additional burdens for businesses.
2007	Establishment of a task force to make proposals to government for eliminating and simplifying the existing licensing regimes and introducing the principle that "silence implies consent" on the part of government.
2009	The CNSAE, renamed the Administrative Simplification Committee (CSA), is placed under the authority of the Ministry of State.

Key institutional players for Better Regulation

The lead entity with respect to Better Regulation is the Ministry of State, to which the CSA has been attached since 2009, and which also includes the Central Legislation Service. Other ministries, including the Ministry of the Civil Service and Administrative Reform, have a relatively important role as well. The Council of State is another significant player, in its role of advising government, verifying the legal quality of draft regulations, and its status as a de facto second deliberation chamber. Other important bodies are the Court of Auditors and the Economic and Social Council.

The executive branch

The Ministry of State

The Ministry of State (Prime Minister's Office) is the main ministry involved in the move to Better Regulation. Three of its units play an essential role: the Administrative Simplification Committee (CSA), the General Secretariat of Government, and the Central Legislation Service (SCL). In practice, they co-operate closely in their day-to-day work.

- The Administrative Simplification Committee (CSA). This committee is directly responsible for moving forward the Better Regulation – or "administrative simplification" – policy.

- The Central Legislation Service (SCL). With respect to legislative and regulatory procedures, this unit monitors and co-ordinates work between the government, the

Chamber of Deputies and the Council of State. It publishes the official Gazette of the Grand Duchy (*Mémorial-Journal Officiel*) and the systematic codification of legislation in the form of codes and compilations. It also runs and manages the *Legilux.lu* Internet site, the government's legal portal. The director of the SCL attends meetings of the CSA plenary.

- The General Secretariat of Government. This represents a key milestone in the process of producing regulations, as the "gateway" to the Council of Government. In 2004 launched a project to systematise processes for submitting proposals to the Council of Government (Chapter 4). It also handles the planning of legislative reforms.

Box 2.2. The Administrative Simplification Committee (CSA)

The first incarnation of the CSA (National Committee for Administrative Simplification for Businesses, CNSAE) was established in 2004, under the Ministry of the Middle Classes, Tourism and Housing. Renamed the Administrative Simplification Committee (CSA) in 2009, it now comes under the authority of the Ministry of State.

Makeup

The CSA has a central "plenary" and working groups, whose work is validated by the plenary. The plenary is the core entity of the CSA, responsible for steering the administrative simplification strategy and monitoring work. It comprises representatives of the ministries and administrations concerned as well as representatives of the ABBL, the Chamber of Commerce, the Chamber of Trades, the Luxembourg Confederation of Commerce, the Federation of Artisans, the FEDIL (Federation of Luxembourg Industries), the HORESCA (Restaurant and Hotel Federation), and the Union of Luxembourg Enterprises (UEL).

The executive president of the CSA co-ordinates the work of the plenary, the workgroups, the *ad hoc* working groups and the Council of Government. Through them, stakeholders are kept informed of significant developments in administrative simplification for businesses. The plenary validates the work of the working groups[2].

The CSA is supported by a Secretariat comprising two officials and an assistant. The executive president co-ordinates the work of the plenary, the workgroups and the Council of Government, which is kept regularly informed of the CSA's work, as is Parliament ("Committee on the civil service and administrative simplification"), at its request. The executive president is a full member of the *Pré-conseil* or "Pre-Council" which vets draft bills for submission to the Council of Government.

Mandate

The basic mandate of the CSA is to promote and co-ordinate simplification efforts throughout the administration. This mandate, however, is becoming broader, with introduction of a policy for *ex ante* impact assessments and an expanded field of work for addressing citizens' needs. There are plans to reinforce its structure with an early move towards the role of "single window" for administrative simplification, in order to test administrative procedures and formalities and make proposals for regulatory amendments.

The other ministries

The Ministry for the Civil Service and Administrative Reform is also responsible for training officials and developing e-Government. The Ministry of Foreign Affairs co-ordinates the negotiation and transposition of European directives (which is done by each Ministry within its field of competence). The Ministry of the Middle Classes[3], to which the CSA was initially attached, is still a major player in administrative simplification for businesses. The Ministry of the Interior is the oversight authority for the communes. The Ministry of Justice is responsible for the consistency of the major codes, but it is not

directly involved. Finally, the Ministry of Finance is consulted when a draft regulation could have a fiscal impact.

Co-ordination of Better Regulation

Luxembourg is a small country and is not systematically endowed with formal structures (inter-ministerial committees) for developing public policies. Co-ordination is generally done informally. However, ministerial independence can frustrate such co-ordination. A number of inter-ministerial committees and co-ordination groups have been constituted in some strategic areas such as urban development and the environment, with their corresponding networks.

When it comes to Better Regulation, the CSA has established a network of correspondents responsible for administrative simplification in each ministry or administration. These correspondents co-ordinate the work initiated by the CSA within their own domain. They are an important element of the mechanism for promoting regulatory quality. To date, initiatives in this area have come from the centre of government, and the line ministries have taken only a limited interest. The interviews conducted by the OECD team suggested that the process of sensitising the line ministries was still "a work in progress".

A Simplification Co-ordination Committee (CCS) has also been set up to examine the impact assessment studies. It includes officials from the Ministry of State, the Ministry of the Civil Service and Administrative Reform, the Ministry of the Middle Classes and Tourism, and the Ministry of Economy and Foreign Trade.

The co-ordination and negotiation of European directives, and monitoring of the transposition, is done by the Ministry of Foreign Affairs, which chairs the Inter-ministerial Committee for European Policy Co-ordination (CICPE) (see Chapter 7).

Parliament and Better Regulation

The Chamber of Deputies has not played a particular role in the development of regulatory quality policies in Luxembourg. It is of course a key player in the process of producing regulations, via the amendments that it discusses and adopts during its examination of draft bills. As with most EU parliaments, it has the right to initiate new laws (although such proposals are infrequent and rarely prosper).

Nevertheless, the Parliament's role in negotiating Community texts has recently been reinforced through the introduction of systematic mechanisms for the government to inform the Chamber when the European Commission publishes new draft texts (see Chapter 7). The Committee on the Middle Classes and Tourism vets these bills against the "think small first" principle. Lastly, the CSA executive president reports on work underway to the Committee on the Civil Service and Administrative Simplification, at its request. The OECD team was told of a certain "increase in power" of Parliament. As well, the Chamber of Deputies is now working to establish an electronic platform open to the professional chambers and, if necessary, to the executive branch.

The Council of State[4]

The Council of State, the government's advisory body, must render an opinion on all draft bills and Grand Ducal regulations when they are submitted to the Chamber of Deputies after adoption by the Council of Government[5]. The Council of State gives its opinion in the form of a substantiated report containing its conclusions and counterproposals, if any. The Council of State expresses itself both as to the substance

(political appropriateness) and the form of draft laws, and the appropriateness of a legislative measure. It also has the important function of examining the conformity of proposals submitted to it in light of higher-ranking national and international rules. In the context of a unicameral Parliament, it plays the role of a non-elected second chamber of deliberation. As a general rule, Parliament will not take a definitive vote on a draft bill until the Council of State has communicated its opinion. The Council of State has the power to suspend a vote for three months by refusing to waive the second vote in the Chamber of Deputies (see Chapter 4). The OECD team heard differing assessments of this role: some were critical of its undeniable political influence (as a non-elected institution) through its ability to block the legislative procedure (with no specific time limits for rendering its opinion), while others stressed its essential role in ensuring legal quality.

The idea that the Council of State can judge the political appropriateness of bills and proposals is not shared by everyone: Article 2.2 of the law of 12 July 1996 reforming the Council of State confines itself to indicating that "if it deems a bill or proposal contrary to the Constitution, to international conventions and treaties, or to the general principles of law, the Council of State shall mention this in its opinion. It shall do the same if it considers a draft regulation contrary to a rule of higher legal ranking."

Resources and training

Staffing

In line with the country's size, the human resources directly available for Better Regulation are modest (a team of three persons to support the work of the CSA). For the administration in general, officials often tend to have legal skills whereas effective regulation also requires economic ones. As to legal expertise, a shortage of adequately trained jurists was mentioned. The administration will thus call in outside experts (for example university professors) who can play an important role in preparing rules and simplifying legislation.

The Council of State also has some staffing problems, with a very small secretariat, part-time members who are increasingly absorbed in other functions, and an "assembly line" approach to its regulatory work that often results in products of indifferent quality.

Training

The initial training of middle-level and senior career officials includes mandatory courses in legislative drafting and in legislative and regulatory procedure. There are plans to incorporate the theme of regulation into these courses.

The CSA, in partnership with the Ministry of the Civil Service and Administrative Reform, offers continuous training in Better Regulation and in use of the impact assessment study. There are plans to integrate these courses into the initial training for officials. Information on Better Regulation, such as a guide for completing the impact assessment form, is also available to the drafters of legal and regulatory texts at the *www.simplification.lu* Internet site.[6]

Notes

1. See the Preamble to the Draft Amendment of Article 34 of the Constitution (Parliamentary Document 5967/00).
2. See Administrator Simplification Committee: *Entfesselungsplang fir Betriber*, p.28.
3. "*Classes Moyennes*", a name derived from the German *Mittelstand*, meaning the medium-sized business sector.
4. Until 1 January 1997 the Council of State also served as the administrative tribunal. That function is today performed by a separate Administrative Tribunal (see chapter 6).
5. The Council of State thus has considerable power as it is "the priorities setter".
6. This site was under reconstruction on 26 October 2009.

Chapter 3

Transparency through consultation and communication

Transparency is one of the central pillars of effective regulation, supporting accountability, sustaining confidence in the legal environment, making regulations more secure and accessible, less influenced by special interests, and therefore more open to competition, trade and investment. It involves a range of actions including standardised procedures for making and changing regulations, consultation with stakeholders, effective communication and publication of regulations and plain language drafting, codification, controls on administrative discretion, and effective appeals processes. It can involve a mix of formal and informal processes. Techniques such as common commencement dates (CCDs) can make it easier for business to digest regulatory requirements. The contribution of e-Government to improve transparency, consultation and communication is of growing importance.

This chapter focuses on two main elements of transparency: public consultation and communication on regulations (other aspects are considered elsewhere in the text, for example appeals are considered in Chapter 6).[1]

Assessment and recommendations

Public consultation on new regulations

Luxembourg has a generally successful tradition of seeking consensus which is adapted to the country and which generally functions well. The culture of public consultation has deep roots. It begins early in the process of developing regulations and relies on both formal and informal procedures. For example, *ad hoc* groups are often established to prepare drafts, with the support of outside experts as well as input from civil society. In comparison with the other countries examined, the OECD team received little in the way of unfavourable comment concerning consultation. The interviews did not, however, shed much light on the practice of seeking consensus.

The administration is readily accessible, but private citizens are less likely than businesses to take an active part in the development of regulations. The OECD team detected an awareness in some parts of the administration that the culture and the tools for sounding out public perceptions of regulation should be reinforced. On the other hand, it was not always clear just how this should be done. The team was told that citizens were more involved downstream than at the upstream stage of drafting, but that "civil society is more active and interested than it was ten years ago".

Luxembourg needs to broaden its approach to consultation so that the form it takes can be tailored to a particular case. Public consultation can take many forms – permanent structures, working groups, public debates with technical support via the

Internet, the media, etc. ICT can be particularly useful for boosting participation by civil society and the general public, and for ensuring transparency of the kind that will strengthen a country's democratic foundations.

Recommendation 3.1. Develop use of the Internet in a (initially) targeted and specific manner for certain consultations so as to take better account of public views, and to gain "in the field" experience, following the examples of other countries such as Portugal and Finland. Establish an electronic portal for these consultations.

Luxembourg does not have a framework for public consultation to support ministries. A growing number of EU countries have established procedures, guidelines and training for ministries, to help them consult with the public more effectively.

Recommendation 3.2. Establish guidelines for consultation. Share experiences among ministries to identify best practices and the most useful processes.

Access to the law

Luxembourg has a very complete and accessible set of directories and databases concerning the law. They constitute an excellent starting point, and they incorporate the good practices that have been instituted in most EU countries. However, if the law is to be truly accessible and understandable for every citizen, the work of consolidation and codification (discussed in Chapter 5) is crucial.

Background

Public consultation on regulations

Public consultation in Luxembourg relies on an administrative culture of seeking consensus. This is widely recognised as necessary for the quality and effective implementation of laws and regulations. Most draft reforms are the subject of broad consultations, formal and informal, to detect a consensus. Given the size of the country, it is fairly easy to rally different players and stakeholders around a specific proposal.

When preparing a draft bill, the initiating ministry may hold informal consultations with outside experts, businesses or other advisory bodies, public or private. It may also create *ad hoc* groups. This kind of informal consultation at an early stage in the process takes place frequently, and many interview participants stressed that there is a deeply rooted tradition of consultation in Luxembourg. In practice, consultation involves businesses primarily, and to a lesser extent nongovernmental organisations such as trade unions.

The general public is informed rather than consulted, a fact that is in part offset by the ease of access to government ("citizens can react, and they do"), and the swift circulation of information.[2] Some participants mentioned that civil society was now intervening more actively. Others remarked that it would be useful, indeed essential, at this stage to strengthen links to the citizens in advance of a decision.

Ad hoc prior consultations on a proposal are supplemented by more formal consultation once the preliminary draft bill has been approved by the Council of Government. The preliminary draft then moves to the draft bill stage and is tabled in Parliament. During this procedure, the government is required to consult the Council of State (see Chapter 4) and the various professional chambers (Chamber of Commerce and Chamber of Trades). The

opinion of a professional chamber must be sought for any draft law (governmental initiative) concerning that particular profession. As to governmental amendments to draft bills for which their opinion has already been requested, these are transmitted to the professional chambers if the initiator of the bill deems it useful to have their opinion on the amendments proposed. The professional chambers also have the right to make proposals to government on matters within their purview, and the government must examine and transmit them to the Chamber of Deputies. The government may also decide to consult the Economic and Social Council, the tripartite body for social dialogue and consensus building (Box 3.1). Here again, consultations tend to focus on businesses through their representatives.

Box 3.1. The Economic and Social Council

The Economic and Social Council, instituted by the amended law of 21 March 1966, is the government's standing advisory body on the economic and social affairs of the country. It represents the central and permanent tripartite body for social dialogue and consensus building among the social partners at the national level. The CES has 39 full members and the same number of alternates, divided into three groups: 18 employers' representatives appointed by the Government in Council at the proposal of the most representative professional organisations (13 representatives of businesses, 3 representatives of agriculture, 2 representatives of the liberal professions); 18 employee representatives appointed by the Government in Council at the proposal of the most representative professional organisations nationwide (14 representatives of private sector employees, 4 representatives of public sector officials or employees); 3 representatives appointed directly by the Government in Council, with recognised expertise in economic, social and financial matters. As a general rule, the members of the third group are senior officials who are experts in the economic, finance and social security fields. The mandate runs for four years and is renewable.

The Minister initiating a draft bill may seek the opinion of specific public or private advisory bodies if he deems this useful for analysis of the proposal by the Council of State and the Chamber of Deputies. Similarly, the committees responsible for analysing a bill in the Council of State and the Chamber of Deputies may turn to outside experts. Thus, in late 2008 and early 2009 the Special "Anti-Crisis" Committee of the Chamber of Deputies invited experts and representatives from the economic, financial and social sectors to prepare a report with proposals that would allow the government to address the international economic and financial crisis.

Pursuant to Article 22.7 of the rules of procedure of the Chamber of Deputies, at the request of a committee the Conference of Presidents may authorise formal public hearings. These public hearings deal with particularly important legislation and may, if appropriate, be broadcast directly over the parliamentary television channel.

The use of ICT is generally confined to Internet publication of draft bills and regulations as well as (and this is just as important for transparency) the opinions of the various bodies consulted during the formal process. Draft bills and Grand Ducal regulations may thus be consulted at the website of the Chamber of Deputies as soon as they are tabled, as may the opinions of the professional chambers, the parliamentary committees and the Council of State. The Economic and Social Council also publishes its opinion at its website. Rulings of the Administrative Court, the Court of Cassation and the Constitutional Court may also be consulted via Internet.[3] The opinions of the Council of State (*www.ce.lu*), the Chamber of Commerce (*www.cc.lu*), the Chamber of Trades (*www.cdm.lu*), the Chamber of Employees (*www.csl.lu*), the Chamber of Agriculture (*www.lwk.lu*), the Chamber of Public Officials and Employees (*www.chfep.lu*) and parliamentary proceedings in the Chamber of Deputies (*www.chd.lu*) are made public and can be consulted in print or via Internet.

Access to the law

Publication of laws

Article 112 of the Constitution declares: "No law or general or communal administrative decision or regulation shall come into force until it has been published in the form determined by the law". Legislative and regulatory acts become binding four days after they are published in the official Gazette (*Mémorial*), unless a shorter or longer time has been set. The *Mémorial* is also available on *Legilux*, the legal portal of the Government of the Grand Duchy of Luxembourg managed by the Central Legislation Service. The *Mémorial* includes three distinct sections: the legislative section or *Mémorial A* (legislative and regulatory acts), the administrative section *Mémorial B* (individual administrative acts, circulars and notices); the corporations and associations section or *Mémorial C* (containing publications relating to corporations and associations stipulated by law).

The SCL publishes a compendium of legislation that provides access to all substantive law in force. This compendium, the first edition of which was published in 1996 under the name "General Compendium of Legislation", was revised in 2009. The new "Analytical Compendium of Luxembourg Law" (RADL) brings together all legislation and regulations, organised by subject matter and keywords (whereas the previous compendium listed texts by ministerial department or administration). The RADL is available at *Legilux*, where it is updated daily. The SCL also publishes a yearly official government directory containing the responsibilities of the various departments and services, the names and functions of their personnel.

The data from *Mémorial A* (legislative and regulatory acts) available at *Legilux* are supplemented by various codes. These are legal codes or compilation codes (see Chapter 5) as well as collections of legislation grouped around a specific theme, co-ordinated texts, and a selection of case law. In areas of interest to businesses, collections of laws have been published relating to electronic commerce (2004), public procurement (2004) and the financial sector (2008). *Legilux* also contains practical guides to legislation, for example dealing with non-contentious administrative procedure and legislative and regulatory procedure (see Chapter 4).

Legilux also contains foreign-language translations of legislation and regulations of interest to a significant number of professionals and other persons with little or no knowledge of the language of official publications of the Grand Duchy. An example is the booklet entitled "Law concerning commercial companies, 2003".

Lastly, the RADL, published in 2009 by the SCL, presents an exhaustive inventory of substantive law currently in force (updated to 31 December 2008) in Luxembourg. The RADL can be consulted at *www.Legilux.lu*, and direct links to the texts allow rapid access to all laws and regulations applicable in Luxembourg.

The Chamber of Deputies also publishes legislation and parliamentary documents at its website (*www.chd.lu*). Since January 2010, the minutes of committee meetings, after signature, have been published at the Chamber's website. (Meetings of the Bureau, the Conference of Presidents, the Parliamentary Control Commission for Oversight of the State Information Service and those dealing with visits of international delegations are not made public, however). In other words, the citizen can follow the progress of a draft bill through to publication of the law in the *Mémorial*.

Access to administrative documents

The citizen's right of access to public information is not covered by any general regulation at the present time. The government programme 2009-2014 calls for adoption of a law on the general right of access to administrative documents, inspired by legislation adopted in neighbouring countries and by recommendations of the Council of Europe. On the other hand, there are principles and rules governing citizens' access to their administrative files. The law of 1 December 1978 governing the non-contentious administrative procedure enshrines the citizens' right to be heard and to obtain their administrative file. The Grand Ducal regulation of June 1979 on the procedure to be followed by administrations of the State and the communes enshrines the right of all citizens to full communication of the file on their administrative situation, as well as the information on which the administration has based or intends to base an administrative decision that would affect a citizen's rights and interests.

Notes

1. Procedures for rule-making (Chapter 4); codification (Chapter 5); appeals (Chapter 6).
2. Formal and direct public consultations according to the rules of direct democracy (*e.g.* Switzerland) takes place only rarely, when the government and the Chamber of Deputies decide by means of a law to consult the population on a matter of general interest through a referendum (see Law of 14 April 2005 on holding a national referendum on the Treaty Establishing a Constitution for Europe, signed at Rome, 29 October 2004).
3. *www.justice.public.lu/fr/index.html.*

Chapter 4

The development of new regulations

Predictable and systematic procedures for making regulations improve the transparency of the regulatory system and the quality of decisions. These include forward planning (the periodic listing of forthcoming regulations), administrative procedures for the management of rule-making, and procedures to secure the legal quality of new regulations (including training and guidance for legal drafting, plain language drafting, and oversight by expert bodies).

Ex ante impact assessment of new regulations is one of the most important regulatory tools available to governments. Its aim is to assist policy makers in adopting the most efficient and effective regulatory options (including the "no regulation" option), using evidence-based techniques to justify the best option and identify the trade-offs involved when pursuing different policy objectives. The costs of regulations should not exceed their benefits, and alternatives should also be examined. However, the deployment of impact assessment is often resisted or poorly applied, for a variety of reasons, ranging from a political concern that it may substitute for policy making (not true – impact assessment is a tool that helps to ensure a policy which has already been identified and agreed is supported by effective regulations, if they are needed), to the demands that it makes on already hard pressed officials. There is no single remedy to these issues. However experience around the OECD shows that a strong and coherent focal point with adequate resourcing helps to ensure that impact assessment finds an appropriate and timely place in the policy and rule-making process, and helps to raise the quality of assessments.

Effective consultation needs to be an integral part of impact assessment. Impact assessment processes have – or should have – a close link with general consultation processes for the development of new regulations. There is also an important potential link with the measurement of administrative burdens (use of the Standard Cost Model technique can contribute to the benefit-cost analysis for an effective impact assessment).

The use of a wide range of mechanisms, not just traditional "command and control" regulation, for meeting policy goals helps to ensure that the most efficient and effective approaches are used. Experience shows that governments must lead strongly on this to overcome inbuilt inertia and risk aversion. The first response to a problem is often still to regulate. The range of alternative approaches is broad, from voluntary agreements, standardisation, conformity assessment, to self regulation in sectors such as corporate governance, financial markets and professional services such as accounting. At the same time care must be taken when deciding to use "soft" approaches such as self regulation, to ensure that regulatory quality is maintained.

An issue that is attracting increasing attention for the development of new regulations is risk management. Regulation is a fundamental tool for managing the risks present in society and the economy, and can help to reduce the incidence of hazardous events and their severity. A few countries have started to explore how rule-making can better reflect the need to assess and manage risks appropriately.

Assessment and recommendations

Procedures for producing regulations

There is a shortage of up-front information and systematised processes for developing regulations. Internal consultation is a key element for the coherent evolution of the legislative framework. In much of the EU, such consultation is mandatory and formalised. That said, the most useful approach is probably to combine formal and informal upstream consultation. Internal consultation is often entrusted to inter-ministerial committees (*ad hoc* or permanent) responsible for specific policy formulation, and it relies on ICT (for example, a government intranet) to make it effective. Recent years have seen a clear improvement in systematising the production of regulations, but implementing the process still seems to be highly decentralised. Luxembourg needs in particular to introduce an application for paperless production of regulatory texts – one that will carry the process from the sponsoring ministry through all the intervening stages to final publication in the *Mémorial* (for now, the procedure is entirely paper-based).

Recommendation 4.1. Strengthen upstream co-operation among ministries. Publish the government programme and any changes to it, in particular drafts of laws (and of important regulations) to give them greater visibility and allow stakeholders the chance to make their opinions known. Examine the potential of electronic systems for more effective data sharing between ministries and with parliament. Improve online tools. Make clear who will have the lead in implementing these mechanisms.

It should be noted in this context that all draft laws and all proposals for laws are published in the form of "Parliamentary documents", which can be consulted on paper and at the website of the Chamber of Deputies (*www.chd.lu*), and which will include any amendments, the opinion of the Council of State, the report of the competent committee, and the opinions of professional associations.

Legal quality control also requires attention. Upstream control of legal quality is not assured, and the resources currently in place are inadequate relative to the task. As one interviewee told the OECD team, "it is not a disaster, but we could do better". Legal quality depends above all on the work of the Council of State, which becomes involved in the procedure only very late.

Recommendation 4.2. Review the legal control process to have it start as soon as possible in the procedure. Review the structures and capabilities for quality control, by establishing a panel of jurists within government (following the United Kingdom's example) or a strengthened partnership with CSA or SCL in the early stages of the process of developing regulations, and boost their resources.

There are no fixed deadlines for the Council of State to issue its opinion – an essential step before a regulatory draft can proceed. In practice, response times vary, depending on the text in question. This can hold up the legislative process for as long as two or three years. Many interviewees raised this issue, stressing the need for reform.

Recommendation 4.3. Establish a timeframe for the Council of State to issue its opinions.

***Ex ante* impact assessments are a weak link in the regulatory process, and the CSA is now working to strengthen them.** There has nevertheless been progress. There is now an integrated impact assessment form, and it is being filled out more or less completely. The culture is slowly taking hold, but much remains to be done.

A better performance based on sound policy decisions must start with a clear political statement of the importance of impact assessment. As a first step, the government must demonstrate the political will to support the procedure, for otherwise stakeholders within the administration will not change their attitude. Other EU countries (*e.g.* Finland) have found it useful to communicate clearly in the government programme that this process is deemed essential. To reinforce the message, it would be helpful to draw the link between administrative simplification and impact assessments, as reducing red tape is already seen as important. The Cabinet could at the same time affirm its support. Luxembourg might consider whether a law would be useful to make impact assessments mandatory (as France and Spain have done).

Recommendation 4.4. Identify ways of reinforcing communication on the importance of producing impact assessments at the initial stage of developing regulations so as to avoid the need for *ex post* clean up. Consider how impact assessments can be made compulsory.

The requirements for impact assessments need to be reinforced. Impact assessments must take into account the "regulatory cycle", *i.e.* the planning, implementation and evaluation stages. Some very specific elements of this process, as discussed below, have proven their worth in other EU countries and should be reinforced in Luxembourg.

Strengthening the upstream institutional framework and sanctions is essential. There must be an organism responsible for guaranteeing the quality of impact assessments before they are presented to Cabinet. This could be the CSA or the SCL, or a mixed body derived from both entities. In any case, it must be centrally positioned, with access to the process of preparing policies and regulations, so that it can intervene promptly and decisively as "gatekeeper", *i.e.* it must have the power to reject an inadequate study and to insist on a proper assessment before a draft is submitted to Cabinet. In Luxembourg it is probably neither necessary nor useful to create a new body. Nevertheless, consideration should be given to strengthening the human resources available for this work. Their role should be clearly distinguished from the process of verifying general procedures for developing regulations. These are intended to ensure that formal procedures are duly observed and are concerned only marginally with the substance and the quality of the assessments, which is a separate task.

Recommendation 4.5. Review and strengthen institutional arrangements for producing high-quality impact assessments.

Ministries need more support if they are to produce high-quality impact assessments. As in most other EU countries, ministries are responsible for carrying out impact assessment, and this in turn gives them a sense of ownership. In order for results to come up to expectations, ministries need to be offered specialised training. The introduction of special courses could also be useful to strengthen networking amongst officials, forge links between ministries, and share experience. The CSA already offers courses, and it would be interesting to compare these with the ones provided in other small countries. For example, Ireland offers regular, well-structured courses that have been very well received

and are attracting growing numbers of civil servants. Training needs to be backed by guidelines for ministries to use in preparing assessments. Those guidelines could be part of the practical handbook on legislative and regulatory procedure, but whether they are instructions or not, should be supported by concrete examples, must be clear and – to promote a sense of ownership of the process by ministers and officials who "don't see the use of it" – should contain a forthright explanation of the logic and the importance of assessments for better regulatory governance.

Recommendation 4.6. Review training courses for possible improvements, and ensure that they are part of compulsory training and are taken by the largest possible number of civil servants. Incorporate these into the revision of the general manual.

The recently overhauled impact assessment statement seeks to correct some of the defects of the previous version; improvements should be pursued. The current impact assessment form was revised in 2010. The change took place after the OECD mission and thus could not be evaluated. The CSA has instituted a quantified assessment of administrative burdens, using the Standard Cost Model, but it should consider going further. For example, the environment and sustainable development do not figure among the areas covered by the assessment, nor does the impact on the economy beyond the SME sector.

Recommendation 4.7. Consider further changes to the impact assessment format. Review the standard form to include all fields important to decision making (*e.g.* the environment). Review the methodology to highlight the need for quantification, if possible, or at least for a sound qualitative evaluation of all costs and benefits of a proposed regulation.

The stages of the process should also be reviewed. The process needs to be clearly targeted. A balance must be struck between the scope of application of the mechanism and the proportionality of the effort, with care taken not to make the process too cumbersome.

The mechanism contains no obligation for consultation with outside stakeholders, nor any requirement for publication. If impact assessments are to be of real use in decision making, public consultation is essential in order to gather the necessary inputs. The current explanatory note highlights the importance of stakeholder consultation, which is the first item on the impact statement form. Releasing and publishing assessments would reinforce the message to stakeholders that the process is taken seriously, and at the same time, allowing their contents to be shared with all parties involved in the regulatory production chain, in particular the Council of State and the Chamber of Deputies, which currently have no access to the assessments.

Recommendation 4.8. Make public consultation and publication of impact assessments mandatory.

Lastly, the mechanism must be evaluated if it is to be effective. Regular evaluation of the mechanism is essential for ensuring not only that the assessments are conducted properly, but that they are useful as tools for decision-making and provide the desired backing for optimal drafting of regulations. Evaluations should be planned systematically. The Court of Auditors might be willing to assist in this regard.

Recommendation 4.9. Evaluate the impact assessment mechanism regularly, and publish the evaluations. These could be included in the CSA's published reports on progress with simplification.

Alternatives to regulation

It would be useful to reinforce the message that the alternatives to regulation must be considered systematically, as well as the option of a risk-based approach, at a stage which is not too late in the decision-making process. Several participants stressed the need to take better account of the danger of producing too many regulations. There does not seem to exist a systematic assessment of the "zero regulation" option, and a risk-based approach to the development of regulations is not evident either – an approach that could also help limit overproduction. It is not enough to mention alternatives in the impact statement: the pressure has to be maintained.

Background

The hierarchy of rules in Luxembourg

Rules in Luxembourg include laws (which may be initiated either by government or by parliament) and regulations (reserved to government initiative).

Box 4.1. The legislative and regulatory structure in Luxembourg

The Constitution

The first Luxembourg Constitution was drafted in 1841, two years after the country's independence in 1839. The current constitution dates from 17 October 1868. It has undergone several amendments since then.

Laws

A law is defined as a rule voted by the Chamber of Deputies that has been promulgated by the Grand Duke. The initiative for a law may come either from the Chamber of Deputies or from the government. The law of 12 March 2009 amended the Constitution by deleting from the legislative process the requirement that the Grand Duke must sanction laws by affixing his approval to the texts adopted by parliament.

Regulations

Grand Ducal regulation. The Constitution gives the Grand Duke the general power to issue the regulations needed to execute laws and treaties. The sole constitutional condition for the formal validity of Grand Ducal regulations is that they be countersigned by a minister. The Constitution, however, is supplemented by other texts. In particular, the Royal Grand Ducal order of 9 July 1857 on the organisation of government requires that all measures submitted to the Grand Duke must have been debated within the Council of Ministers. Failure to observe that rule will nullify the regulation.

Ministerial regulation. The members of the government may take measures for applying the provisions of laws or Grand Ducal regulations, provided they do not expand the scope of application of the instrument for which they are issued, for example by introducing additional obligations or sanctions.

Regulation issued by public institutions. The law may grant public institutions (for example CSSF or the Insurance Commission) the power to issue regulations within their field of specialisation. The law may subject these regulations to approval of the oversight authority or may even provide for their nullification or suspension in case of illegality.

Order (*Arrêté*). Orders concern individual decisions adopted by the Council of Government (Grand Ducal order) or by a minister (ministerial order).

Trends in regulatory output

Luxembourg does not seem to suffer from significant regulatory inflation (a major problem for some other EU countries). Several interview participants suggested to the OECD team that Luxembourg is not a great producer of rules, in contrast to the EU, the regulatory output of which weighs heavily on the country and on its capacities to cope with that output. The problem cited by some participants had to do, rather, with problems in preparing or transposing texts into clear, understandable and accessible laws (see Chapter 5). This can of course be laid in part to overproduction but also to the shortage of personnel with a sound mastery of legal drafting (see Chapter 2).

Table 4.1. Production of new laws and regulations, 2000-08

	2000	2001	2002	2003	2004	2005	2006	2007	2008
Laws	75	91	96	119	118	110	118	96	97
Transposing one or more Community directives	12	8	11	8		16	23	25	21
Grand Ducal regulations	292	269	233	266	257	229	275	278	301
Transposing one or more Community directives	120	37	42	93		83	59	61	45
Regulations of the Government in Council	2	6	3	1	3	6	2	2	4
Ministerial regulations	28	31	29	27	39	260	384	311	18
Grand Ducal orders	14	12	11	11	30	9	2	21	18

Note: laws approving international conventions are included in the total number of laws (6 in 2008).

Source : Ministère d'État, Département aux relations avec le Parlement, Service central de législation, *Rapport d'activité 2008*, March 2009.

Procedures for making new regulations

Legislative programming

Following the June 2009 elections, the government (as it does following all general elections) set a timetable for implementing the reforms contained in the government programme 2009-14. At the beginning of the legislative session, a timetable of reforms is established for the first half of the session. The General Secretariat of the Council of Government reports twice a year on progress against that timetable. The Central Legislation Service provides a weekly update of draft bills, for tracking bills introduced in the Legislature. These two documents (timetable of reforms and list of bills) are internal government documents and are not published. Unlike the situation in some other EU countries, then, there is no "public face" to this programming. The OECD team also found that upstream inter-ministerial co-ordination of drafts was often ineffective.

Procedures for preparing draft laws and regulations

Preliminary draft bills are prepared by the various ministerial departments and transmitted to the Prime Minister. The preliminary draft is then communicated to the General Secretariat of Government, assisted by a group of senior officials known as the "Pre-Council". They are circulated to the different ministerial departments within a week after the weekly meeting of the Council of Government. That circulation is done in hard copy (departments must send 50 copies of preliminary drafts), as the Luxembourg

administration does not have an application for dematerialising the preparation of legal texts. After approval by the Government in Council, the department initiating the bill transmits it, if it is considered urgent, to the Chamber of Deputies and to the Council of State, together with any amendments to the initial draft. Under ordinary procedures, the Council of State's opinion should be available at the time the draft bill is tabled in the Chamber of Deputies. Other advisory bodies such as the professional chambers and the Economic and Social Council may intervene in the preparatory phase, as provided by law.

A practical guide to legislative and regulatory procedure exists, and it is now being revised.

Since 2004, the General Secretariat of Government has tried to systematise the process of preparing laws. The preliminary draft bill must be accompanied by a set of documents and if the file is incomplete the General Secretariat will not place it on the agenda of the Council of Government. These documents are the following:

- Preamble (statement of reasons).
- Commentary on the articles.
- Opinion from the Minister of the Civil Service and Administrative Reform for all drafts affecting an administration's personnel organisation or reorganisation.
- Opinion of the advisory bodies, if necessary (professional chambers, Economic and Social Council).
- Impact assessment report relating to "Better Regulation" and equal opportunities between men and women.
- Financial report on the expected fiscal impact (in which case the preliminary draft is submitted for an opinion from the Minister of the Treasury).
- A note to the Council of Government comprising:
  - A succinct summary of the purpose and contents of the bill.
  - A description of amendments that it would make to existing legislation, or any changes from a previous version already approved by the Council of Government.
  - Mandatory indication as to whether the draft contains aspects that fall within the competence of another ministerial department and if there has been appropriate consultation with such department(s).
  - The list of questions to be settled or decisions to be taken by the Council of Government.

As in the case of legislation, the Council of State plays an advisory role in the normal regulatory procedure. Its opinion is required for all draft Grand Ducal regulations other than those adopted in an emergency. Certain Grand Ducal regulations may be legally required to be put for consultation to the Conference of Presidents of Parliament. The professional chambers may be asked for their opinion on any draft Grand Ducal regulation that affects

their members. As for the Economic and Social Council, it intervenes only on an exceptional basis.

Box 4.2. The procedure for developing rules in Luxembourg

Draft bills (at government initiative)

- The Grand Duke advises the Chamber of Deputies of the draft bills he intends to submit for adoption. Upon approval by the Council of Government, the member of government concerned is authorised to begin the legislative process.
- Once approved by the Council of Government, the draft bill is submitted to the Council of State for its opinion.
- Next, the initiating ministry prepares a Grand Ducal order authorising it to table the bill in the Chamber of Deputies.
- The Ministry of State informs the initiating ministry of the date of sovereign signature of the tabling order, whereupon the member of government concerned is authorised to place the bill in the hands of the president of the Chamber, in a public sitting, or to submit it via the clerk of Parliament.
- Once the draft bill is printed as a parliamentary document, it becomes a public document and may be consulted by any interested person.
- The initiating ministry is informed of the draft's approval by the Council of Government (extract from the minutes) and sends a letter requesting the Minister for Relations with Parliament to seek the opinion of the Council of State.
- Draft bills approving an international convention do not need to go through the Council of Government, as the minister concerned already has full powers from the Grand Duke to sign the convention.
- The bill may be tabled in the Chamber either before or after its submission to the Council of State. In practice, however, most bills are tabled in the Chamber before the Council of State is consulted and/or before its opinion is received.
- In no case may the Chamber take a definitive vote on the entire bill before the Council of State has communicated its opinion.
- In practice, parliamentary committees await receipt of the Council of State's opinion before examining the bill in depth.
- Unless the committee or the Chamber decides otherwise, the committee's preparatory work will be done in closed sitting and the committee may decide, by unanimous vote, to keep its deliberations secret.
- The opinion of the Council of State is communicated to the committee examining the bill, and the committee will finalise its report or propose amendments on the basis of that opinion.
- The final parliamentary report is written; it contains an analysis of the documents received and of the committee's deliberations, as well as the substantiated conclusions and the text that the committee will put to the Chamber for vote.
- As a general rule, the Chamber will never take a definitive vote on the entire bill until it has

received the opinion of the Council of State.

- If the Chamber takes a vote on the bill without having received that opinion, the Council of State, having been so informed, has three months to issue its opinion on the draft bill or on any amendments to the initial text.
- Unless the Chamber decides otherwise, at least three days must elapse between presentation of the report and the beginning of debate in public sitting.
- The Chamber fixes the date for the plenary debate after considering the report of the committee concerned.
- Once the committee has adopted its report, the Conference of Presidents will place the draft bill on the agenda in a public sitting.
- Immediately after presentation of the committee report, representatives of the various political groupings and the listed speakers will speak to the bill; the minister responsible for the bill will be the last to speak, unless he insists on intervening immediately after the *rapporteur*.

Draft bills (at parliamentary initiative)

- Every deputy has the right to propose a bill, signing it and submitting it to the Bureau of the Chamber. The Chamber decides whether to receive a proposed law, at the proposal of the Conference of Presidents.
- The proposal is transmitted to the government, which may issue an opinion, and is then referred by the Conference of Presidents to a committee.
- The proposal is placed on the agenda of a meeting of the committee and then, within six months after submission, the question of whether to pursue the legislative procedure will be discussed at a public sitting.
- If the Chamber is in favour of pursuing the legislative procedure for the proposal, the Conference of Presidents will refer it to a committee for examination. It is also submitted to the Council of State and the interested professional chambers for their opinion.
- If the Chamber decides not to pursue the legislative procedure for the proposal, the proposal will be deemed dismissed. A proposal that the Chamber has dismissed or not adopted may not be reintroduced during the same session.
- Any report favouring a parliamentary initiative that would increase public expenditure, directly or indirectly, must indicate the funds or the expenditure cuts needed to cover the outlay or the forgone revenue that the proposal would entail.
- A deputy may withdraw his or her proposal before the vote to pursue the legislative procedure, in which case the Chamber is so informed.
- Withdrawal of the proposal after the vote on legislative procedure must be decided by the Chamber at the proposal of the Conference of Presidents.
- A proposed bill cannot be withdrawn after the first constitutional vote.
- Draft bills are assigned by the president of the Chamber to one of the standing committees.
- That committee will consider it and make its report promptly, if it decides not to submit any amendments for the (supplementary) opinion of the Council of State. The report is distributed

to members of the Chamber.

- The report is presented at a public sitting of the Chamber by the committee *rapporteur*. After hearing the report, the Chamber will hold a public debate dealing with the principle, the bill as a whole, its individual articles, and any amendments.
- The initiator and the committee *rapporteur* will defend their respective points of view.
- Any member of the Chamber may intervene in the debate. Deputies may present amendments during the debate; they must be drafted in writing and submitted to the president of the Chamber, and they must be supported by at least five Deputies.
- If the Chamber decides to send the amendments to the Council of State or to a parliamentary committee, debate may be suspended until the Council of State has issued its opinion or the committee has drafted its supplementary report.

Regulatory procedure

- As the Grand Duke is authorised by the Constitution to exercise regulatory power, Grand Ducal regulations are always a government initiative.
- After preparing a draft regulation, the initiating ministry transmits the file, with all the required documentation, in 50 copies, to the Prime Minister (Minister of State) for submission to the Council of Government for approval.
- Upon approval by the Council of Government, the "preliminary draft Grand Ducal regulation" becomes the "draft Grand Ducal regulation" and may be introduced into the procedure.
- For this purpose the initiating minister sends a letter to the Minister for Relations with Parliament (on behalf of the Prime Minister).
- The letter of submission to the Council of State must be accompanied by the documentation constituting the file.
- The Central Legislation Service transmits the file to the Council of State for its opinion and to the members of government concerned by the regulation for information.
- The Council of State sends its opinion to the Prime Minister – Central Legislation Service, for communication to the initiating minister and the other members of government concerned.
- Once the Council of State's opinion is received, the initiating minister will amend the draft text in accordance with any observations in that opinion.
- The opinion of a professional Chamber is required for any draft Grand Ducal regulation that would principally affect its members.
- If the Council of State's opinion does not give rise to any major amendments in the initial text that would require a supplementary opinion, the initiating minister may publish the measure with the force of law.

Verifying legal quality

Draft bills are examined by the Central Legislation Service and by the Council of State. The SCL has limited resources, with only one jurist on its 15-member team (the others having various university degrees) and it is not in a position to exert proper control over the

legal quality of all texts. The SCL does not currently provide technical assistance to the ministries, except on a voluntary and informal basis, even though the drafting quality of the texts could be improved by consulting the SCL during their preparation. As was noted during the interviews, such consultation could be more effective than an *ex post* opinion issued after the draft has been finalised. The Council of State, which belongs neither to the executive nor the legislative branch, also reviews the quality of draft bills and regulations as an external legal auditor.

Legal quality control is limited, then, by the fact that it comes so late in the production process: this observation applies both to the Council of State's review, which comes only after the text has already been adopted by the Government in Council, and to that of the SCL. Lack of time is also cited as an obstacle to legal quality control. The legal quality of texts is heavily dependent on the legal drafting skills of the ministerial departments. Basic training for new officials includes sessions on legal drafting. The technical support provided to drafters is however limited, as the OECD team was told by several participants. Drafters have a practical guide that was prepared by the SCL in 2003 in collaboration with the Council of State and the Secretariat of the Chamber of Deputies. That guide details the steps in preparing new draft laws and regulations, but it does not explain the technical aspects of drafting texts.

The special role of the Council of State

The role of the Council of State goes beyond that of a legal audit of the constitutionality of the texts submitted to it. It pronounces itself on both the substance and the form of drafts (including questions of legal drafting and conditions of application), and even, at times, on the appropriateness of the proposal. Its response times vary, depending on the texts. They are not specified, a fact that can hold up the legislative process (in some cases, those times can be as long as two or three years). The so-called "formal" objections of the Council of State are particularly important, as they may foreshadow subsequent refusal to waive the second constitutional vote.[1]

While its opinion is not binding, the Council of State has a second important lever at its disposal: this is the power to waive the second vote by the Chamber of Deputies. According to the Constitution, all bills must be submitted to a second vote unless the Chamber, in agreement with the Council of State, decides otherwise at a public sitting (which is rare). The Council of State justifies its refusal of the waiver, either in a public session or in writing. If it refuses the waiver, the Chamber of Deputies must wait at least three months before taking a definitive vote adopting the law. This mechanism was designed to counterbalance the powers of a unicameral parliament. In principle, the Council of State reserves its right of suspensive veto for proposals it deems to be in conflict with higher-ranking national and international rules, or to have serious legal defects. In effect, the opinion of the Council of State constitutes a kind of jurisprudence that ministries take into account.

Ex ante impact assessments

Background and current approach

The first impact assessments in Luxembourg were conducted in the late 1990s. Since the budget law of 8 June 1999, any preliminary draft bill with budgetary implications must be accompanied by a report assessing its short, medium and long-term fiscal impact. All such drafts must be submitted, with the impact report, for the opinion of the Minister of

Treasury and Budget. Since 1998 the initiators of laws and regulations must also complete an equal opportunities impact form.

This mechanism was reviewed and validated in January 2006 by the plenary assembly of the CSA. Currently, a comprehensive impact assessment report covering several criteria (Box 4.3) is mandatory and must be transmitted with the draft law or regulation to the Council of Government. The purpose of that report, as described by the CSA, is "to measure the economic impact – *i.e.* the administrative and financial burdens – that laws and regulations would impose on the persons or businesses affected."

The current impact assessment form was revised by the CSA in April 2010, as the previous one had not produced the desired results. During its November 2009 mission (when the previous form was still in effect), the OECD team received the following observations. The form is supposed to be easy to understand and use, but completing it often amounts to simply ticking the boxes without much concern as to substance, and the ministries have not really asserted ownership over it. The forms are completed "at the last minute", because this is an obligation. As one participant commented, "the text isn't going to change", and the assessment will thus have little influence on the decision taken. The assessment form, while simple enough in its structure, nevertheless covers a broad field and completing it can be a daunting task. The methodology is largely qualitative, and it could be improved if some of the elements were quantified with, for example, some economic analysis and cost/benefit figures.

The revised assessment form:

- Simplifies and reduces the number of elements that must be reported.
- Establishes a three-part structure: "Better Regulation", "Equality of Opportunities"; and "Services Directive".
- In the "Better Regulation" section, a significant portion is devoted to administrative simplification, including innovative features such as regrouping formalities, interagency data sharing, and tacit authorisation. The explanatory note to the impact assessment form also stresses the importance of consulting stakeholders at least eight weeks before the preliminary draft is submitted to the Council of Government.

The assessment form is targeted at proposals originating with the central executive branch (governmental administration), either as draft laws or draft Grand Ducal regulations, as well as all administrative procedures that affect businesses. The initiators of the draft in question must briefly describe the purpose of the draft and the bodies consulted on the matter. As in other EU countries, this procedure does not apply to parliament-initiated legislative proposals, which fall under parliamentary authority.

The preliminary draft of a law must also be accompanied by a statement of reasons (preamble), a commentary on the articles, the opinion of the Ministry of the Civil Service and Administrative Reform (for all drafts affecting an administration's personnel organisation or reorganisation), the opinions of the bodies consulted (if there are any at this stage), as well as a draft decision and, if appropriate, a draft press release. There must also be a memorandum to the Council of Government briefly summarising the objective and content of the file, with a description of the proposed changes to existing legislation or to an earlier version of the proposal already approved by the Council of Government, an indication as to whether the proposal contains aspects that fall to another ministerial

department and, if so, whether that department has been consulted, and a list of questions to be settled with respect to the decisions to be taken by the Council of Government.

The Luxembourg government stresses the essential message of the OECD and of the 2001 Mandelkern Commission report to the European Commission to the effect that the impact assessment is not a substitute for the political decision but, on the contrary, allows that decision to be taken in full knowledge of the situation.

The impact report form has been designed as a simple exercise and, consistent with its name, it amount essentially to a series of boxes to be ticked, and not to a full-blown impact assessment. Ticking the boxes can readily be reduced to a last-minute formality, completed just before the text is transferred to the Secretariat of Government. The OECD interviews found that this was frequently the case and that, among ministerial departments, the impact assessment was for the most part an unfamiliar exercise, of little apparent value added. There is great resistance to quantified impact analysis. The forms are completed, but their content is not of much use. The fact that the forms are not published makes them even less useful for public debate, including parliamentary debate, and their lack of visibility makes administrations even less inclined to fill them out carefully. In April 2010 the CSA updated the report form to make it more effective. At the same time, it rolled the equal opportunities form into the updated impact evaluation form.

Institutional framework

The impact assessment forms for draft bills and regulations are supposed to be completed by the initiating ministerial department, as they are in most other EU countries and as they must be to ensure a sense of ownership. A Simplification Co-ordination Committee (CCS) has been established to examine the impact forms. It comprises two officials of the Ministry of State (of which the CSA is part), two officials from the Ministry of the Civil Service and Administrative Reform, two officials of the Ministry of the Middle Classes and Tourism, and two officials of the Ministry of Economy and External Trade.

The CCS issues an opinion on the basis of the impact evaluation forms submitted by the General Secretariat of the Council at the time the initiating Ministry submits the preliminary draft law. This formal opinion must allow the authors of legislative and regulatory proposals to improve and simplify their texts. When faced with complex and specialised cases, the CCS will consult with experts. With texts of Community origin, it checks to see that the principle of "the whole directive and nothing but the directive" has been observed. The impact assessment form and the formal opinion of the CCS are presented to the Council of Government, together with the corresponding draft of the law or Grand Ducal regulation.

Support and training

The CSA has issued an explanatory note on the points to be observed in the course of preparing the impact assessment study, and this is available at its website (*www.simplification.lu*).[2] That note invites officials to turn to the CSA with any questions. The CSA also offers four continuing training courses each year, open to all officials, dealing with the principles of Better Regulation and use of the impact assessment form. On average, some 15 government officials and employees take this one-day course. The course will be made part of the compulsory initial training course for all government officials and employees as of January 2011.

Methodology

The procedure involves two stages:

- The initiator of the measure completes the form so that the CCS can offer an informal opinion. The CCS may make recommendations to the initiating Ministry (on consultation, use of the SCM, etc.) or it may submit the draft text for the opinion of the CSA plenary.

- The form must be attached to the text submitted to the Council of Government, at which time the CCS renders a formal opinion.

The impact assessment form requires quantification of any new administrative burdens introduced by the proposed regulation. For drafts identified as significant by the *ex ante* procedure, the CSA may undertake a quantified assessment of administrative burdens, with the agreement of the ministry concerned, using the Standard Cost Model or the common methodology of the European Union. The criteria underlying this choice will include the importance of the proposal's economic, environmental or social repercussions, its consequences for major interest groups, and significant policy reform in one or more economic sectors. For the moment, however, no support is available to help with the cost/benefit analysis.

Public consultation and publication

The impact assessment form is strictly an internal government document. Only the financial form is published and communicated to the Council of State and the Chamber of Deputies. Moreover, the process differs from the public consultation procedures conducted during preparation of draft laws or regulations.

Alternatives to regulation

The impact assessment form includes a question as to whether alternatives have been considered. The very first section of the form asks the initiator of the draft to identify the consequences of the "no regulation" option. That question is also included in the training offered by the CSA, and may be put forward by the CCS in its opinion on draft laws and regulations. These instructions are not binding.

Risk-based approaches

As in most other EU countries at the present time, there is no provision for taking account of risk before beginning the formal process of preparing rules.

Notes

1. An emergency procedure allows the government not to send a draft Grand Ducal regulation to the Council of State. There are limitations to this possibility. On one hand, the initiating ministry must substantiate resort to the emergency procedure. The General Secretariat of the Council of Government verifies that substantiation, the pertinence of which may as a general rule be examined by the administrative tribunal and the administrative court in case of appeal. On the other hand, the law that the regulation is intended to implement must not specifically require that the Council of State's opinion be sought. The emergency procedure is requested for around half of draft Grand Ducal regulations. It is not applicable for laws and their amendments.

2. *www.simplification.public.lu/analyse-flux/Note_explicative_de_la_fiche_d_impact.pdf*

Chapter 5

The management and rationalisation of existing regulations

This chapter covers two areas of regulatory policy. The first is simplification of regulations. The large stock of regulations and administrative formalities accumulated over time needs regular review and updating to remove obsolete or inefficient material. Approaches vary from consolidation, codification, recasting, repeal, *ad hoc* reviews of the regulations covering specific sectors, and sun setting mechanisms for the automatic review or cancellation of regulations past a certain date.

The second area concerns the reduction of administrative burdens and has gained considerable momentum over the last few years. Government formalities are important tools to support public policies, and can help businesses by setting a level playing field for commercial activity. But they may also represent an administrative burden as well as an irritation factor for business and citizens, and one which tends to grow over time. Difficult areas include employment regulations, environmental standards, tax regulations, and planning regulations. Permits and licences can also be a major potential burden on businesses, especially SMEs. A lack of clear information about the sources of and extent of administrative burdens is the first issue for most countries. Burden measurement has been improved with the application by a growing number of countries of variants on the standard cost model (SCM) analysis to information obligations imposed by laws, which also helps to sustain political momentum for regulatory reform by quantifying the burden.[1]

A number of governments have started to consider the issue of administrative burdens inside government, with the aim of improving the quality and efficiency of internal regulation in order to reduce costs and free up resources for improved public service delivery. Regulation inside government refers to the regulations imposed by the state on its own administrators and public service providers (for example government agencies or local government service providers). Fiscal restraints may preclude the allocation of increased resources to the bureaucracy, and a better approach is to improve the efficiency and effectiveness of the regulations imposed on administrators and public service providers.

The effective deployment of e-Government is of increasing importance as a tool for reducing the costs and burdens of regulation on businesses and citizens, as well as inside government.

Assessment and recommendations

Simplifying the law

Legislative simplification is one of the priorities of Luxembourg's policy for Better Regulation, and well-developed codification work is underway. The government has launched a series of initiatives for legislative simplification. Bringing together all the rules concerning a given field within a single structure is considered a useful exercise, and one that should be pursued with appropriate resources. Another tendency is to roll successive laws into one umbrella law, as was done with the 1993 Financial Sector Act, rather than have a scattered series of laws. The OECD team found many interviewees who were decidedly in favour of legislative simplification, in particular through codification.

Nevertheless, efforts at legislative simplification are not systematised but instead take the form of *ad hoc* codification initiatives. The government should commit itself more thoroughly to a systematic policy of simplifying laws and regulations. Any legislative simplification programme must be conceived as a medium- and long-term policy, supported at the highest political level, and implemented by teams well staffed with experts, and jurists in particular, given the objective of cleaning up and rationalising the legal system, rendering the law more accessible, and ultimately making life easier for citizens and businesses. With a reinforced strategy for legislative simplification, implemented in sectors deemed priorities, the government will be able to ensure that the law is clear, less stratified and fragmented, and more readily accessible at lower cost.

Beyond codification, Luxembourg has not yet taken other measures that could be useful for legislative simplification. For example, Luxembourg should consider the advantages of deploying the instruments of a periodic simplification law and a "law-cutting" law. Such instruments engage both parliament and government in the simplification process, and associate regulatory cleanup, simplification and codification in a flexible and innovative form in which the law can evolve.

Recommendation 5.1. Confirm the importance attached to legislative simplification, as part of the effort to make laws more accessible. Review options for using approaches other than codification. Confirm the priority sectors.

The current institutional arrangements are not able to provide the required support. The institutions at the centre of government, and the CSA in particular, should be strengthened to promote a more comprehensive programme for simplifying the law. The success of a simplification and codification programme will rely in large part on co-ordination and on the capacities of ministerial departments to work together in identifying priorities for simplification, preparing codes and consulting stakeholders. Above all, codification work requires smooth and constant inter-ministerial co-operation for co-ordinating texts and taking different positions into account, especially with respect to cross-cutting areas or those where jurisdiction is shared. The Irish Law Reform Commission (or for that matter, its British counterpart) could, for example, be a source of ideas for Luxembourg. This independent commission is charged with overseeing the coherence and quality of all regulations and proposing specific reforms to the government. Lastly, the simplification of laws and regulations is a technical undertaking and should be managed by a team of jurists fielded by the various ministries.

Recommendation 5.2. Strengthen institutional support for legislative simplification. Consider other possibilities that could work in parallel for moving forward faster and more systematically, such as instituting a law reform commission. Review legal capabilities within the ministries.

It is important to highlight the significant links between legislative simplification and other actions for improving regulatory quality. Legislative simplification and codification, through which the law can evolve, should be linked to programmes for cutting red tape. In addition, consultation and impact assessment are essential for assessing the effects and the innovative scope of legal codes and the impact of the policies pursued, through *ex post* evaluation.

ICT offers good support for legislative simplification, and its use could be strengthened. Consistent with the maxim that it is presumed one knows the law, legislative simplification can also benefit from the use of ICT to make the law more accessible to citizens. The *Legilux* site is an excellent starting point.

Reducing the administrative burden

A realistic overall target has been set for reducing red tape, and the CSA has put in place several of the elements needed to monitor the programme. Following the 2009 elections, an overall target of 15% was adopted. A network of ministerial correspondents is in place, chaired by the CSA. *Ad hoc* working groups have been formed to deal with the four areas for which the government has set quantified reduction targets, and this is a good beginning.

The mechanism has no precise objectives and makes no provision for publicising the actual results for the ministries concerned. By no means have all ministries yet signed on to the simplification agenda. The overall target represents an important step, but it needs to be accompanied by more precise objectives to ensure effective monitoring and evaluation of results and to put pressure on ministries to achieve them.

Recommendation 5.3. Establish and publish precise quantified objectives for the ministries concerned in the administrative burden reduction programme. Strengthen contacts with other EU countries through groups established for this purpose in order to collect maximum information on experience that could be useful for Luxembourg.

The link to impact assessments should be strengthened by quantifying burdens *ex ante*. Reducing administrative burdens is already an integral part of the *ex ante* impact study mechanism, but those burdens have no figures attached to them. Tools need to be developed to help quantify burdens *ex ante*, drawing on examples from other countries such as Sweden with its MALIN system, which allows ministries to quantify anticipated burdens.

Measures for citizens should be further strengthened. A programme for citizens is included in the government programme. This would bring greater visibility to the efforts of the government, which is already committed to this route, in particular through e-Government and the one-stop shops, for dealing with the administrative burdens that fall on the general public. Here, the example of the Netherlands could be useful.

Measures to reduce administrative burdens on government itself should also be considered. It would be useful to consider an initiative targeting the administration. In tight fiscal times, some countries have found that reducing burdens on the administration can not only produce savings but can also shift a portion of those savings to strengthening the services delivered directly to citizens and businesses (less red tape, more availability for the customer).

Recommendation 5.4. Confirm the intention to move forward with the programme to reduce red tape for citizens as soon as resources are available and the responsible body has been identified. Consider the possibility of a red tape programme for the government itself.

Background

Luxembourg's policies for simplification and regulatory quality tend generally to be geared to businesses, and to SMEs in particular. Yet as with administrative simplification, the fact that its primary objective is to make the law clear and accessible means that legislative simplification also benefits the citizenry as a whole. The Economic and Social Council, in its annual statement on the country's economic, social and financial evolution (April 2009), stresses that "administrative simplification concerns not only businesses but the citizens as well, who must benefit from swifter and more direct access to public services, with no diminution in the quality of those services."

Simplification of regulations

Legal and regulatory simplification initiatives in EU countries can be classified as follows:

- Codification (with or without room for the law to evolve).
- Periodic simplification laws whereby Parliament authorises the government to simplify and codify the law.[2]
- "Law-cutting" laws.[3]
- "Delegification", *i.e.* replacing laws by rules with the status of regulations.
- "Sunset" clauses that provide for the automatic review or expiry of laws.

Codification

Codification is one of the principle thrusts of government efforts to simplify the law. It was one of the measures set forth in the simplification plan for businesses that was published in 2007 (see below). The government has undertaken several codification projects in various fields, either *à droit constant* (the law as it stands, or "settled law") or *à droit non constant* (allowing for the law to evolve), but the preference has tended to be for codification as settled law. There are two types of codification: *codes-compilation* or "compilation codes" (known as "compilation of codes") and *codes-loi* or "law codes" (known as "collection of codes").

- The *codes-compilation* list together the legislative and regulatory texts applicable in a given field, with a usable grouping of their various ramifications by chapter. These codes are for information purposes only and have no legal standing (the only legally valid text is that published in the

Mémorial). Under this heading are to be found the Administrative Code, the Environment Code, the Health Code, the National Education Code, and the planned Economic and Financial Code. These *codes-compilation* are produced jointly by the Central Legislation Service and the specific department concerned; which keep the texts up-to-date so as to show their current status (*i.e.* a co-ordinated text or a consolidated text). The pace of updating varies depending on the codes (up to twice a year for the Administrative and Environment Codes).

- The *codes-loi* constitute the applicable law in their respective fields. Consolidation of the texts of their articles is fixed by law and can be changed only by a legislative or regulatory act. These codes are legally binding. Luxembourg law contains seven *codes-loi*, including the Civil Code, the Penal Code, the Labour Code and the Commercial Code.

The *codes-compilation* are updated regularly by the SCL. A hardcopy version is published twice a year, and is also posted at *Legilux*. This exercise is overseen by an external legal expert. The *codes-loi*, which consolidate all other laws and are voted by Parliament, are also updated by the SCL.

Consumer protection is one of the main areas of codification work. The intention is to improve legal security by facilitating access to legal texts in force, repealing superfluous provisions, and simplifying the legal framework. The Consumer Code, tabled in the Chamber of Deputies and prepared by the Ministry of Economy and External Trade, regroups all the currently scattered texts of laws and of Grand Ducal regulations concerning the protection of consumers' economic interests. Apart from transposition of Directive 2005/29/EC on unfair commercial practices (the "UCP Directive"), no new text has been added to the existing body of regulations, which derive for the most part from Community provisions. Another codification project (again as "settled law") concerns municipal governments (see Chapter 8). The rules governing public procurement are also codified.

The Consumer Code has also been regarded as a very positive outcome. This "settled law" code has made consumer protection legislation more coherent and understandable. The code includes non-contractual rules (pre-contract information and unfair commercial practices), contractual rules (unfair terms and special contracts) and rules governing the enforcement of consumer law, covering action for discontinuance and the new powers granted the government by Parliament. In terms of procedure and method, the Consumer Code is the result of a structured process involving successive phases and several consultations with stakeholders and with national and European experts. In the end, it may be said that the goal of protecting consumer rights has been achieved through legislation that is accessible but not "overly simplified".

Most of the existing codes fall under the responsibility of the Ministry of Justice, which thus has the residual role of overseeing coherence in the main codes, for example the Civil Code, whenever they are amended at the initiative of another ministry. At the Pre-Council stage, the Ministry of Justice checks all draft bills under consideration that might interfere with or modify these "grand codes".

Other instruments

"Delegification" is not yet a feature of the regulatory simplification approach in Luxembourg. The government programme of June 2009, however, calls for speeding up work on certain aspects of legislative and regulatory procedure, particularly with respect to the transposition of EU texts of a technical nature, where the government will "examine ways of making greater use of Grand Ducal and ministerial regulation in technical areas." Moreover, there are no simplification laws or any "law cutting" system, which might be

useful for a thorough clean-out. There is no systematic use of such devices as sunset clauses in Luxembourg.

Reducing administrative burdens

Administrative burden reduction for businesses

In 2004, the government decided to give priority to simplifying administrative formalities in order to boost the competitiveness and the entrepreneurial spirit of SMEs. This thrust came in response to strong demands from businesses, and from SMEs in particular. In December 2004 the government established the National Committee on Administrative Simplification for Businesses (CNSAE), which in 2010 was renamed the Committee for Administrative Simplification (CSA). Administrative simplification for businesses is being pursued through an action plan developed on the basis of proposals from businesses or their representatives that are members of the CSA. The CNSAE published a formal plan in 2007, known as the "*Entfesselungsplang fir Betriber*", and in April 2009 it published a report on progress achieved between 2004 and 2009.

The 2009-14 programme of the new government that took office following the June 2009 elections has been pursuing the main projects for administrative simplification. An additional step was taken by setting a national target for reducing administrative burdens by 15% by 2012 in four priority areas, the first of which will be Social Security. The other three fields (municipal development planning, environment and taxation) have been formally approved. The choice of fields was based in part on a 2006 business survey, and the target has been set at what is considered a feasible level (15%). In the first years of the simplification programme, the CSA has confined itself largely to going after "easy prey", attacking the problems that are most obvious and easiest to resolve, as a way of ensuring the programme's credibility. The CSA now needs to adopt a more systematic method for attacking more complex problems.

Luxembourg does not use common commencement dates, which would make it easier for businesses (and SMEs in particular) to track regulatory changes affecting them.

Institutional framework and support

Cutting red tape is the responsibility of the CSA, which was established in 2004 as the CNSAE and in July 2009 was placed under the Ministry of State (prior to that time it came under the Ministry of the Middle Classes, Tourism and Housing). This committee comprises representatives of public administrations and employers' organisations[4] and meets once a month. The presence of business representatives on the CSA has allowed for active co-operation by businesses in the work of administrative simplification.

Administrative simplification correspondents have been appointed in all ministries and administrations concerned. They have become the CSA Secretariat's interlocutors within the ministries, and this is an important feature considering the Secretariat's small size (four persons). The Secretariat gathers proposals from CSA members, co-ordinates work, and communicates the results. The correspondents also have an advocacy role in promoting administrative simplification and active participation by ministries in the simplification programme.

Methodology

The simplification steps taken during the period 2004-2009 were defined in light of the business survey and proposals put forward by professional and government representatives.

Following its establishment in 2004, the CNSAE surveyed some 500 SMEs for their perceptions of administrative obligations and procedures. That survey revealed 11 important areas, six of which were deemed priorities. Action proposals relating to these six fields, presented in the form of "*ex post* fact sheets", were put forward by professional representatives and some public administrations. In 2007, the CNSAE established six *ad hoc* working groups comprising representatives of employers' organisations and public administrations (Food Security, Environment, Taxation, Occupational Safety and Health, Social Security and Transport). These groups are tasked with resolving the problems raised in the *ex post* fact sheets.

In 2009, the government decided to use the SCM method to measure administrative burdens in the four fields for which it had set a quantitative reduction target. This approach was applied first to the social security field, and, more specifically, to measuring the administrative cost differentials for businesses following reform of the Social Security system to introduce a single statute for all employees.

Since 2005, the CSA has been making the *ex post* fact sheets available to departments and to the general public. In this way departments and the public are able to draw the authorities' attention to the administrative burdens identified and they can also propose specific improvements. The Standard Cost Model was applied for the first time in 2009 in the Social Security field, specifically to the introduction of a single statute for employees. The CSA starts by examining the issue with the expert correspondents to determine whether there really is a problem and, if there is, it presents the fact sheet to the plenary assembly. If necessary, the fact sheet will be considered subsequently in an *ad hoc* working group.

Public consultation and communication

The Luxembourg government has based its simplification efforts on proposals put forward by businesses through their professional organisations, which are members of the CSA plenary. Any department, business or citizen can submit observations or simplification proposals to the CSA through its website. The CSA publishes information about its work at its website, and also through an electronic newsletter. In 2009 it published a 45-page brochure detailing simplification actions by area of activity since 2004, and their state of progress[5]. In practice, communication is addressed mainly to businesses and to the administrative "one-stop shops". Other stakeholders (such as consumer associations and trade unions) are much less involved.

The government insists that this process is useful. The professional chambers take account of the problem of administrative simplification for businesses in their formal opinions issued as part of the legislative procedure. Any problems with the regulatory texts are identified at the outset and appropriate solutions are put forward by all stakeholders. These opinions are sought at the time the bill is tabled in the Chamber of Deputies, after it has passed through the Council of Government. This process also avoids delays that could arise if differences were to emerge late in the process of preparing administrative simplification for businesses.

One-stop shops

In November 2008 the Ministry for the Civil Service and Administrative Reform launched a virtual one-stop shop, *www.guichet.lu*, intended to diversify access to public services and facilitate procedures. The objective of this portal is to centralise all procedures, forms and information that the State (in its broad sense) makes available to citizens and professionals alike. It includes a "citizens" and a "businesses" section. The portal offers administrative guidance on a great number of identified situations, grouped by broad

themes. It also provides information on the current status of legislation and regulations. Beyond the information aspect, the portal is an interactive platform through which administrative formalities can be conducted online. It contains a description of the most important administrative procedures, and it allows forms to be downloaded and, in some cases, to be signed electronically and submitted to the agency concerned. This portal needs to be expanded progressively to cover new formalities, and to evolve in this way from an "information portal" to a truly interactive platform.

The new version of the impact assessment sheet includes a section on the "services directive" and the explanatory note provides additional information on what is expected of the authors of a preliminary proposal on the subject. In addition, a proposed framework law on services in the internal market was tabled on 30 March 2009.

A thorough overhaul of the State's Internet presence is also under way, with a view to simplifying access to information and services for citizens and businesses, while at the same time reducing the number of sites that must be maintained.

A *guichet unique urbanisme* ["one-stop shop for urban development"] is now being developed. The existing portals (of which there are several hundred) will be replaced by a single integrated portal (see Chapter 8).

Authorisations and licenses

The 2009-14 government programme calls for introducing the administrative principle that "silence is consent" when it comes to authorisations that do not require further conditions or obligations to be defined. According to this principle, administrations would have a fixed period of three months to decide on applications submitted. If the applicant's file is complete and the administration does not respond within that deadline, authorisation is deemed granted, without the requirement for any written confirmation from the administration. At the same time, the government programme stipulates that with respect to other authorisation regimes for which tacit approval is not considered feasible, laws and regulations will be adapted to establish specific response times for the administrations concerned, for example the time limit for verifying whether an application file is complete. These time limits will have to be adapted to the needs of each administration, but will not exceed three months.

Programme monitoring

The CSA reports on the progress of its work to its oversight Ministry (the Ministry of State), to the Council of Government and, on request, to the Parliamentary Committee on the Civil Service and Administrative Simplification. A progress report on administrative simplification for businesses, covering the period 2004-09, was published in the spring of 2009 in the form of a brochure.

Results

The CSA report published in 2009 announced that of the 85 actions included in the 2007 action plan 52 had been completed, 19 were underway, and 14 were pending. After a breaking-in phase, the pace has accelerated since 2008, as was noted by business representatives. Their concerns are now focused on the need to harmonise authorisation procedures and administrative response times.

Areas where significant progress has been achieved include the following:

- Procedures (for example, authorisation to start a business) can be handled online at a virtual one-stop shop.
- Certified copies of documentation are no longer required.
- The business registry (*Registre de commerce et de sociétés*) has been merged with the registry of physical and legal persons.
- Recruitment procedures for non-Community employees have been streamlined (with creation of the single residency permit, which combines residency and work permits).
- Waste prevention and management procedures have been simplified.

Administrative burden reduction for citizens

The government's administrative simplification policy was initially targeted at businesses, but steps have also been taken in favour of citizens. The government has sought to enhance relations between citizens and the administration by improving access to information and facilitating administrative procedures. The main pillar of this policy, which is part of the modernisation of the civil service, is the "citizens" section of the virtual one-stop shop, which provides access to all procedural information by major heading (taxation, employment, family, education, housing, citizenship and transport). Creation of the Ombudsman's office (see Chapter 6) was also intended to improve relations between the administration and the citizens. The interviews conducted by the OECD team point to a clear interest in seeing this policy evolve more vigorously. In the particular context of Luxembourg, where much of the population and many of the country's assets are of foreign origin, this policy is potentially of great importance for all those who need ready access to government services.

Administrative burden reduction for government

The Luxembourg government has taken no specific steps to reduce the administrative burden on the public administration itself. However, the proposed initiatives at administrative reform examine the functioning of the administration as a whole (using the Common Assessment Framework (CAF), analysing relations with the citizen-user, optimising processes) and they have not to date been applied systematically in all administrations. Interviews by the OECD team nevertheless revealed some hesitancy with regard to an approach specifically focused on the administration. It would be well to consider the usefulness of such an approach. Some participants expressed concerns that reducing administrative burdens on businesses might merely shift the problem to government. That, at least, would allow the problem to be delineated and addressed head-on.

Notes

1. Programmes to reduce administrative burdens may include the review and simplification of whole regulatory frameworks or laws, so there can be some overlap with policies aimed at simplification via consolidation etc. There may also be some overlap with the previous chapter on the development of new regulations, as administrative burden reduction programmes are often conducted on a net basis, that is, taking account of the impact of new regulations in meeting target reductions.

2. Introduced in Italy in 1997 and in France in 2003.

3. In Italy, for example, the fourth simplification law introduced a progressive mechanism for cleaning up legislation (the "law-cutting"- Taglia-leggi – law), the successive phases of which involved: an inventory of laws and regulations in force; normative simplification, with repeal of all rules predating 1970 that were not deemed by administrations to be indispensable; reorganisation and codification, with room for the law to evolve, in order to harmonise surviving provisions with those subsequent to 1970. Actual implementation of this "guillotine" has focused on the repeal of all obsolete laws.

4. Union of Luxemburg Enterprises (UEL), Chamber of Trades, Chamber of Commerce, Federation of Artisans, Luxemburg Bankers' Association (ABBL), Luxemburg Confederation of Commerce (CLC), FEDIL-Business Federation Luxembourg, HORESCA (Hotel and Restaurant Federation).

5. *www.simplification.public.lu/brochure/Brochure.pdf.*

Chapter 6

Compliance, enforcement, appeals

Whilst adoption and communication of a law sets the framework for achieving a policy objective, effective implementation, compliance and enforcement are essential for actually meeting the objective. An *ex ante* assessment of compliance and enforcement prospects is increasingly a part of the regulatory process in OECD countries. Within the EU's institutional context these processes include the correct transposition of EU rules into national legislation (this aspect will be considered in Chapter 7).

The issue of proportionality in enforcement, linked to risk assessment, is attracting growing attention. The aim is to ensure that resources for enforcement should be proportionately higher for those activities, actions or entities where the risks of regulatory failure are more damaging to society and the economy (and conversely, proportionately lower in situations assessed as lower risk).

Rule-makers must apply and enforce regulations systematically and fairly, and regulated citizens and businesses need access to administrative and judicial review procedures for raising issues related to the rules that bind them, as well as timely decisions on their appeals. Tools that may be deployed include administrative procedures acts, the use of independent and standardised appeals processes,[1] and the adoption of rules to promote responsiveness, such as "silence is consent".[2] Access to review procedures ensures that rule-makers are held accountable.

Review by the judiciary of administrative decisions can also be an important instrument of quality control. For example, scrutiny by the judiciary may capture whether subordinate rules are consistent with the primary laws, and may help to assess whether rules are proportional to their objective.

Assessment and recommendations

The enforcement of laws and regulations deserves special consideration. Risk assessment, co-ordination of inspections and a results-based implementation policy are all tools that can reduce unnecessary burdens on businesses presenting a low risk of non-compliance, and they can make the inspection system more effective and less costly.

Recommendation 6.1. Review the regulatory enforcement policy to identify potentially more effective approaches.

Appeals channels are well-conceived, and, a mediator was instituted in 2004. The OECD team was not able to unwrap this in detail, but there would seem to be no major problems with the system. Knowledge of the system is acquired mainly by word of mouth. It would be timely to consider the publication of information on channels of appeal against

administrative decisions, taking into account the Luxembourg context, in which foreigners figure prominently among its population and workforce.

Background

Compliance and enforcement

Monitoring regulatory enforcement

It is up to each ministry to monitor enforcement of regulations pertaining to its field of activity.

Monitoring regulatory enforcement by inspection agencies

Inspection is the responsibility of the ministries or regulatory agencies, which may call upon the police or customs officials to conduct on-site inspections and to issue fines. Ministries and regulatory agencies may sue and be sued for breach of a regulation. The Luxembourg government reports that risk assessment is an approach widely used by regulatory agencies.

Appeals

Judicial appeals

In Luxembourg there are two types of jurisdiction: the judicial one (civil and criminal cases) and the administrative one. Under Luxembourg law, administrative jurisdictions have the particular feature that they are competent, in principle, to consider only matters that have been expressly devolved to them by law. Thus, special laws have removed administrative disputes from the purview of the courts and assigned them to the administrative jurisdictions.

In cases involving incompetence, acts in excess of authority, improper exercise of authority, breaches of the law or of procedures designed to protect private interests, the Administrative Tribunal decides on appeals against administrative decisions in respect of which no other remedy is available in accordance with laws and regulations. In principle, the administrative tribunal hears appeals for annulment. A *recours en réformation* (asking the tribunal to quash and replace an administrative decision) is possible in cases expressly provided by law. Interested parties may also file an appeal before the administrative tribunal in challenges against an administrative decision equivalent to rejection of an application when the three-month time limit has expired without a decision having been rendered.

The administrative tribunal also hears challenges involving direct taxation by the State and municipal taxes and levies. It decides appeals against decisions of the director of taxation in specific cases where the law provides for such an appeal, which must be filed within three months. If six months has elapsed after a claim for reimbursement or reduction, without a definitive decision, the appellant may consider the claim rejected and may file an appeal before the administrative tribunal.

As with the decisions of other administrative jurisdictions (such as the Superior Council of Social Insurance), decisions of the administrative tribunal may be appealed to the Administrative Court.

Non-judicial appeals (administrative appeals)

The non-contentious administrative procedure was established by the law of 1 December 1978,[3] supplemented by a Grand Ducal decree of 8 June 1979 on the procedure to be followed by State and municipal administrations. These two texts establish the following fundamental rules: the right to be heard; access to information; the right of the citizen to be assisted or represented in the course of administrative proceedings; the obligation of the administration to substantiate its decisions; and the obligation of the administration to indicate available avenues of recourse.

The Ombudsman

The Ombudsman (or mediator) instituted by the organic law of 22 August 2003 is empowered to hear all claims submitted by physical or legal persons concerning the functioning of State and municipal administrations, as well as public enterprises of the State or the communes, with the exception of their industrial, financial and commercial activities. This decision must have been taken in connection with a case of direct concern to the person seeking the Ombudsman's services. Appointed by and reporting to the Chamber of Deputies, the Ombudsman is independent and is answerable neither to the administration nor to the government. The position of Ombudsman was created as part of an administrative reform policy intended to bring administration closer to the citizens and to improve its relations with them.

An applicant may not lodge a complaint with the Ombudsman without having first filed an administrative appeal. The invocation of the Ombudsman does not suspend the time limits applicable to other avenues of recourse legally available, and the Ombudsman intervenes only with the administration or administrations in question. Citizens may submit their complaints to the Ombudsman directly, either in writing or orally (through the Office of the Ombudsman), or indirectly through a member of the Chamber of Deputies. If a complaint appears justified, the Ombudsman will advise the citizen and the administration that issued the challenged decision and will make recommendations for friendly settlement. If in the exercise of his duties the Ombudsman finds systemic dysfunction or incoherence or shortcomings at the administrative or regulatory level, he is empowered to make official recommendations to the public agencies in question. The Annual Report of the Ombudsman for 2008/09 contains 39 such recommendations. Follow-up to the recommendations is monitored by the Petitions Committee of the Chamber of Deputies. The Ombudsman receives around 900 formal complaints and 2 000 contacts every year.

Notes

1. Administrative review by the regulatory enforcement body, administrative review by an independent body, judicial review, ombudsman.
2. Some of these aspects are covered elsewhere in the report.
3. In adopting this law, Luxembourg has followed resolution (77) 31 of the Council of Europe on protection of the individual in relation to the acts of administrative authorities.

Chapter 7

The interface between member states and the European Union

An increasing proportion of national regulations originate at EU level. Whilst EU regulations[1] have direct application in member states and do not have to be transposed into national regulations, EU directives need to be transposed, raising the issue of how to ensure that the regulations implementing EU legislation are fully coherent with the underlying policy objectives, do not create new barriers to the smooth functioning of the EU Single Market and avoid "gold plating" and the placing of unnecessary burdens on business and citizens. Transposition also needs to be timely, to minimise the risk of uncertainty as regards the state of the law, especially for business.

The national (and subnational) perspective on how the production of regulations is managed in Brussels itself is important. Better Regulation policies, including impact assessment, have been put in place by the European Commission to improve the quality of EU law. The view from "below" on the effectiveness of these policies may be a valuable input to improving them further.

Assessment and recommendations

The small size of its government, in comparison with other EU countries, is a major challenge for Luxembourg. How can it best be organised to achieve optimal efficiency in the process of negotiating and transposing European directives? The fact is that Luxembourg has to deal with the same number of directives, and hence the same volume of work, as any other EU country.

The negotiating process does not seem to pose any major problems. The negotiating process unfolds in accordance with the EU framework, and Luxembourg focuses its efforts on the most important cases.

The real problem arises downstream, with transposition, where Luxembourg falls short of the target set by the European Commission. A more structured approach was recently instituted, with an electronic support tool, to overcome delays in the transposition of directives. There has been some progress recently. Transposition is normally done via the legislative route, and there are no special provisions for "fast tracking" transposition such as those that exist in the United Kingdom and some other countries.

However, the amended law of 9 August 1971 on the execution and enforcement of decisions and directives and the enforcement of regulations of the European Community in

economic, technical, agricultural, forestry, social and transportation matters allows the transposition of certain technical provisions by Grand-Ducal decree.

Nevertheless, Luxembourg "is transposing rather well" in terms of its rate of infractions. This is one of the lowest among EU members.

Overregulation could be a problem. "The whole directive and nothing but the directive" is the rule of thumb promulgated by the government, in an effort to reconcile the need not to go beyond what is strictly necessary for transposition and the need to be thorough enough to avoid infraction proceedings. This principle is well known throughout the administration, but there is no clear consensus on how to implement it. It would seem that some parts of the government are experiencing difficulties ("some ministries are drowning in texts"). Other participants suggested that the quality of transposition was rather good. The same officials are responsible for negotiating a directive and then transposing it. This is an asset, in principle, but when it comes to making a choice, priority will be given to negotiation. The problems with transposition were not clearly identified for the team but are probably of different types, and it would be useful to assess them. The government programme calls for an analysis of the current system of transposition in order to identify problems and develop solutions.

In the future, electronic monitoring of transposition should make it possible to verify the extent to which the rule of thumb quoted above has been applied, in order to measure its effective observance.

Recommendation 7.1. Evaluate the transposition procedure, for directives generally and for each ministry and/or sector, to identify where the problems lie. Consider whether existing legal provisions are one of the reasons behind transposition difficulties. Discuss the issue with other countries with limited means, such as Ireland and Finland.

Background

General context

As in the other EU member states, the output of domestic regulations is substantially affected by the output of rules at the EU level. According to statistics on the number of legal and regulatory texts (see Chapter 4), texts transposing one or more European directives amounted to between 16% and 30% (depending on the year) of the new laws and Grand Ducal regulations over the period 2005-08.

Negotiating EU regulations

Institutional framework and processes

In the negotiation phase of draft bills in the various committees of the Council of the European Union, negotiations are conducted by the competent ministers. The Ministry of Foreign Affairs is responsible for co-ordination, compiling information from and for European institutions and chairing the Inter-Ministerial Committee for European Policy Co-ordination (CICPE) which meets 4 to 6 times a year. In effect, the CICPE, established in 2005, initially held six meetings a year, and then in 2009 moved to a four-meeting schedule. In practice, ministries establish priorities as to the negotiation topics that are of greatest interest to Luxembourg, and devote their resources to those issues.

Once the EU College of Commissioners has adopted a draft bill, the Ministry of Foreign Affairs so advises the competent ministry or ministries. Within one month, the ministries must prepare descriptive fact sheets concerning these drafts.[2] These fact sheets are intended to encourage ministries to familiarise themselves with the provisions of draft directives or regulations (including their legal impacts) at the stage of adoption by the European Commission, to anticipate any problems that might arise during transposition, and to clarify questions of competence at a preliminary stage. The descriptive fact sheets are regularly presented to the CICPE.

In the negotiation phase, ministries may consult stakeholders in civil society about the draft bills that concern them. Advance consultation of this kind facilitates subsequent transposition of the directive emerging from the negotiations for, pursuant to the law of 1924 on professional chambers, these bodies must be consulted on the law or Grand Ducal regulation transposing a directive before any law or regulation affecting their particular profession is adopted.

The role of Parliament

A recent agreement between the government and the Chamber of Deputies on European policy co-operation has reinforced the potential for involving parliamentarians in the process of negotiating European directives, by ensuring that Deputies receive better information on negotiations underway. The memorandum setting out this agreement came into force in July 2008 and on 7 May 2009 it was incorporated into the rules of procedure of the Chamber of Deputies. That agreement was also designed to create conditions allowing the Chamber of Deputies to oversee observance of the principle of subsidiarity, which the Treaty of Lisbon accords national parliaments.

Under the terms of that agreement, "the government shall keep the Chamber of Deputies promptly and continuously informed on all European questions of particular importance for the Grand Duchy of Luxembourg." That information may be provided either orally or in writing, such as through explanatory notes that make it possible to assess the eventual consequences that European acts may have for Luxembourg. It may relate either to substance or to procedure. It must allow the Chamber of Deputies to make a timely decision on its position, which it will communicate to the government. In these cases, the Chamber of Deputies must be kept constantly informed of progress with these files.

The Chamber of Deputies or the parliamentary committees may summon government members participating in meetings of the European Council or the Council of the European Union to provide an explanation, in advance of the meetings, of the status of outstanding files and of the government's positions on them. After these meetings the government will report on the outcomes, at the request of the competent committee of the Chamber. The government undertakes to transmit to the Chamber of Deputies, upon receipt, all documents provided by European institutions as well as documents, reports, communications and information on the agenda of the various meetings of the EU Council of Ministers. What is involved here is an information procedure, and not a negotiating mandate given by the Chamber of Deputies to the government.

Ex ante impact assessments (negotiation stage)

Drafts at the negotiating phase are not subjected to any *ex ante* impact assessment. The descriptive fact sheet that ministries must prepare contains some elements of analysis, as it must indicate the legal implications and identify the general effects that the draft will have on Luxembourg.

It was suggested that ministries should consider various elements of the *ex ante* impact assessment, such as general criteria for Better Regulation, at the time European texts are being negotiated, and specifically in the context of drafting the chapter on "general effects on Luxembourg" in the descriptive fact sheet. That fact sheet is prepared by the various interested ministries in the wake of a proposed Community directive.

Interface with Better Regulation Policies at the EU level

Institutional framework and process

Responsibility for transposing Community directives falls to the competent ministries concerned by the subject matter. The Ministry of Foreign Affairs, as co-ordinator, identifies the ministry or ministries that will be responsible for transposition of a specific directive. Where several ministries are concerned, the Ministry of Foreign Affairs identifies one ministry to take primary responsibility and co-ordinate the transposition effort with the other ministries concerned.

In principle, transposition is done via the legislative route. However, some technical provisions are transposed into Luxembourg law by Grand Ducal decree rather than by law. The principal difficulty encountered by ministries is that they tend to be short-staffed. As a result, resources are often concentrated on negotiations that are important for Luxembourg, and transposition work is consequently delayed. In some cases, the solution is to transpose the text word for word.

Ex ante impact assessment (transposition stage)

The impact assessment form that ministries must complete covers all draft laws and regulations including those for transposing European directives (see Chapter 4).

Over-regulation

According to some interview participants, transposition can in certain instances give rise to "gold plating". The government's administrative simplification programme addresses this problem. One of the government's broad principles of regulatory quality is "the whole directive and nothing but the directive". The ministries are broadly familiar with that principle, although it is difficult to measure how effectively it is observed.

According to other participants, the principle of "the directive and nothing but the directive" is sometimes applied too rigidly, thereby preventing transpositions from making use of significant regulatory options allowed by the directives, particularly with a view to achieving a high level of consumer protection.

Monitoring transposition

Within the government, the transposition of directives is monitored by the Inter-Ministerial Committee for European Policy Co-ordination (CICPE), and transposition issues are now looming ever larger on its meeting agendas. The Ministry of Foreign Affairs also presents regular reports to the Council of Government. To date the ministries have not had an electronic tool for systematic monitoring and the process has relied mainly on files and information transmitted by the ministries. A weekly progress report has however been instituted. Each year the government presents to Parliament a report on European policy, as well as a report on transposition of European directives and the enforcement of Community law. It is up to Parliament to decide if and when it will debate the report. So far this report

has always been examined by the Committee on Foreign and European Affairs, Defence, Co-operation and Immigration.

The government statement for the period 2009-14 calls for reinforcing the mechanism for monitoring transposition of Community law, through four main measures:

- Strengthening the attributes of the CICPE. That committee is supposed to ensure co-ordination between the ministries responsible for transposing directives. In particular, it must fulfil the upstream task of alerting ministries to legislative proposals under preparation within the European bodies, and must assign them the job of preparing the measures needed to transpose the results within established time frames.

- Introduction of the computerised tools needed for monitoring the transposition of European directives, and infringement procedures.

- An analysis of the current transposition system in Luxembourg to identify and resolve any problems.

- Regular examination (at least bimonthly) of transposition files during meetings of the Government in Council.

Results

The European Commission's Internal Market Scoreboard[3] for December 2009 shows Luxembourg with a transposition deficit of 1.4% (above the 1% target set by the European Commission), representing 22 directives for which transposition is overdue. While Luxembourg is one of the five countries that have not yet achieved the 1% target, its situation has recently improved significantly: in December 2008 its deficit was 2.2% (36 directives overdue), and in December 2007 it stood at 2.8% (45 directives overdue). This progress has been made possible by the introduction of a more systematic process by the Ministry of Foreign Affairs, in particular the transposition fact sheet and a weekly monitoring table. Moreover, Luxembourg "is transposing rather well": it had seven directives not correctly transposed as of 1 November 2009, one of the lowest numbers of any member State.. There were 31 infringement proceedings underway against Luxembourg in May 2009 (compared with an average of 47 against member states as a whole).

Link with the European Commission's policy on regulatory governance

The OECD team heard several interview participants describe the importance of effective regulatory governance within the EU. Generally speaking, Luxembourg is strongly in favour of reinforcing that policy in order to ensure greater control over EU regulatory output ("we cannot turn off the EU law tap") and stricter procedures for *ex ante* impact assessment of draft directives, without falling into "monstrous procedures". They also pointed to ever-shorter transposition deadlines, the fact that some draft directives are available only in English, and a lack of consistency in the definitions used in different directives.

According to the Luxembourg government, it would be useful if the draft legislative acts emanating from the European Commission could be transmitted more promptly to the European Parliament, the Council and national parliaments. The Ministry of Foreign Affairs suggests that, as soon as they are adopted by the College of Commissioners, draft

legislative acts should be e-mailed to the permanent Representatives to the European Union.

Notes

1. Not to be confused with the generic use of the term "regulation" for this project.
2. The fact sheet contains the following information: name of the draft legislative act, date of its adoption by the Commission and by the Council, transposition deadlines, legal basis, decision-making procedure, persons in charge, objective and content, legal implications, effects on Luxembourg, and potential transposition difficulties.
3. The transposition deficit shows the percentage of notifications of internal market directives not yet transposed and notified to the Commission in relation to the total number of directives that should have been transposed.

Chapter 8

The interface between subnational and national levels of government

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

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

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

Assessment and recommendations

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

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

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

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

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

Background

Structure, responsibilities and funding of local governments

Structure of local governments

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

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

Box 8.1. Municipal bodies

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

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

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

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

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

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

Responsibilities and powers of subnational governments

Principal powers of the communes

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

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

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

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

Control over legality

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

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

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

Financing

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

Territorial reform proposals

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

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

Better Regulation policies deployed at local level

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

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

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

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

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

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

Co-ordination mechanisms

Co-ordination between the central and local administrations

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

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

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

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

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

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

Co-ordination among local administrations

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

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

Note

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

Bibliography

Andrich, Daniel (2003), La procédure législative et réglementaire, Service central de législation, Luxembourg.

Besch, Marc (2005), Traité de légistique formelle, Conseil d'Etat du Grand-Duché de Luxembourg.

Nothar, Roger (2002), La procédure administrative non contentieuse, p.8-11 *www.Legilux.public.lu/leg/textescoordonnes/guides/procedure_administrative_non_contentieuse/P_047_098.pdf.*

Ministère de l'Intérieur (2005), « Concept intégratif pour une réforme territoriale et administrative du Grand-Duché de Luxembourg », *www.miat.public.lu/publications/relation_communes/Concept_integratif/concept.pdf.*

Ombudsman (2009), Rapport d'activité du 1er octobre 2008 au 30 septembre 2009. Secrétariat du Médiateur, Luxembourg. *www.Ombudsman.lu/doc/doc_downloads_51.pdf.*

CNSAE (2009), Simplify – Simplification administrative en faveur des entreprises, Rapport 2004-2009, Luxembourg. *www.simplification.public.lu/brochure/Brochure.pdf.*

Etudes économiques de l'OCDE : Luxembourg 2010.

Plan de conjoncture du gouvernement du 6 mars 2009 : lutter contre les effets de la crise-préparer l'après-crise.

Annex A

The procedure for developing laws and regulations in Luxembourg

Draft bills (at government initiative)

By virtue of Article 47 of the Constitution, the Grand Duke advises the Chamber of Deputies of the draft bills he intends to submit for adoption. Upon approval by the Council of Government, the member of government concerned is authorised to begin the legislative process.

Once approved by the Council of Government, the draft bill is submitted to the Council of State for its opinion. The draft is generally accompanied by a preamble, in which the competent minister explains the reasons underlying the proposal, and by a commentary on the articles. The Council of State transmits its opinion to the government in the form of a substantiated report, containing its conclusions and, if necessary, a counter-proposal.

Next, the initiating ministry prepares a Grand Ducal order authorising it to table the bill in the Chamber of Deputies. As with all documents requiring the Grand Duke's signature, the draft Grand Ducal tabling order is transmitted to the Minister of State, responsible for relations with the Grand Ducal Court. All documents submitted to the Grand Duke for review or signature must be endorsed by the Prime Minister. The file which will be transmitted to the Ministry of State for forwarding to the Marshall of the Court must contain the Grand Ducal tabling order and the draft of the law in question, with all its annexes and an extract from the minutes of the Council of Government reporting the date of approval of the draft bill.

The Ministry of State informs the initiating ministry of the date of sovereign signature of the tabling order, whereupon the member of government concerned is authorised to place a copy of the original order in the hands of the President of the Chamber, in a public sitting, or to submit it via the clerk of Parliament, together with a copy of the bill and its annexes and any accompanying documents (such as the opinion of the Council of State and the opinions of the professional chambers). The Parliamentary Bureau assigns a number to the draft bill (parliamentary document), which will then be printed by the central government printing office (from which additional copies may be ordered).

Once the draft bill is printed as a parliamentary document, it becomes a public document and may be consulted by any interested person. The consecutive parliamentary documents, which will be published throughout the procedure and will retain the number assigned by the Parliamentary Bureau plus a set of serial digits, make it possible for the public to track the progress of the legislative procedure and to consult such documents as the opinion of the Council of State, the opinions of the professional chambers, any amendments, the report of the competent parliamentary committee, etc.

The initiating ministry is informed of the draft's approval by the Council of Government (extract from the minutes) and sends a letter requesting the Minister for Relations with Parliament[1] to seek the opinion of the Council of State, pursuant to Article 19 (1) of the law of 12 July 1996, which provides that relations of the Council of State with the Grand Duke and with the Chamber of Deputies must be conducted through the Prime Minister, except in emergencies.

The bill may be tabled in the Chamber either before or after its submission to the Council of State. In practice, however, most bills are tabled in the Chamber before the Council of State is consulted and/or before its opinion is received.

In this case, Article 55 (2) of the rules of procedure of the Chamber of Deputies provides that the Conference of Presidents will order a referral to a parliamentary committee, which may begin consideration even before the Council of State's opinion is received. However, committee discussion may begin at the earliest three days after the text has been distributed to Deputies, unless the Chamber decides otherwise (rules of procedure of the Chamber of Deputies, Article 55 (5)).

In no case may the Chamber take a definitive vote on the entire bill before the Council of State has communicated its opinion (unless the Chamber invokes Article 2 (4) of the law of 12 July 1996).

In practice, parliamentary committees await receipt of the Council of State's opinion before examining the bill in depth.

Since January 2010, the minutes of committee meetings are considered public once they are signed and are published at the website of the Chamber of Deputies. Such publicity is not however given to the minutes of meetings of the Bureau, the Conference of Presidents, the parliamentary oversight committee for the State information service, or meetings that concern visits of international delegations. A committee may decide to hear the opinions of non-parliamentary persons or organisations. Every deputy may participate as a non-voting observer in the meetings of all committees of which he or she is not a member. Members of the government may attend such meetings, and indeed may be summoned, to present their views, pursuant to Article 80 of the Constitution, which provides that "members of the government have access to the Chamber and must be heard at their request". That article is interpreted as covering the plenary sessions of the Chamber and the meetings of parliamentary committees.

The opinion of the Council of State is communicated to the parliamentary committee examining the bill, and the committee will finalise its report or propose amendments on the basis of that opinion.

The final parliamentary report is written; it contains an analysis of the documents received and of the committee's deliberations, as well as the substantiated conclusions and the text that the committee will put to the Chamber for vote.

As a general rule, the Chamber may not take a definitive vote on the entire bill until it has received the opinion of the Council of State. As an exception to the general principle, Article 2 (4) of the amended law of 12 July 1996 reforming the Council of State and Article 70 (1) of the rules of procedure of the Chamber of Deputies allow the Chamber to vote on a draft bill without the opinion of the Council of State.

If the Chamber takes a vote on the bill (or amendments to it) without having received that opinion, the Council of State, having been so informed, has three months to issue its opinion on the draft bill or on any amendments to the initial text. If the Council of State

has not issued its opinion by the end of that three-month period, the Chamber may vote on the entire bill and then dispense with the second constitutional vote and ask the Council of State to dispense with the second vote. In practice, this exception has never been invoked to date.

There must be an interval of three days between adoption of the committee report and presentation of that report in public sitting. The discussion of draft bills follows immediately upon presentation of the report in public sitting, and a vote on the bill is taken immediately after the debate.

Thus, by virtue of Article 22 (April 5) of the Chamber's rules of procedure, "reports shall be submitted for approval of the committee. They shall be distributed before discussion in public sitting, at least three days before the debate, unless the Chamber decides otherwise."

Once the committee has adopted its report, the Conference of Presidents will propose a public sitting in order to place the draft bill on the agenda. In principle, the draft bill may be included on the agenda of the next public sitting if the report on it has been adopted by the day the Conference of Presidents meets to schedule parliamentary work, except in emergency cases or during the last week of public meetings of the parliamentary session in December or in July.

Immediately after presentation of the committee report, representatives of the various political groupings and the listed speakers will speak to the bill; the minister responsible for the bill will be the last to speak, unless he insists on intervening immediately after the *rapporteur*.

Draft bills (at parliamentary initiative)

Every deputy has the right to propose a bill, signing it and submitting it to the Bureau of the Chamber. The Chamber decides whether to receive a proposed law, at the proposal of the Conference of Presidents.

The proposed bill is transmitted to the government, which may issue an opinion, and is then referred by the Conference of Presidents to a committee.

The proposal is placed on the agenda of a committee meeting and then, within six months after submission, the question of whether to pursue the legislative procedure will be discussed at a public sitting. Following the discussion, the Chamber will take a vote on whether to pursue the legislative procedure.

If the Chamber is in favour of pursuing the legislative procedure for the proposal, the Conference of Presidents will refer it to a committee for examination. It is also submitted to the Council of State and the interested professional chambers for their opinion.

If the Chamber decides not to pursue the legislative procedure for the proposal, the proposal will be deemed dismissed.

A proposal that the Chamber has dismissed or not adopted may not be reintroduced during the same session.

Any report favouring a parliamentary initiative that would increase public expenditure, directly or indirectly, must indicate the funds or the expenditure cuts needed to cover the outlay or the forgone revenue that the proposal would entail.

A deputy may withdraw his or her proposal before the vote to pursue the legislative procedure, in which case the Chamber is so informed.

Withdrawal of the proposal after the vote on legislative procedure must be decided by the Chamber at the proposal of the Conference of Presidents.

A proposed bill cannot be withdrawn after the first constitutional vote.

Draft bills are assigned by the President of the Chamber to one of the standing committees, to a special *ad hoc* committee, or to two or more standing committees that will meet together. Upon referral to the committees, the procedure is the same for proposed laws as for draft bills.

The committee to which the draft bill is referred will consider it and make its report promptly, if it decides not to submit any amendments for the (supplementary) opinion of the Council of State. The report is distributed to members of the Chamber.

The report is presented at a public sitting of the Chamber by the committee *rapporteur*. After hearing the report, the Chamber will hold a public debate dealing with the principle, the bill as a whole, its individual articles, and any amendments.

The initiator and the committee *rapporteur* will defend their respective points of view. Any member of the Chamber may intervene in the debate, with due regard to the rules governing floor time (see Article 37 of the rules of procedure of the Chamber of Deputies).

Deputies may present amendments during the debate; they must be drafted in writing and submitted to the President of the Chamber, and they must be supported by at least five Deputies.

If the Chamber decides to send the amendments to the Council of State or to a parliamentary committee, debate may be suspended until the Council of State has issued its opinion or the committee has drafted its supplementary report.

Regulatory procedure

As the Grand Duke is authorised by the Constitution to exercise regulatory power, Grand Ducal regulations are always a government initiative.

After preparing a draft regulation, the initiating ministry transmits the file, with all the required documentation, in 50 copies, to the Prime Minister (Minister of State) for submission to the Council of Government for approval.

Upon approval by the Council of Government, the "preliminary draft Grand Ducal regulation" becomes the "draft Grand Ducal regulation" and may be introduced into the procedure.

For this purpose the initiating minister sends a letter to the Minister for Relations with Parliament (on behalf of the Prime Minister) – Central Legislation Service, to advise the Council of State of the draft regulation. As with draft laws, this letter indicates the date the project was approved by the Council of Government, the professional chambers and other bodies consulted or to be consulted, and any priority attached to the draft, as well as any Community directives that the draft would transpose.

The letter of submission to the Council of State must be accompanied by the documentation constituting the file.

The Central Legislation Service transmits the file to the Council of State for its opinion and to the members of government concerned by the regulation for information.

The Council of State sends its opinion to the Prime Minister – Central Legislation Service, for communication to the initiating minister and the other members of government concerned.

Once the Council of State's opinion is received, the initiating minister will amend the draft text in accordance with any observations in that opinion (although from a strictly legal viewpoint, he is not required to do so).

The opinion of a professional chamber is required for any draft Grand Ducal regulation that would principally affect its members. Although such an opinion must be requested, however, it does not necessarily have to be oabtained. In contrast to the legislative procedure, failure to consult a competent professional chambers on a draft regulation carries legal sanctions.

If the Council of State's opinion does not give rise to any major amendments in the initial text that would require a supplementary opinion, the initiating minister may publish the measure with the force of law.

If the Grand Duke considers the situation urgent, he may dispense with seeking the opinion of the Council of State for a Grand Ducal regulation, pursuant to Article 2 (1) of the amended law of 12 July 1996 reforming the Council of State. In practice, the question of urgency will be decided by the Council of Government on the basis of a substantiated report from the initiating minister. The emergency procedure is supposed to be used only in exceptional cases and must never become the rule. On the other hand, the emergency procedure may not be used in the case of a law where the Council of State's opinion is formally required for the regulations implementing the law. This is also true for amendments to a draft regulation for which the Council of State has already issued a first opinion. Recent judicial decisions (Administrative Court, 25 October 2001) have upheld the right of the courts to determine whether resort to the emergency procedure for preparing a regulation is justified in any specific case. It should be noted that resort to the emergency procedure does not relieve the initiating minister of the requirement to seek the opinion of the professional chambers on matters of principal concern to their members. However, while it is mandatory to seek the opinion of a competent professional chamber, that opinion does not necessarily have to be obtained.

Certain Grand Ducal regulations may be required by law to be submitted to the Conference of Presidents of the Chamber of Deputies for consultation.

Note

1. On behalf of the Prime Minister – Central Legislation Service.

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

The OECD is a unique forum where governments work together to address the economic, social and environmental challenges of globalisation. The OECD is also at the forefront of efforts to understand and to help governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies.

The OECD member countries are: Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The European Commission takes part in the work of the OECD.

OECD Publishing disseminates widely the results of the Organisation's statistics gathering and research on economic, social and environmental issues, as well as the conventions, guidelines and standards agreed by its members.

OECD PUBLISHING, 2, rue André-Pascal, 75775 PARIS CEDEX 16
(42 2010 28 1 P) ISBN 978-92-64-09510-6 – No. 57625 2010

Better Regulation in Europe

LUXEMBOURG

The importance of effective regulation has never been so clear as it is today, in the wake of the worst economic downturn since the Great Depression. But how exactly can Better Regulation policy improve countries' economic and social welfare prospects, underpin sustained growth and strengthen their resilience? What, in fact, is effective regulation? What should be the shape and direction of Better Regulation policy over the next decade? To respond to these questions, the OECD has launched, in partnership with the European Commission, a major project examining Better Regulation developments in 15 OECD countries in the EU, including Luxembourg.
Each report maps and analyses the core issues which together make up effective regulatory management, laying down a framework of what should be driving regulatory policy and reform in the future. Issues examined include:

- Strategy and policies for improving regulatory management.
- Institutional capacities for effective regulation and the broader policy making context.
- Transparency and processes for effective public consultation and communication.
- Processes for the development of new regulations, including impact assessment, and for the management of the regulatory stock, including administrative burdens.
- Compliance rates, enforcement policy and appeal processes.
- The multilevel dimension: interface between different levels of government and interface between national processes and those of the EU.

The participating countries are: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden and the United Kingdom.

With the financial assistance of the European Union

OECD*publishing*
www.oecd.org/publishing

ISBN 978-92-64-09510-6
42 2010 28 1 P