

Executive Summary - Luxembourg

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

<i>Better Regulation strategy and policies</i>	
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 <i>ex ante</i> 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 (<i>e.g.</i> 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.

<i>Institutional capacities for Better Regulation</i>	
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.

<i>Transparency through public consultation and communication</i>	
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.

<i>Development of new regulations</i>	
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 <i>ex post</i> 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 (<i>e.g.</i> 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.

<i>The management and rationalisation of existing regulations</i>	
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.

<i>Compliance, enforcement appeals</i>	
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.
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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.