

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 (<i>Entfesselungsplang fur Betriber</i>). 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 <i>www.guichet.lu</i> 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 (<i>Relevé général de la législation</i>) is restructured as the Analytical Directory of Luxembourg Law (<i>Répertoire analytique du droit luxembourgeois</i> , 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 (<i>guichet unique</i>) 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.