

## 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.

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**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.**

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**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.

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**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.**

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**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.

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

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**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.

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**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.**

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**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.<sup>1</sup>

#### **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<sup>2</sup>.

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<sup>3</sup>, 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<sup>4</sup>*

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<sup>5</sup>. 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](http://www.simplification.lu) Internet site.<sup>6</sup>

## 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.