

Chapter 3

Transparency through consultation and communication

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

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

Assessment and recommendations

Public consultation on new regulations

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

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

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

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

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

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

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

Access to the law

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

Background

Public consultation on regulations

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

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

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

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

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

Box 3.1. The Economic and Social Council

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

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

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

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

Access to the law

Publication of laws

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

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

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

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

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

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

Access to administrative documents

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

Notes

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