

Chapter 5

The management and rationalisation of existing regulations

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

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

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

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

Assessment and recommendations

Simplifying the law

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

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

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

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

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

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

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

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

Reducing the administrative burden

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

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

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

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

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

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

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

Background

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

Simplification of regulations

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

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

Codification

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

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

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

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

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

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

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

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

Other instruments

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

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

Reducing administrative burdens

Administrative burden reduction for businesses

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

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

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

Institutional framework and support

Cutting red tape is the responsibility of the CSA, which was established in 2004 as the CNSAE and in July 2009 was placed under the Ministry of State (prior to that time it came under the Ministry of the Middle Classes, Tourism and Housing). This committee comprises representatives of public administrations and employers' organisations⁴ and meets once a month. The presence of business representatives on the CSA has allowed for active co-operation by businesses in the work of administrative simplification.

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

Methodology

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

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

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

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

Public consultation and communication

The Luxembourg government has based its simplification efforts on proposals put forward by businesses through their professional organisations, which are members of the CSA plenary. Any department, business or citizen can submit observations or simplification proposals to the CSA through its website. The CSA publishes information about its work at its website, and also through an electronic newsletter. In 2009 it published a 45-page brochure detailing simplification actions by area of activity since 2004, and their state of progress⁵. In practice, communication is addressed mainly to businesses and to the administrative “one-stop shops”. Other stakeholders (such as consumer associations and trade unions) are much less involved.

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

One-stop shops

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

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

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

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

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

Authorisations and licenses

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

Programme monitoring

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

Results

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

Areas where significant progress has been achieved include the following:

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

Administrative burden reduction for citizens

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

Administrative burden reduction for government

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

Notes

1. Programmes to reduce administrative burdens may include the review and simplification of whole regulatory frameworks or laws, so there can be some overlap with policies aimed at simplification via consolidation etc. There may also be some overlap with the previous chapter on the development of new regulations, as administrative burden reduction programmes are often conducted on a net basis, that is, taking account of the impact of new regulations in meeting target reductions.
2. Introduced in Italy in 1997 and in France in 2003.
3. In Italy, for example, the fourth simplification law introduced a progressive mechanism for cleaning up legislation (the “law-cutting”- Taglia-leggi – law), the successive phases of which involved: an inventory of laws and regulations in force; normative simplification, with repeal of all rules predating 1970 that were not deemed by administrations to be indispensable; reorganisation and codification, with room for the law to evolve, in order to harmonise surviving provisions with those subsequent to 1970. Actual implementation of this “guillotine” has focused on the repeal of all obsolete laws.
4. Union of Luxemburg Enterprises (UEL), Chamber of Trades, Chamber of Commerce, Federation of Artisans, Luxemburg Bankers' Association (ABBL), Luxemburg Confederation of Commerce (CLC), FEDIL-Business Federation Luxembourg, HORESCA (Hotel and Restaurant Federation).
5. www.simplification.public.lu/brochure/Brochure.pdf.