

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.

Assessment and recommendations

Public consultation on regulations

Italy is advancing on the modernisation of its public consultation practices, not least thanks to the thrust for e-consultation fostered by the 2005 Code of Public Administration. The system for the measurement of administrative burden is another point in case. In that remit, Italy has developed a more transparent and systematic consultation of stakeholders at the early stages not only of policy formulation, but also in relation to the design and conduct of the measurement tool. The Guidelines on the measurement and reduction of administrative burden point out, formally, the need to involve stakeholders in every phase of the process. The recent Enterprise Law (Law 180, November 2011) provides for the consultation of the most representative business organisations before the adoption, at any Government level, of measures which have consequences on them. In September 2010, a Negotiating Table for simplification measures for SMEs was established at the Department of Public Administration with the participation of designated representatives from major associations (Confindustria and Rete Imprese Italia, which includes Confartigianato; CNA, Confcommercio, Confesercenti, Casartigiani). The Table is consulted in every phase in the definition and implementation of the simplification Agenda, in the burden measurement and reduction activities and in targeted simplification measures for SMEs. The initiative *Burocrazia: diamoci un taglio!* is a further example of an online consultation designed to involve citizens, businesses and their associations in the administrative simplification process.

Despite a series of legal provisions enshrined in laws and regulatory act, however, systematic and open consultation of the public on regulatory initiatives is not governed by operational principles and quality standards. The existing provisions remain merely descriptive and do not provide further concrete, detailed guidance on how to organise consultation. The 2009 Directive implies that stakeholders' consultation takes place within the process of preparing RIAs, but the 2008 RIA regulation fails to provide the mechanisms, processes and tools to ensure implementation matching international good practices. Consequently, while consultation practices have evolved over the past 15 years and the authorities always consult during RIAs, open public consultations (notably through “notice and comment” procedures) remain seldom used and coexist with traditional forms of closed-door consultation and negotiation. Moreover, there still is significant variance in the scope, intensity and transparency of consultation.

Greater awareness of the necessity to enhance consultation practices as an “integral part”¹ of decision-making is emerging. The new government of November 2011 has announced that it would devote more attention to public consultation in the preparation of normative acts. DAGL is preparing a new regulation which is expected to cover consultation in *ex ante* and *ex post* evaluation.

Recommendation:

1. Ensure speedy development and proper implementation of all the instruments aimed at promoting systematic, timely and transparent public consultation practices, including the forthcoming DAGL regulation on consultation and related detailed guidelines for administrations. The new consultation policy should be properly communicated to stakeholders.

Public communication on regulations

By making the *Normattiva* portal operational and accessible for free, Italy has bridged the gap that separated it from other well performing EU countries in terms of public communication of adopted regulations. Nonetheless, wide margins of improvement remain as far as the communication of planned and forthcoming regulatory initiatives, which are not systematically posted online. The results of burden measurement, reduction and simplification activities are shown in a special report published regularly online. This constitutes a "good practice" upon which future improvement could be based.

Recommendation:

2. Greater analysis, advocacy and communication on the expected gains from regulatory policy would help the country strengthen the coalition of reformers. In the long run, consider how to strengthen the functions of producing such information.

Background***Public consultation on regulations at the central level******Policy on public consultation***

Italy is conscious of the need to strengthen consultation. A 1999 reform law called for better consultation and established the Osservatorio sulle semplificazioni for consultation on simplification initiatives. The general requirement for Italian central administrations to systematically consult stakeholders affected by regulations as well as the public is enshrined in the law.² But while stakeholders' consultation is systematic and accompanied by publication of the consultation activities in the measurement and reduction of administrative burden, it is somewhat less developed in the development of new regulations.

The law requires that simplification measures for SMEs are prepared after hearing the employers' associations and the results of these consultations are made public and submitted to the parliament. The Enterprise Law approved in November 2011 also formally introduces a systematic consultation of representative organisations prior to the adoption of measures (at any government level) which have effects on firms.

The 2008 RIA regulation insists on the necessity to put adequate emphasis on this important phase of the preparatory process – a principle which is reiterated by the Directive of the Prime Minister of 2009 regulating the procedural stages for the preparation of normative acts.³ Nonetheless, both the related decree implementing the law and setting general principles and standards for public consultation and the related guidelines are still to be issued. As a result, the approach has been somewhat *ad hoc*. There are no formal legal requirements to publish the results of consultations, reveal the parties consulted, or provide feedback. The procedure and intensity of the interaction between central administrations,

the regions, local authorities, the social partners and other stakeholders vary. Depending on the regulation, the Council of State, the Court of Audit, the Conference State-Regions and the business associations must be consulted, channelled through DAGL.

DAGL is proposing a decree implementing the legal basis on public consultation, with a view to integrate RIA and consultation practices as much as possible, and to standardise current approaches. To date, the proponent administrations are in fact each responsible for organising the form of public consultation, and they have great discretion as to whom and how to consult.

Some central administrations have taken individual steps to enhance consultation practices. Illustrative examples include:

- The Department of the Treasury has a dedicated section of its website where public consultations carried out on its draft legislative proposals and other documents are published.⁴
- The Ministry for Agricultural, Food and Forest policies has created an Observatory (*Osservatorio sulla regolazione*) charged with the co-ordination of all ministry's activities linked to RIA and *ex post* evaluation (VIR). The Observatory manages a register that allows stakeholders to participate in online consultations. Further to these consultation rounds, which usually last 20 days, the Observatory produces the related RIA report. This report is, however, not publicly available.
- The Ministry for cultural heritage and activities organises so-called focus groups in relation to its RIA practice. This form of consultation is reported to have been an effective and efficient allocation of resources. However, in the past two years, the notice-and-comment mechanism was used only once.
- The Ministry of economic development opened an online consultation in April 2010 on the transposition of the EU Directive on the accomplishment of the internal market of Community postal services (Directive 2008/6/EC). A report was published in the summer of 2010.⁵

An emerging use of ICT for consultation

The Code for Digital Administration of 2005 (see Chapter 1) opened the way for a more embracing consultation culture, through the use of ICT, and Internet in particular. It notably contained a provision making explicit reference to online consultation. A number of initiatives have been taken in this direction in relation to proposals for administrative simplification. For the first time, the government organised a government-wide online consultation, on the Action Plan on Simplification for 2007. In 2008, an online consultation was also launched with a view to collect indications on the priority for simplification for the then new Action Plan, generating some 1 200 comments and recommendations from stakeholders within a month.

In March 2009, the Department for Public Administration and Innovation opened a three-week online consultation on the implementation of some delegated competences to the Minister to rationalise the performance of the public administration and enhance its efficiency (Legislative Decree 150/2009). FORMEZ managed the online consultation, and the Department issued a report on the experience in April 2009, analysing both the statistics related to the exercise and the content of the feedback received.⁶ The Minister has defined two main instruments to support this effort, namely the Reform Delivery Unit (RDU),⁷ a co-ordination unit with representatives of all key players, and a web portal on the reform.

In March 2010, the Department invited citizens, experts and all the stakeholders to give their comments and advice through a two months online consultation on the draft version of the Guidelines for the public administrations websites.⁸ A similar consultation was carried out in May 2011 to update the Guidelines. A public online consultation, open to all stakeholders, also took place between May and July 2011 on the preliminary text of the new code of public administration (www.codicepa.gov.it).

Box 3.1. Online consultation on administrative simplification: Cutting bureaucracy

In November 2009, the Public Administration and Innovation Department launched *Burocrazia: diamoci un taglio!*, an online consultation designed to involve citizens, businesses and their associations in the administrative simplification process. Unlike the previous trials, this initiative is permanently accessible to all potentially interested parties.

The initiative received 500 comments and inputs within two years, 46% of which submitted by private sector representatives. The Office for Administrative Simplification in the Public Administration Department screens them and considers them as a basis for new simplification measures. Feedback is ensured through the regular publication of reports concerning the main results and case studies, for which citizens can follow the process of resolution.¹

According to the results of the consultation, poor use of ICTs and limited integration and interoperability among public agencies are the two most critical issues that compound bureaucracy. The Public Administration Department estimates that 17% of Italian population uses e-Gov services; compared to an EU average of 30%, 40% in the major European countries and 60% in Northern European countries.

1. www.magellanopa.it/semplificare; the latest report was published in October 2011.

Source: OECD (2010), *Modernising Public Administration: A Study on Italy*, p. 89, www.epractice.eu/node/284742.

In July 2008, an Inter-Institutional Agreement was signed between the Minister for Normative Simplification and the President of the National Council for Economy and Labour (CNEL) to enhance consultation with stakeholders on simplification and regulatory reform. As specified in the Agreement, CNEL provides support to the Minister during the examination of the themes connected to regulatory reform and normative simplification in the economic and social fields. It also provides advice and support through the participation of relevant members. This form of consultation aims, among others, to identify the normative simplification proposals that could bring benefits for the country economic growth and development, taking into account the results of the burden measurement programme.

Consultation by regulatory agencies

Public consultation practice by regulatory agencies is quite advanced. All of them apply notice-and-comment and publish the inputs received as well as their (general) feedback on the consultation findings. What differentiates the various practices is the form of publications, some directly posting online links to individual documents, other attaching the consultation documents to the proposals.⁹ Banca d'Italia and the Regulatory Authority for Electricity and Gas (AEEG), for instance, have developed specific guidelines, the systematic organisation of hearings with the main stakeholders, and the online publication of consultation documents (coupled with the “notice and comment” procedure).¹⁰ The Authority for the supervision of public contracts for works, services and supplies (AVCP),

which also publishes consultation on its initiatives online, is another example of the recent agencies' dynamism on regulatory public consultation.¹¹ Systematic involvement of stakeholders in the adoption of general type acts is required of financial authorities (Bank of Italy, Committee on corporations and the stock exchange, ISVAP and COVIP) by law (Law 262/2005). Similarly, the law establishing AGCOM, the Communications Regulatory Authority, requires the involvement of stakeholders in the regulatory process. The AEEG has voluntarily developed a structured consultation system according to international standards.

Public communication on regulations at the central level

Communication on existing regulations

All Italian laws and subordinate regulations as well as the judgements of the Constitutional Court have to be published in the Official Gazette (*Gazzetta Ufficiale*), available online. Information and communication activities of the public administration are regulated by Law 150/2000. The Digital Administration Code of 2005 (Legislative Decree 82/2005) made a sensible contribution towards diffusing the practice of converting, transmitting and publishing legal and administrative acts into electronic format. The Code strengthened the right of individuals and economic operators to access and receive public documents electronically.

Since 2008, the programme Normattiva (www.normattiva.it) has served as the database and communication service for accessing legislation in its original formulation as well as it is (has been) in force (i.e. further to amendments) at any given point in time. It is shared by the Presidency of the Council of Ministry, the Senate and House of Representatives, is managed by the Minister for Legislative Simplification and the DAGL.

Communication on proposed regulations

While planned legislative proposals by the government are still not systematically published, some attempts have been made to improve the situation. In 2007, the Government adopted a political and programmatic planning process listing all the actions of commitment, deadlines, the kind of intervention, and the responsibilities envisaged by the Government. To date, the legislative proposals that are likely to bear the most important impacts are normally posted on the websites of the government or the responsible ministries. This is notably the case for the most relevant simplification proposals, which have been until now accompanied also by targeted information campaigns.

Notes

1. As defined by the Minister of Public Administration and Simplification at his parliamentary hearing in 2011: www.funzionepubblica.it/media/879354/audizione_ministro_20_12_2011.pdf.
2. Law 229/2003 and Law 246/2005.
3. Direttiva del Presidente del Consiglio dei Ministri, *Istruttoria degli atti normative del governo*, Gazzetta Ufficiale.
4. www.dt.tesoro.it/it/consultazioni_pubbliche.
5. www.comunicazioni.it/ministero/ufficio_stampa/comunicati_stampa/pagina252.html.
6. Further to Law 15/2009. See www.innovazionepa.gov.it/comunicazione/notizie/2009/aprile/notizia-del-29042009-4.aspx.
7. www.riformabrunetta.it. The portal give public servants and citizens complete and transparent information on the reform process. It links all activities related to the reform, in particular, initiatives on customer satisfaction, transparency, equal opportunity and front-line support.
8. http://apps.innovazionepa.it/forum/forum_topics.asp?FID=9, and www.innovazionepa.gov.it/media/367125/linee_guida_siti_web_pa.pdf.
9. www.osservatorioair.it/wp-content/uploads/2010/04/OsservatorioAIR_Panel_Consultazioni.pdf.
10. On the AEEG consultations, see www.autorita.energia.it/it/docs/dc/consultazioni_aperte.jsp, www.autorita.energia.it/it/docs/dc/dc-11.htm, www.osservatorioair.it/wp-content/uploads/2009/08/deli-46_09-aeeg.pdf; on the AGCOM consultations, see www.agcom.it/SearchTematica.aspx?idM=5.
11. www.avcp.it/portal/public/classic/Comunicazione/ConsultazioniOnLine.



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