

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 regulations

General context

Belgian governments have a well-established and well-supported practice of consulting external shareholders when preparing new regulations, which is based on institutionalised bodies (“advisory boards”) set up by each government. Consultation is considered, not only by governments, but many stakeholders as an essential instrument for reaching consensus and overcoming tensions. Stakeholders are generally consulted through a dense, highly structured and extensive network of advisory boards, which comprise representatives of target groups related to various policy/regulatory issues. The system has the broad support of most stakeholders. Advantages inherent to the system (when it works at its best) include the fact that consulted stakeholders are targeted in terms of their representativeness

and expertise, and that they are integrated in an “interactive” discussion with the government.

Belgium’s consultation policy is dynamic, and governments are deploying or testing a number of new approaches alongside the traditional structures (without abandoning the latter). There are signs that a new thinking is emerging, especially in the regions. Belgian governments have also been developing new forms of consultation, including more open “notice and comment” procedures using the internet to reach out directly to citizens, round tables, and large scale *ad hoc* consultations for difficult issues such as the transposition of complex EU directives. Administrative simplification programmes have encouraged the use of the internet and direct interviews with stakeholders to gather views. Regulatory agencies such as the food agency have adopted new approaches. The development of *ex ante* impact assessment processes looks promising in terms of adopting new attitudes to consultation including its timeliness (sufficiently ahead of formal decisions to go ahead with a proposal, so that the consultation can inform the decision). The network of Better Regulation units across Belgian governments is an institutional asset for the further development of new approaches.

There have been significant efforts to simplify the advisory board system, particularly in the regions. The network of advisory boards is traditionally very extensive, comprising around 250 boards at federal level, 23 commissions in Wallonia, and 13 strategic advisory boards together with subsidiary bodies in Flanders (after rationalisation). The regions have taken steps to streamline their systems, reducing the number of bodies and setting common rules, but the structures remain significant and it is not yet clear that the reforms have yet had a positive impact in terms of enhanced transparency and meeting stakeholder needs. The federal government (which has the largest number of boards) has yet to engage a reform of its system.

Despite these important developments, the overall approach to consultation would benefit from an updated and clearer policy to guide the process and reinstate transparency. Transparency as a basic principle of consultation has become compromised over time by the growing size of the advisory board system. Belgian governments have a commitment and a large number of requirements to consult. Stakeholders are generally strong supporters of the advisory board system and they want to improve it. Three related needs can be distinguished (relevant for all the Belgian governments): further reforms of the advisory board system; further development (in parallel, where it is appropriate to integrate them) of new forms of consultation; and a clearly articulated consultation guidance to cover all domains. These issues are examined more closely under the three sections below.

Recommendation 3.1. (all governments): Engage further reforms of the advisory board system to simplify the structure; develop further new forms of consultation, for use where appropriate as a complement to the traditional system; and to frame the overall approach, establish consultation guidelines for all domains (these aspects are each covered in more detail below).

Reform of advisory boards

The advisory board system needs further reform. The system has developed to secure a comprehensive coverage of issues for which public consultation is needed, but has grown in complexity and lost transparency precisely because of the range and number of consultations undertaken by a very large number of advisory boards. Belgian governments

have a commitment and a large number of requirements to consult. Even some insiders find it a challenge. Stakeholders do not want to change the system, but they want to improve the process. Specific issues that appear to need attention include: complexity, timing of consultation (and link to impact assessment processes), deadlines for responses, the scope of regulations to be covered, conditions of access to the boards, the role of the ministerial cabinets, sanctions for non-observance of the procedures, and feedback to stakeholders.

The system now lacks transparency (which was not the original intention). Efforts to rationalise advisory boards have been mainly limited to the regional governments although the need for reform is also part of the debate on regulatory quality at the federal level. The number of advisory boards remains too high, including in some cases “one issue” lobby groups which fragment the strategic messages which governments need to hear. The large number of advisory boards can make it difficult for stakeholders to contribute efficiently to all consultations, as the same organisations can be part of several boards. Advisory groups are also established according to different rules, which reduces the transparency of the system, especially for outsiders (for example, how consultation is carried out, who are the board members).

The timing of consultation exercises may need attention, an issue that is shared with many other countries. Governments may consult advisory boards at a very late stage in the drafting process when the political decision to go ahead has already been made. In addition, consultation and *ex ante* impact assessment are not linked.

Deadlines for advisory boards to respond to consultation exercises may be too short, another issue that is widely shared with other countries. The OECD peer review team heard from some stakeholders that response times can be short, and that official time limits may be too short to allow organisations to consult their own members.²

The full consultation processes need to cover all regulations. At the federal level, the government often uses programme-laws as a fast-track procedure for making new regulations, and the OECD peer review team heard that some parts of the consultation processes could be sidestepped as a result. The OECD peer review team were told that laws initiated by parliaments may sometimes be used to circumvent the formal consultation processes which apply to proposals initiated by the executive.

The conditions of establishment and nomination to advisory boards need to be fully transparent and accessible. Procedures for establishing advisory boards and nominating their members need to be fully transparent and accessible so that potential outsiders who have not been previously involved may put themselves forward for nomination if they so wish. The organic laws regulating the processes as well as the nominations are systematically published in the Belgian Monitor. This may be enough to ensure that those who have an interest can join in, taking account of the framework laid down for representativeness, social partners etc. However the OECD peer review team considered that a view should be taken on whether enough is done to raise awareness of the procedures.

The significant role of ministerial cabinets in rule-making undermines the scope for officials to ensure that consultation procedures are observed. The OECD peer review team heard that drafting is often carried out by the ministerial cabinets, which means that consultation procedures may not be applied. Officials in the administration are given little opportunity to check that procedures have been followed, and to take remedial action.

Information on the work of most advisory boards is not easily accessible, apart from the largest ones. There is not much easily accessible information on the work of most advisory boards, apart from the largest ones. The opinions of the advisory boards are supposed to be

public, but are not always easily accessible. Some of the boards, but not all, publish their opinions on their websites. Opinions of different advisory boards on the same issue are not always made available in the same place by the relevant ministry.

Feedback to stakeholders is not always complete or systematic. The OECD peer review team heard that little feedback is provided to stakeholders, and few efforts are made to publicise comments. This was a particular criticism of the social partners and parliament. Parliaments noted that governments are not required to justify how they take account of advice given by bodies such as the Council of State and external stakeholders. The explanatory memorandum attached to draft bills is a summary, and it seems that there is a demand for a more complete document.

Recommendation 3.2. (all governments): Evaluate the advisory board system, with a view to (further) rationalisation, and streamlining of the supporting rules. Consider a guillotine system to prune the number of boards when they come to the end of their mandate. Eliminate boards that are not found efficient. Establish advisory board mandates with a limited timeframe, and systematically review the functioning of the board before renewing the mandate.

Recommendation 3.3. (all governments): Ensure that consultation exercises are launched at an early stage in the decision making process, before political commitments have been made, and in time to provide useful feedback to the government as an aid to decision making. Make use of the forward planning mechanisms to secure this.

Recommendation 3.4. (all governments): Enforce the rules regarding deadlines where necessary, and check that these provide adequate time for stakeholders to prepare effective responses.

Recommendation 3.5. (all governments): Check that all regulations are captured by all the relevant stages of the consultation process (including for example review by the relevant advisory board). Consider, in discussion with parliaments, how and to what extent laws initiated by parliaments can be the subject of equivalent robust procedures.

Recommendation 3.6. (all governments): Check that the process and the criteria for the establishment and nominations to advisory boards are clear and easily accessible for all those who may wish to put themselves forward.

Recommendation 3.7. (all governments): Consider the establishment of a consultation portal (covering all governments) in order to ensure that the work and opinions of the largest advisory boards are published and easily accessible to all interested parties, including the general public.

Recommendation 3.8. (all governments): Ensure that systematic feedback is provided on significant stakeholder contributions, including where consultation is non-obligatory. Consider providing more complete feedback on important legislation than is currently provided in the explanatory memorandum to draft bills.

Development of new forms of consultation

Belgium's current institutionalised system of consultation is based on fundamental principles of representative democracy. The system covers a very wide range of sectors and issues. The Belgian system draws a large part of its strength from high-participation rates. Union membership is high (between 60 and 70%), and 80-90% of enterprises are members of an employer's federation.

The system nevertheless raises some challenges for the active and direct involvement of citizens and businesses in the development of new regulations. Advisory boards are intermediaries between governments and individual businesses and citizens. Business and trade unions ("social partners") play a key role in the boards. Capturing effectively the views of citizens and businesses depends on the capacity of advisory board members to consult their own constituencies. As advisory boards are usually set up with mandates of four to five years, they may not keep pace with developments in the stakeholder community. The system thus implicitly limits inputs from all relevant stakeholders beyond the defined in the texts on the creation of advisory boards. It may thus some "miss" useful inputs, and puts citizens and businesses at arm's length from the administration, by attributing them a passive role (recipients of information about projects for new regulations and the opinions of advisory boards) rather than allowing them a more pro-active engagement in the rule-making process. The development of new forms of consultation could be tested further to establish where it might be useful as a complement to the traditional forms of consultation.

Recommendation 3.9. (all governments): Without endangering the traditional advisory board system of consultation, develop a framework for the selected use of new approaches, building on experiments that have already worked well. For example, when would it be useful to consult on the web, perhaps as part of the advisory board process? What issues would benefit from this approach?

Framework consultation guidelines

Belgian governments lack a clearly defined integrated code of good practice and guidance material to lend strength and visibility to consultation where this would add value. The legal foundations for consultation are robust and go back a long way in Belgium's history. However it would be useful to examine how to improve the rules and extend these to areas which are not yet the subject of specific rules. Setting up a set of universal guidelines may prove a useful way forward, to confirm and define clearly common minimum standards that would apply to all domains, and to provide advice on the new forms of consultation that are emerging. It may also be useful to consider whether the threat of annulment by the Council of State or the Constitutional Court in case of non-

observance of obligatory consultation requirements is a sufficient encouragement to respect the procedures. Are further sanctions needed?

Recommendation 3.10. (all governments): Develop, agree and publicise an enforceable consultation guide and supporting code of good practice that covers all the key elements set out in the more detailed recommendations above (scope, timing, methods, feedback etc). This could be done by setting up a reflection group made up of the representatives of the Better Regulation units, representative stakeholders, the most important consultations boards, and the Council of State. Consider whether there is a need for further sanctions for non-compliance with consultation rules and procedures.

Inter- governmental consultation

Consultation structures and processes are for the most part intra-governmental. Although there are some specific advisory bodies to co-ordinate consultation on policies and related regulations across governments, this does not appear to be an established feature of the system. This aspect, however, is of critical importance for policy areas where competences and rule-making powers are split among the different governments but where there may be a shared interest in developing an effective policy and regulatory response (environment, for example).

Recommendation 3.11. (all governments): Consider whether there is a need to boost and systematise inter-governmental consultation and shared approaches to public consultation in areas where governments agree on the need for co-ordination.

Public communication on regulations

Belgian governments have developed numerous initiatives to ensure access to regulatory information, which is guaranteed by legal texts, making strong use of ICT. Significant and impressive initiatives have been taken, including a range of Belgium wide initiatives. These efforts are essential for the citizens' and enterprises' understanding of regulations given the underlying institutional complexity of Belgium and the use of several languages. Citizens' right of access to administrative information is guaranteed by the constitution and detailed in a 1994 law. All regulations, issued by the federal state, regions and communities, are published in the Official Journal, which is available on the Internet. In addition regulations are compiled in a website, with unofficial or official consolidated versions and search facilities. All texts are available in French and Dutch (as well as German for regulations concerning the German-speaking community). The federal government has established a portal for accessing all official Belgian websites, including those managed by regional and community authorities, and for providing guidance on administrative procedures to all citizens and enterprises.

Background

Public consultation on regulations

General context

Belgian governments have a well-established practice of consulting external shareholders when preparing new regulations, based on institutionalised bodies set up by each government and focused on different categories of stakeholder. Consultation is considered an essential instrument for reaching consensus and overcoming tensions. This is, for example, formalised in the Walloon guide on regulation: “Consultation of users is a non-expensive and efficient solution to contribute to identifying issues, assess the necessity for governmental action and define the best way to act.”³ The need for consultation of all affected parties is also part of the eight principles for good regulation set by the Flemish government in 2003 (Chapter 1).

Consultation is carried out through an extensive network of advisory boards, including up to 600 boards at the federal level, 23 commissions in Wallonia⁴ and 13 key strategic boards in Flanders (with an undefined number of other consultative bodies). Each advisory board is regulated individually to reflect the variety of issues and stakeholders, although the approach is based on a set of “models”. Belgian governments also usually consult external stakeholders informally at an earlier stage in the development of regulations. Other forms of more open consultation are also emerging alongside the traditional approach, for example, in the context of administrative burden reduction programmes (*e.g.* through interviews with stakeholders).

Inter-government consultation

Consultation structures and processes are for the most part intra-governmental. There are some specific advisory bodies to co-ordinate policies and related regulations across governments. These have been established *ad hoc* and there is no general presumption that a shared system will be in place for policy issues that involve the competences (and hence rule-making) of different governments. Examples of specific initiatives include *ENOVER/CONCERE* (*Energieoverleg or Concertation État-Régions pour l'Énergie/Energieoverleg*) for discussions between federal government and regional governments over energy-related matters that have been devolved to regions, and the federal inter-departmental commission for sustainable development.

Advisory boards

Specific regulations set up advisory boards and their conditions of work, including rules for the designation of committee members, work scope, consultation process, publicity given to the committee’s recommendations, assessment of results, and procedures for taking account of the recommendations. While missions and specific rules can differ, the organisation of advisory boards at federal, regional or community levels are based on a number of common principles:

- Composition reflects the different types of target stakeholder for policy areas. The regulation creating the board usually sets the number of members for each defined target stakeholder. They are usually proposed by defined institutions and nominated by the government.

- The scope of activity is defined.
- Regulations setting up an advisory board and complementary regulations specify the rules regarding deadlines for giving comments, publicising comments, secretariat capacities, etc. These rules can thus vary across boards.

All advisory boards have a general mission to enlighten administrative and political authorities and associate all relevant stakeholders with the decision-making process. Beyond this, their specific missions may vary. Advisory boards can be asked to provide comments and suggestions in the development of specific new regulations, in the implementation of regulations (*e.g.* issuing advice on delivery of specific authorisations), and in the development of broader policies. These differences can be reflected in their composition. They can take the shape of technical or expert committees, socio-economic committees (reflecting different target groups) and inter-federal co-ordination committees (through the representation of region and community organisations). Some advisory boards combine these three different missions. This is the case of the High-Level Statistical Council, which includes academics, business and trade union representatives, as well as federal, regional, and community agencies.⁵

Consultative bodies for social dialogue

Belgium has specific consultative bodies to promote “social dialogue” between business and employee representatives (“social partners”) and governments on social and economic issues. This is against the background of a high trade union density relative to other OECD countries.⁶ At the federal level, the social dialogue takes place through two long-standing advisory boards (National Council of Labour established in 1952, often referred to as “Belgium’s social parliament”, and the Economy Central Council established in 1948). Each federated entity has established its own social and economic council, bringing together social partners.⁷ These councils provide advice and recommendations to their regional government on all matters of regional competence and those having an impact on the region’s economic and social life. They include several thematic permanent committees and *ad hoc* committees created for specific issues.

Belgium has developed since 1945 a system of participation in the management of social security by the social partners. These are firstly consulted on projects of the authorities but may also intervene in budget management, the determination of their rights and obligations etc. Finally, they can write their own collective agreements which have force of law within the limits of their scope.

Rationalisation of consultative bodies

While consultative bodies allow an exchange a views between different stakeholders and the development of consensus positions, the multiplicity of bodies is also frequently seen as an impediment to their efficiency, as well as having a negative impact on the readability of the institutional framework. Interviews conducted by the OECD peer review team showed a strong commitment to institutionalised consultation processes, due to added value brought by confrontation of opinions. At the same time, many interviewees noted important differences between bodies, in terms of efficiency, influence on the decision-making process, as well as the difficulty of ensuring efficient participation as result of the numerous bodies. Efforts to rationalise advisory boards have been mainly limited to the regional governments although the need for reform is also part of the debate on regulatory quality at the federal level.

As part of its administrative reorganisation around 13 policy areas, the Flemish government has established a single strategic advisory board (*strategische adviesraads*) for each of the policy areas. A 2003 decree⁸ has set common rules for all strategic advisory boards relating to their mission, independence, funding and accountability. The Social and Economic Council of Flanders acts as a strategic advisory board for several policy areas, in addition to its general mission to promote social dialogue. The reforms have led to a reduction in the number of consultative bodies, with some uncertainty however as to the ultimate outcome, as the establishment of the strategic advisory boards has not eliminated all other bodies. Some consultative committees have been maintained or created, in some cases in relation to a strategic advisory board. The Flemish government has undertaken an evaluation of consultation practices.⁹

The Walloon government has engaged similar streamlining efforts. A 2008 decree sets common rules applicable to a number of consultative bodies such as mandate duration (5 years), quorum, and time allocated for consultation (35 days). As in Flanders, the Economic and Social Council has also been charged to serve as secretariat for other advisory boards. These reforms have harmonised some rules regarding advisory boards, but not all (publication of opinions is not covered, for example).

With respect to the federal level, there have been calls for a reform of consultative bodies. The review of economic regulations undertaken by FPS Economy released in 2008 includes an assessment of consultation practices and recommends that existing commissions dealing with economic regulations should be reviewed and streamlined. It calls for a grouping all consultative bodies relating to economic areas under a single advisory board and detailed rules regarding the organisation and procedures of these commissions (*e.g.* deadlines, composition of boards, possibility for creating specialised sub-groups).

Consultation process

Advisory boards are consulted either before or after the first reading of a text in the Council of Ministers (after in the case of the Walloon government). The results of the consultation process are used in different ways by Belgian governments. At the federal level, the note attached to the text sent to the Council of Ministers must include the opinions of the advisory bodies (summary and full text) and the list of bodies still to be consulted. The government is not, however, required to attach these when it sends the proposal to the federal parliament. In Flanders, the decree related to strategic advisory boards stipulates that the Flemish government “gives a reason and an explanation for its decision on advisory opinions to the strategic advisory board”. The opinion of the strategic advisory board is appended to the draft sent to the Flemish parliament, while the feedback on the opinion is sent only to the strategic advisory council. In Wallonia law drafters are encouraged to report on opinions received during the consultation process in the note to the Walloon government so as to provide feedback to consulted stakeholders.

The largest advisory boards have a website on which they publish their comments. Examples of boards publishing their notice of opinions are the National Council of Labour, the Advisory Committee of Telecommunications, the Economic and Social Council of the Walloon Region. In some cases, government departments also publish the advice of some of the advisory councils. This is the case, for example, of the FPS Economy which publishes the opinions of the Council of Consumption.

The legal section of the Council of State, which is consulted after the meeting of a Belgian government, checks compliance with consultation requirements as part of its legal

check on all regulations proposed by Belgian governments. Failure to comply with consultation requirements is a case for annulment of a secondary regulation by the litigation section of the Council of State. At the federal level the Secretariat of the Council of Ministers plays a gate keeper role upstream as it checks compliance with the requirements for all texts sent to the Council of Ministers. However failure to consult is not a justification for the nullification of legislative acts.

Scope of consultation

Formal requirements regarding consultation of advisory boards mainly apply to primary regulations (laws, decrees and ordinances) and to some secondary regulations. For example, the government of Flanders must consult the strategic advisory board on all draft primary regulations (decrees) as well as secondary regulations of “strategic relevance”. The strategic advisory boards can take the initiative of giving advice on draft decrees initiated by the Flemish parliament or draft secondary regulations issued by the Flemish government. Advisory boards can also be associated with the development of large scale reforms as was the case of the National Council of Labour in the programme for the modernisation of social security.

At the federal level a number of primary regulations are not submitted to advisory boards. These are regulations embedded in “programme laws” often called “catch-all laws”, which include various provisions relating to different policy areas. Programme laws are subject to limited scrutiny (including for internal consultation such as the Council of State). It is widely recognised that programme laws have been used extensively over the years and now contain dozens (even hundreds) of provisions, which should be subject to specific laws, in a large range of policy areas. The abuse of these programme laws, was mentioned repeatedly at meetings held by the OECD team (for more on programme laws, see Chapter 4). Another by-pass, mentioned to the team, is to use the parliamentary procedure for tabling a new regulation to take forward what is really a government initiative. In this case, consultation takes place within hearings organised by the parliamentary committees, and official advisory boards may not be consulted.

Development of other forms of consultation

Belgian governments are developing more open forms of consultation and taking other initiatives to strengthen the process. The 2008 policy notes of federal government ministries include the following action: “The government will emphasise citizens’ participation in the policy making process by promoting new participative methods, particularly citizen panels and online public consultations”.

In the area of administrative simplification, Belgian governments collect suggestions of stakeholders through the *Kafka* contact point on the Internet.¹⁰ Citizens, businesses and public servants can suggest simplification proposals or point out any problems relating to administrative procedures and regulations. The ASA sends suggestion concerning regions and communities to the relevant authorities. Flanders has taken similar initiatives with the campaign “simplifying together” and the use of panel discussions for the baseline measurement. In addition to the general *Kafka* contact point, the ASA has recently used an open form of consultation for the implementation of a specific simplification measure.¹¹

The transposition of the EU directive on public participation in the elaboration of some plans and programmes relating to the environment has also led to the organisation of large scale consultations in Belgium. In Wallonia, where conditions for consultation in the environment field are set in a 2007 decree,¹² the most recent consultation in this area related

to the implementation of the water framework directive. In Flanders, the model of the “Round Table” has been used in the automobile sector for consultation on issues. The 2008 Inter-institutional Agreement on RIA (partners are: the Flemish government, the strategic advisory councils, SERV and the Flemish Parliament) should open the way to a broader approach which should also promote timely consultation (before it is too late in the decision process). Flanders is also promoting EU related consultation *via VLEVA*.

Issues with consultation

While most stakeholders upheld the broad lines of the current system, they raised some important concerns. Box 3.1 reflects the remarks picked up by the OECD peer review team in the course of interviews with a wide range of stakeholders in the federal state and federated entities. It should be noted that even (consulted) stakeholder groups often voiced concerns. It should also be emphasised, however, that most stakeholders upheld the broad lines of the current system (it reflects an “eminent tradition”). They would simply like it to work more effectively.¹³

Box 3.1. Issues raised by stakeholders with consultation in practice

Scope of consultation. Formal consultation processes stop short of covering all relevant regulations. They are only mandatory for primary legislation (and in some cases “important” secondary regulations—which may not be defined). They do not cover parliamentary initiatives, which are often used to bypass consultation procedures (example mentioned Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora). They do not cover federal programme laws.

Timing of consultation and deadlines for response. The OECD peer review team heard from some stakeholders that response times can be short, and that official time limits may be too short to allow organisations to consult their own members.

Involvement of the ministerial cabinets. Drafting is often carried out by the ministerial cabinets, which means that consultation procedures may not be applied. Officials in the administration are given little opportunity to check that procedures have been followed, and to take remedial action (“our biggest problem are the cabinets”!). The proportion of drafts prepared by the cabinets can reach 80%.

Feedback. Little feedback is provided to stakeholders, and few efforts are made to publicise comments. This was a particular criticism of the social partners and parliament. Parliaments noted that governments are not required to justify how they take account of advice given by bodies such as the Council of State and external stakeholders (for which it was suggested that the answer was a stronger and more complete explanatory memorandum attached to draft bills).

Stakeholders consulted. It was noted by some that this was almost exclusively the established advisory board structures. This has two negative consequences. First, the unintended effects of a proposed regulation may not be detected. Second, stakeholders may take matters into their own hands. A specific case was mentioned: an infrastructure project in Antwerp where a reiterated consultation process has been running since 2002 and concerned stakeholders have not been consulted; these stakeholders formed pressure groups and have since held up closure on the project. At the same time, established consultation groups were not always happy either, noting that arbitrary decisions could sometimes be made, notably by the ministerial cabinets, on whom to consult. There was a certain tendency to avoid formal consultation mechanisms as a result, and to use instead informal consultation/lobbying.

Lack of a consultation policy. To set out essential requirements, responsibilities, and to offer guidance on issues and tools such as ICT.

Public communication on regulations

Access to administrative data and documents is guaranteed by the constitution, whose Article 32 states: “Everyone has the right to consult any administrative document and to have a copy made, except in the cases and conditions stipulated by the laws, decrees”. At the federal level, two laws regulate access to administrative documents in more detail both in terms of active publicity (upon own initiative of government agencies) and passive publicity (upon request for information). The law of 11 April 1994 on administrative publicity requires government agencies to respond to a request for information within 30 days of its filing, specifies cases when agencies can reject the request and sets up a Commission for Access to Administrative Documents. A law of 5 August 2006 provides additional requirement in case of request in the field of the environment.

Belgian regulations are accessible through different official publications and websites. All regulations of Belgian governments are published in the *Belgisch Staatsblad – Moniteur belge*, the official journal of the Kingdom, which is managed by the FPS Justice and available on the Internet since 1 June 2007.¹⁴ Regulations enter into force ten days after publication in the official journal, unless otherwise specified. The FPS Justice also manages an online database (*Justel*),¹⁵ which provides access to consolidated versions of regulations as well as references to related parliamentary documents (in French and Dutch). Federal, community and regional institutions have co-operated in the establishment of a portal, the Crossroads Bank for Legislation,¹⁶ which gives access to each institution’s databanks on legislation and case-laws (including WALLEX and *Vlaamse Codex*, the legal databases of the Walloon Region and the Flemish Region). Institutions include federal, community and regional parliaments and governments, community commissions, the Council of State and the *Court of Cassation*. The second stage of development (not started) involves linking the various databanks with each other and providing a single search tool.

Most government agencies also publish information on regulations relating to their field of activity on their websites. Publication is in Dutch, French, German and frequently English at the federal level. Multi-language publication is also often used at regional and community levels. For example, the FPS Economy, SMEs, Self-employed and Energy publishes a guide “*Vade-mecum of companies*” on its website.¹⁷ The guide is mainly intended for start ups and small and medium-sized enterprises, but also contains information useful to private persons. The guide includes information on administrative formalities for setting up a business, taxes, labour and social legislation, state aid and official bodies which provide government support. It includes hyperlinks to relevant regulations and contacts in ministries, agencies and other bodies in charge of the regulation (including at the regional level). The FPS Economy has also published the “A-to-Z Guide on Labour Regulations” on its website.

The directorate for external communication of the FPS Chancellery of the Prime Minister provides support to all government agencies in managing information and communication tools. Jointly with the PPS Staff and Organisation it co-ordinates communication to federal public officials as well as the federal portal.¹⁸ The federal portal is an access gate to all official websites across Belgian authorities (federal state, regions and communities). It also provides guidance on the main administrative requirements relating to citizens and businesses (such as licensing requirements, formalities relating to life events or procedures for obtaining specific welfare support), with access to relevant websites.

Some governments have developed tools to facilitate citizens’ access to the administration. Some interviews highlighted the need to develop such policies to avoid a “technocratic” approach to rule-making, and closer contact with citizens. The Walloon Region has put in place a free phone number, nine local information centres and three

itinerant information centres to provide information and advice to citizens on administrative procedures. The Flemish Region has put in place a Contact point (*Vlaamse Infolijn*) with a website and a free phone number (1700) to provide information and advice to citizens on administrative procedures. Brussels-Capital Region has set up the Brussels Enterprise Agency (BEA) which assists companies in starting up in the region. Two services – one concerning economic subsidies, and the other concerning the promotion of industry and innovation in technological domains – were merged to create the BEA in 2002. The BEA is not a regulatory agency, but provides support to firms by giving them information and in some cases acting as a mediator with the administration.

Notes

1. Procedures for rule-making (Chapter 4); codification (Chapter 5); appeals (Chapter 6).
2. This is not entirely the case for the federal level.
3. EASI-WAL (2007), “*Réglementation – Guide de simplification*”, *Collection guides pratiques, 2e édition, Janvier 2007, Commissariat wallon E-Administration et Simplification, Namur*.
4. As listed in Wallonia’s official website: <http://guide.wallonie.be/jsp/guide/pgShowGuide5.jsp?path=RW-aap-ccc>.
5. For more on the Statistical Council, see: www.statbel.fgov.be/info/council_fr.asp.
6. In Belgium trade union density stood at 53% in 2007. This is one of the highest densities among OECD countries with Scandinavian countries, where density reaches 70% (*Source: OECD.stat*).
7. Brussels Social and Economic Council, established in 1988; Flanders Social and Economic Council (SERV), established in 1988; Walloon Region Economic and Social Council (CESRW), established in 1985; and Economic and Social Council of the French Community, established in 2008 and composed of members of the social and economic councils of the Walloon Region and the Brussels-capital region.
8. Decree of 18 July 2003 related to strategic advisory boards, as modified by Decree of 22 December 2006.
9. The Policy Research Centre – Governmental Organisation in Flanders 2007-2011 (a centre funded by the Flemish government) has launched a research project. In a first phase, two strategic advisory bodies have been chosen as a pilot.
10. www.Kafka.be.

11. The consultation was about the simplification of two forms relating to benefits for handicapped people.
12. *Ministère de la Région wallonne, Décret du 31 mai 2007 relatif à la participation du public en matière d'environnement.*
13. “UNIZO does not share the idea that there is a need for a second, all access consultation model, next to the existing consultation model where government representatives and acknowledged social partners interact on existing and future regulation. The development of such a parallel consultation model, that should allow individuals and organisations other than the acknowledged social partners to give input on existing and future regulation, will only complicate and slow down the Belgian regulatory process, which is already imperfect”.
14. *www.ejustice.just.fgov.be/cgi/welcome.pl.*
15. *www.juridat.be/cgi_tit/titf.pl.*
16. *www.belgiumlex.be.*
17. For more, see *http://mineco.fgov.be/enterprises/vademecum/home_fr.htm.*
18. *www.belgium.be.*



From:
Better Regulation in Europe: Belgium 2010

Access the complete publication at:
<https://doi.org/10.1787/9789264087859-en>

Please cite this chapter as:

OECD (2010), "Transparency through consultation and communication", in *Better Regulation in Europe: Belgium 2010*, OECD Publishing, Paris.

DOI: <https://doi.org/10.1787/9789264087859-7-en>

This work is published under the responsibility of the Secretary-General of the OECD. The opinions expressed and arguments employed herein do not necessarily reflect the official views of OECD member countries.

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

You can copy, download or print OECD content for your own use, and you can include excerpts from OECD publications, databases and multimedia products in your own documents, presentations, blogs, websites and teaching materials, provided that suitable acknowledgment of OECD as source and copyright owner is given. All requests for public or commercial use and translation rights should be submitted to rights@oecd.org. Requests for permission to photocopy portions of this material for public or commercial use shall be addressed directly to the Copyright Clearance Center (CCC) at info@copyright.com or the Centre français d'exploitation du droit de copie (CFC) at contact@cfcopies.com.