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Multi-Level Regulatory Governance: Policies, Institutions and Tools for Regulatory Quality and Policy Coherence

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MULTI-LEVEL REGULATORY GOVERNANCE

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KEY ISSUES OF MULTI-LEVEL REGULATORY GOVERNANCE

- The management of multi-level arrangements is faced by most OECD countries. The distinction between federal and unitary countries may not fully catch the entire range and variety of these institutional contexts. Although institutional and procedural settings vary from country to country, a set of common challenges is emerging from the fact that more than one level of government plays an important role, from supra-national to local level, in designing, implementing and enforcing regulations.

- In terms of regulation, the most common problems that affect the relationship between the public and the private are duplication of rules, overlapping and low quality regulations, and uneven enforcement. This issue is critical as it impedes adequate public service delivery at local level, citizen's perception of local and national authorities. It also places unnecessary burdens on business services and activities as well as to investment and trade. High quality regulation at one level of government can be undermined by poor regulatory policies and practices at other levels, impacting negatively on the performance of economies and on business and citizens' activities.

- An analytical framework for multi-level regulatory governance should address a number of issues conducive to inter-level regulatory policies, including:

  a) On *regulatory policies and strategies*: harmonisation regulatory policy, including competition principles, at all levels of government; and horizontal and vertical co-ordination for regulatory quality at different levels of government.

  b) On *regulatory institutions*: the role, scope and influence of the supra-national level for regulatory policy; defining roles and responsibilities of the institutions responsible for regulatory policy; and strengthening institutional capacities for regulatory quality: resources, training, capacity-building.

  c) On *regulatory and policy tools*: consultation and communication mechanisms as a way to improve transparency at different levels of government; the introduction and use of Regulatory Impact Analysis (RIA) at sub-national levels of government; reducing administrative burdens at lower levels of government; the use of alternatives to regulation; and tools to improve implementation, compliance and enforcement of regulations.

- Regulatory policies in a multi-level context can only be effective if they reflect the diversity of needs and interests and encourage co-ordination (horizontal and vertical) and co-operation mechanisms across levels of government. The use of multi-level forums seems to provide an effective framework to achieve this goal. Harmonisation in the use of high regulatory quality standards across levels of government is essential to improve policy objectives and to make a better use of regulatory policy.

- Setting up regulatory institutions at lower levels of governments should take into account the strengthening of capacities (resources, training, capacity-building). A clear definition of roles and responsibilities among the institutions dealing with regulatory policy, which is fundamental to avoid overlapping and duplication, may however give rise to constitutional questions that can only be addressed in the political arena or through jurisprudence. The regulatory stock is often a factor giving rise to different interpretations.

- The use of regulatory and policy tools should be strengthened at lower levels of government. But identifying the "optimal level" for that may require a deep analysis of which level is better place to solve problems that affect citizens and businesses. Bottom-up solutions can provide valuable insights on this process. Indeed innovations which emerge at lower levels of government may deserve to be adopted more widely. Core issues that need to be addressed in a multi-level context concerning the use of regulatory and policy tools are: misalignment to reduce burdens, improving compliance and inspections, assessing the impacts of regulation produced at lower levels of government, strengthening transparent mechanisms in the regulatory process, and encouraging the use of alternatives to regulation.

INTRODUCTION

Multi-level regulatory governance is becoming a priority in many OECD countries. High quality regulation at a certain level of government can be compromised by poor regulatory policies and practices at other levels, impacting negatively on the performance of economies and on business and citizens' activities. The most common problems that affect the relationship between the public and the private sectors are duplication, overlapping responsibility and low quality. These affect public service delivery, citizen's perception, business services and activities, as well as investment and trade. More positively, following certain principles and good practices for high quality regulation in a coherent way as well as facilitating co-ordination among regulatory institutions at different levels of government can bring improvements to the regulatory system as a whole.

The objective of this note is twofold. First, it will identify some of the key policy issues related to multi-level regulatory governance, understood as the exercise of regulatory authority and the various dimensions of regulatory relations across levels of governments (rule making and rule enforcement at all levels of government). Second, it contributes to a "Framework for Analysis of Multi-level Regulatory Governance", taking as a basis the concept of high quality regulation and following the OECD Guiding Principles for Regulatory Quality and Performance and previous analytical work on multi-level regulatory governance.[1] This note also draws on the work already done in the Regulatory Policy Division (chapter on "Multi-level Regulatory Capacity" of the 2006 OECD Review on Regulatory Reform of Sweden, and the 2007 Review of Italy "Ensuring Regulatory Quality Across Levels of Government") as well as the work contained in country reviews on regulatory management and reform.

The 2005 *OECD Guiding Principles for Regulatory Quality and Performance* encourage "better regulation at all levels of government, improve co-ordination and avoid overlapping responsibilities among regulatory authorities and levels of government." The OECD work conducted so far has mainly concentrated on the centre of government, which is primarily responsible for that co-ordination. What is then the real scope of that principle when it comes to other levels of government? Governments are innovating and learning in this process. A comprehensive transposition of the principle to lower levels of government requires further analysis and raises some important questions:

- How can "high quality regulation" at lower levels of government be achieved?
- What are the principles that lower levels of government should follow?
- How could co-ordination, coherence and harmonisation be improved?
- How could overlapping of responsibilities among levels of government be avoided?

OECD countries are confronted by multi-level arrangements in different ways. Challenges stem from the fact that more than one level of government plays an important role in designing, implementing and enforcing regulations. The economic implications of this are evident. The question of the quality of regulation is essential to improve economic and social welfare. In the same way, high quality regulation contributes to boost economic activity by providing certitude to economic actors, reducing regulatory risks and eliminating unnecessary costs and burdens on businesses and citizens. Regulations are important to cities and regions as they develop their strategies for growth and sustainable developments. Therefore,

ensuring regulatory quality, *i.e.* adopting and maintaining regulations so that they contribute fully to achieving public policy objectives without placing needless restraints on competition, innovation and growth, has become a political priority for many OECD countries.

While the OECD has conducted some work on this topic, a comprehensive analytical framework that could serve as a basis for future work is still missing. This paper contributes to closing the existing analytical gap on this issue by challenging perceptions, providing examples,[2] highlighting challenges and raising questions about how multi-level regulatory governance works and could be improved.

OUTLINE

This report is composed of two parts:

- Part I

The first section of Part I focuses on the link between multi-level regulatory governance and decentralisation. The main goal of this section is to describe the interrelation between them and to highlight the challenges produced by different governance arrangements in OECD countries. The second section frames the problem of regulatory governance in a multi-level context, highlighting two main focuses: *i)* the need to spread regulatory quality principles in a multi-level context and how to cope with the regulatory management in that environment; and *ii)* the implications that regulatory governance has on the delivery of public services. The third section presents an overview of different arrangements for regulatory quality in a multi-level context in OECD countries.

- Part II

The fourth section addresses some key issues relevant for an analytical framework on multi-level regulatory governance. This provides some answers to fundamental questions on the management of regulatory systems: *i)* how different levels of government can integrate the same high quality principles for regulatory policy, *ii)* how they can set up regulatory institutions and strengthen their capacities and *iii)* how they can make a better use of regulatory and policy tools. This section is however not exhaustive and opens the possibility for future work and analysis.

PART I

1. Multi-level regulatory governance and decentralisation

The 2005 OECD Guiding Principles for Regulatory Quality and Performance encourage "better regulation at all levels of government, improve co-ordination and avoid overlapping responsibilities among regulatory authorities and levels of government." This summarises one basic concern that most OECD countries are facing today: high quality regulation at one level can be undermined or reversed by poor regulatory policies and practices at other levels, while conversely, co-ordination and coherence can vastly expand the benefits of reform.

Decentralisation is a process that has had important consequences for the way different levels of government produce and enforce regulation. Understood as a process of devolving powers and reforming the assignment of responsibilities across levels of government, decentralisation has implications for any regulatory management system: in most OECD countries there are complex layers of regulation stemming from sub-national, national and international levels of government, which have been the subject of concern with respect to the efficiency of national economies and the effectiveness of government action.

OECD countries provide a rich experience on multi-level regulatory governance issues. While some countries have strong federal traditions in which regions and States are active in drafting and producing regulations, others interact in more unitary frameworks, leaving to local authorities a key role in their implementation (enforcement and compliance). In addition, as a large number of OECD countries are part of the European Union, their governance structures have been adapted to the supra-national nature of the European Union. This has added a layer of complexity in terms of policy and regulatory development and implementation.

The historical record contains many examples of regulatory innovations which emerged at local or regional level before being adopted more widely. This variety of regulatory governance arrangements linked to the decentralisation process imposes enormous challenges in terms of economic performance, institutional architecture and social development for different reasons:

- *Regulation to boost economic activity and growth at all levels of government.* Regulatory action should try to attain better economic and social objectives while reducing unnecessary costs to citizens and business, fostering economic activity and investment, and identifying the costs and benefits of regulation. Therefore, the question of regulation becomes essential to understand the way governments affect citizens' and businesses' activities.[3] Many regulations that affect business services most directly are essentially a local and regional matter: land-use, zoning, construction, water, transport. In a multi-level context, this issue implies not only reducing the risk of overlapping responsibility and duplication, but also having in place appropriate mechanisms that create incentives for economic activity, such as policies towards reduction of administrative burdens, simplified and clear rules to be enforced, etc.

- *Achievement of effective national regulatory policy objectives in a multi-level context.* Central governments face the need to make national policy objectives effective and valid for all levels of government. Some harmonisation in terms of processes seems to be an appropriate balance to achieve this goal since uniform regulations might conflict with local needs. But this requires intensive negotiation, continuous political support and permanent dialogue between different layers of government.
- *Regulation and better provision of public services at lower levels of government.* As there is a trend to devolve powers to lower levels of government for providing public services, sub-national authorities are concerned with a more efficient way to deliver them and to increase capacities to manage this task. The regulatory dimension deserves special attention in this process, since lower levels of government can be confronted with overlapping roles, as direct providers and as regulators. Moreover, regulatory obligations may be imposed by a higher level on a local level without adequate compensation ("unfunded mandates"). The boundary between both roles is not always easy to define, but regulations and the regulatory process should be as transparent as possible to make governments accountable for their actions.
- *Integrating principles of high quality of regulation at different levels of government.* Evidence from OECD countries shows that there is a need to improve the effectiveness of the relations between levels of government in terms of the quality of regulation. There is a growing understanding of the importance to apply principles of high quality regulation at all levels of government. The challenge ahead is to find effective and efficient ways to do it since a simple transposition of those principles from the national level to lower levels of government does not always correspond to the appropriate solution. While there is not a "one size fits all" solution, governments are concerned about the way regulatory institutions should be set up and strengthened, the optimal use of regulatory and policy tools for high quality regulation and the definition of policies that are in line with national objectives.
- *Improving co-ordination among levels of government*. The multi-level dimension is a fundamental part of the design, implementation, enforcement of and compliance with regulation, playing a decisive role for co-ordination and coherence of the regulatory management system. The relationships between levels of government that are defined by constitution require the co-ordination of divided and overlapping designated areas for regulation making. In some cases these areas are clearly defined and governance mechanisms to deal with them are in place, but in others there are also "grey" areas produced by unclear division of responsibilities or even by innovation and economic activity that impose an urgent need for harmonisation and co-ordination.
- *Financing better regulation at all levels of government*. Multi-level governance brings economic costs with it. In terms of regulation, financial resources to support and technical capacities for regulatory quality at sub-national levels of government are not always evident. Countries are innovating in this, and some good practices should be shared. The shared goal should be the reduction of costs for citizens and businesses and the improvement of service delivery in an efficient way and without additional burden on bureaucracy.

The interaction between complex regulatory arrangements in a multi-level context and the decentralisation process has accelerated some trends concerning the way national and sub-national levels of government want to achieve certain objectives. In this dynamic process, national governments seek sometimes to maintain prerogatives already established by law while sub-national levels intend to gain and to expand them. Handling this tension is challenging, and in most cases current mechanisms do not provide an efficient framework for solutions. Decentralisation continues playing therefore a decisive role in the way different levels of government try to attain economic and social goals and defining limits for regulatory action.

2. Regulatory governance in a multi-level context: Framing the problem

All OECD countries face multi-level arrangements that correspond to particular historical, political, legal, economic and social conditions. At first glance, these arrangements are associated in most cases to the constitutional framework and reflected in primary legislation. But their impact goes beyond that point: the application of constitutional principles in practical terms is reflected in very detailed legal instruments that permeate most of the interaction between public institutions at different levels of government. The rules that result from regulatory activity of the State and have to do with the multi-level dynamics are expressed through laws, regulations, guidelines, codes, standards, and even rules that are embedded in the transfer of funds from one level to the other, such as grants or levered-partnered funding.[4] The degree of decentralisation and the assignment of roles and responsibilities attached to the different actors in charge of implementing and complying with those instruments vary accordingly.

As a consequence of these arrangements, the regulatory dimension of this process implies that multiple layers of government and actors produce and/or enforce regulation that affects citizens and business in different ways. The complexity of a regulatory system increases in a more decentralised system composed by more layers of regulatory actors. Business and social activity, however, do not follow the same path as the institutional organisation. People and businesses confront multi-level issues only when they have to interact with the public sphere and multi-level arrangements interfere in their activities. In economic terms, there are two main points to consider in this relationship. On the one hand, bad regulations impose costs on businesses and citizens, which have clear consequences on the economic activity as a whole. Businesses have growing concerns about regulatory costs, skills and capacities of local institutions and competitiveness that are linked to multi-level regulation.[5] On the other, there is a tendency to make lower levels of government more responsible for the provision of services, which requires an analysis of the different possibilities in which public action can make more efficient and effective the use and delivery of public services. Local governments tend to mix their roles of regulators, service provider or owner of public firms. This creates important conflicts of interests, which may breech the competition laws and distort the functioning of markets.

While the OECD Regulatory Policy Division has concentrated more on the first issue through efforts to understand how governments can make a better use of a harmonised, coherent and co-ordinated regulatory policy supported by the right set of regulatory institutions and the use of policy and regulatory tools, the second issue has deserved less attention.[6] Even if the main objective of this paper is to shed some light on those elements that need to be taken into account to establish a regulatory environment of high quality for the benefit of society and economy as a whole, the second part should be subject of future work. In this sense, a framework of analysis could serve as a starting point to understand regulatory policies in a multi-level context aiming at improving not only the interaction with businesses, but also the provision of public services.

3. Multi-level regulatory governance in OECD countries

OECD countries present a broad spectrum of multi-level regulatory governance arrangements. This section intends to highlight the most visible differences in order to understand the current trends. Whereas a simple division could lead a separation between federal and unitary countries *grosso modo*, the way regulatory powers are exerted and implemented depends on particularities and exemptions of each country since there is no uniformity of practice in the world with regard to the division of powers and responsibilities. This fact is also complemented by a general tendency to decentralise and to devolve powers to local governments in both federal and unitary countries, leaving in some cases policy areas to unclear competence or competence sharing between levels.

Throughout the world, functions of governance are divided between national and sub-national governments. The distinction between federal and unitary countries may not fully cover the entire range and variety of institutional contexts. Two central issues are the *degree* of sub-national autonomy and the *mechanism*s to allocate and control responsibilities. However some trends and categories can be discerned. A general framework of regulatory governance interactions between levels of governments seems to appear in terms of degrees of regulatory autonomy. Note that for a country (federal or unitary) a regulatory relationship may belong to one or to another category depending on the policy and sector. Based on the different OECD reviews,[7] the four most common categories to assign regulatory responsibilities between levels of government are the following:[8]

1. Sub-national governments have *no discretion* when applying regulations developed at central level (Hungary).
2. Sub-national governments have *some discretion to implement* regulations developed at central level (the Czech Republic, Belgium, Denmark, Ireland, Finland, UK).
3. Sub-national governments have *limited powers* to create regulations (the Netherlands). These powers often concern local policy issues (Greece).
4. Sub-national governments have *extensive regulatory powers* (Australia, Canada, Switzerland, Mexico, USA).

In Categories 1 and 2 only a part of the regulatory process is assigned to lower levels of governments. In Category 2, though, a significant degree of autonomy in implementing regulations is assigned at local level. For these categories, the centre maintains a specific policy and rule-making role. The categories include a wide range of institutional contexts. At one extreme, national standards are developed at the centre but adapted and implemented with significant discretion at sub-national levels according to their own circumstances (*i.e.* institutional and functional organisation, compliance strategy). At the other extreme, sub-national governments merely execute policies, which are fully decided at the central level.

The regulatory relationships included in Category 2 permit local jurisdictions to differ in their approaches to implementation. At the same time, this type of relationship maintains homogeneity at national level on the elements considered relevant for the country: competition and free movement of goods and services; quality of the environment; health services; etc. This type of relationships nonetheless raises the key question on how the central level can oversee the adherence of local policies to national standards.

Categories 3 and 4 cover relationships between levels where more independence to the local levels of governments has been assigned: each layer has responsibility in specific policy areas. Both categories include regulatory relationships in which both central and sub-national governments participate in regulatory policy-making (that is, concurrent and overlapping responsibilities). The central level usually has no power to interfere with sub-national-level decisions, despite the fact that too much independence of regulatory decisions at local level raises the risk of duplication, inefficiencies or even contradiction. It is for these categories where the design of co-operation and co-ordination mechanisms to exploit economies of scale or to avoid barriers eroding the national jurisdiction is the most pertinent.

A sizable number of OECD countries are part of the European Union and have therefore adopted governance structures and legal orders meeting the supra-national nature of the European Union regulatory system. This concerns, in particular, the obligation to comply with the fundamental principles of subsidiarity, proportionality and mutual recognition imposed by the EU Treaty. As the policies and laws of EU's member states are increasingly influenced by common EU rules that are transposed into national laws in accordance with different institutional and administrative cultures, using a variety of legal instruments, the multi-level governance structures of many OECD member states are becoming increasingly complex.

In all countries, however, mayors represent government to citizens at the level of everyday interaction. Citizens and business who must cope with administrative burdens and comply with regulations do not necessarily care at what level of government a particular regulation was adopted or on the basis of what kind of impact assessment. The first door through which the citizen or businessman passes is often city hall.

Notes

1. OECD (2003), *Regulatory Policies Co-ordination among Levels of Government. Some Lessons from the OECD Country Review Programme*, Background Report, Paris; OECD (2004), *Multi-level Regulatory Governance*, GOV/PGC/REG(2004)4, Paris.

2. The examples illustrating multi-level regulatory governance arrangements in this document come from official information available via Internet, reports and publications from OECD and non-OECD countries and particular cases identified during the process of preparing the analytical background reports on "Government Capacities for Assuring High Quality Regulation". A survey on multi-level regulatory governance practices and arrangements could be envisaged to deepen the understanding of this issue in the future.

3. In Australia, there is an increasing recognition that there is a move "into more areas that require joint federal-state decision making and co-operation across portfolio boundaries, necessitating the use of mechanisms to facilitate whole-of-government action." Productivity Commission (2006), *Productive Reform in a Federal System*, Productivity Commission, Canberra, p. 13.

4. Doern, B. and R. Johnson (eds.) (2006), *Rules, Rules, Rules, Rules. Multi-level Regulatory Governance*, University of Toronto Press, Toronto, p. 6.

5. In a research report prepared by The Better Regulation Executive on business perceptions, the participants were asked spontaneously to describe the role of local authorities' regulatory function. While most participants could identify areas that related to their own businesses' role, many were surprised to learn the areas of regulation enforced by local authorities; they did not conceive that they had the available resources (in terms of both people and money) to cover such a wide remit. The Better Regulation Executive (2007), *Business Perceptions of Regulations*, Research Report, London, March, p. 64. In the Canadian province of Newfoundland and Labrador, the Red Tape Reduction Task Force conducted consultations with external stakeholders who have found that businesses feel they are over regulated. The Task Force heard similar concerns from individuals about the frustrations with, and complexity of, dealing with government. Newfoundland Labrador Government (2007), *Report of the Red Tape Reduction Task Force to the Minister of the Department of Businesses*, St. John's, February, p. ii and iii.

6. The OECD is currently undertaking a review of Italy with a special chapter on multi-level governance. This chapter will address in particular regulatory quality as well as issues related to the liberalisation of sectors such as commercial distribution; energy distribution; and local public transport, where regions, or even sometimes municipalities, have explicit regulatory powers.

7. A preliminary taxonomy of the different multi-level regulatory arrangements was made in 2003, based on the different OECD country reviews on regulatory reform. OECD (2003), *Regulatory Policies Co-ordination among Levels of Government. Some Lessons from the OECD Country Review Programme*, Background Report, Paris, p. 5.

8. A similar taxonomy can be used for the supra-national regulatory responsibilities applicable to OECD countries that belong to the European Union. Regulatory competences (EU exclusive, shared, national) are defined by the EU Treaty and implemented at national level via different legal instruments. These may or may not allow discretion to national governments (EU regulations, directives, and decisions) on how common rules are to be implemented. This categorization may concern primary as well as secondary EU legislation (*i.e*. implementation rules falling under the European Commission executive responsibilities).

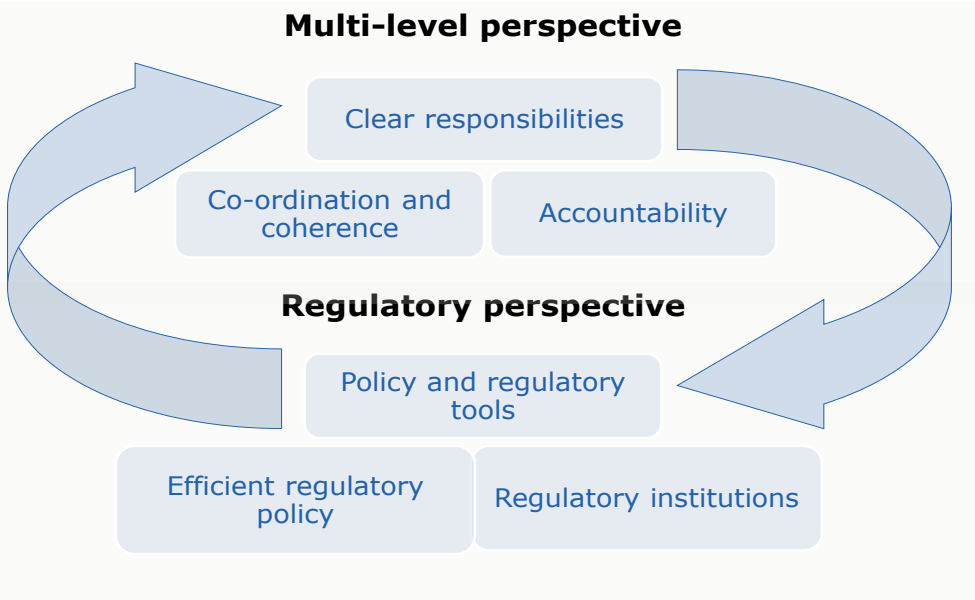
PART II

4. Analytical framework for multi-level regulatory governance

The 2005 *OECD Guiding Principles for Regulatory Quality and Performance* encourage countries to "commit to regulatory reform at the highest political level, recognising that key elements of regulatory policy – policies, institutions and tools – should be considered as a whole, and applied at all levels of government."

The implementation of this principle is a challenging task that reveals the complex nature of multi-level regulatory governance. While central governments have made improvements in managing regulatory complexity and integrating principles of high quality regulation at national level, much remains to be done at sub-national levels to strengthen human and technical capacities for implementation, to improve the quality of regulation when it is drafted and produced at lower levels of government, to set up the right institutions that deal with this issue and to make effective use of policy and regulatory tools.

Figure 1. Multi-level regulatory governance: Framework for analysis



4.1. Regulatory policy and strategies in a multi-level context

In most OECD countries as well at the level of supra national government institutions, regulatory policy is recognised today on its own and as a relevant part of the governance agenda. A core question for national governments is how to ensure regulatory quality at all levels of government, since the coherence of government action is only achieved through the complementarity of different regulations and sub-national levels are responsible to a large extent for the application of national norms.

OECD countries are looking for innovative and responsive policy design to ensure that regulatory policy is exercised at the level where market and regulatory failures are most effectively tackled. In the same way as for the national level, regulatory policy should serve to boost economic development and consumer welfare by encouraging market entry, innovation, and competition at sub-national levels of government. In economic terms, controlling regulatory costs and reducing unnecessary barriers, in particular to SMEs, is fundamental to improve productivity. Regulatory policy should also be seen as part of improving public sector efficiency, responsiveness and effectiveness.

The following issues are of relevance to achieve and to improve regulatory policy in a multi-level context:

4.1.1. Harmonising regulatory policy, including competition principles, at all levels of government

The growing devolution of powers to sub- and supranational levels of government imposes the need for coherence in regulatory policy. This could be understood in two different senses: one, concerning the harmonisation of the framework for regulatory quality and second, harmonisation of the content of regulatory policy at different levels of government. Regulatory governance has a dual meaning, *i.e.* it refers both to rule making at different levels of government and to overall implementation, compliance and enforcement. The scope, definition and content of regulatory policy, but also the different tools and methods used to produce and implement regulation at all levels of government should follow general principles to reduce uncertainty in regulatory action and to establish a general framework for regulatory quality.

Achieving regulatory uniformity is not always necessary or appropriate and because of the issues of jurisdictional sovereignty and the challenges of attaining co-ordinated agreement, achieving harmonisation of the content of regulation can be problematic. Jurisdictions within countries sometimes compete by improving their regulatory policy to attract and retain investment. However, where regulations affect a large number of businesses or citizens and impose significant costs in terms of taxes or transaction costs, there are likely to be opportunities to improve economic productivity and the welfare of citizens by introducing regulatory reforms which promote the free flow of goods and services. A key element is to have in place governance processes which allow jurisdictions to co-operate in a consideration of uniform regulatory systems to eliminate barriers to trade, maximise the simplicity and ease of comprehension of regulatory requirements, and reduce transaction costs taxes and charges.

Regulatory harmonisation does not imply that the content of regulatory policy formulated at national level should be uniformly adopted by sub-national levels of government; in some cases some national regulatory systems may provide a better model for national regulation.

In addition, achieving uniformity might be a slow and politically difficult process due to the need to bridge different views and negotiate outcomes acceptable to all parties. Nevertheless, with an increased number of actors with regulatory powers and interconnected policy areas that require government action, finding coherence and harmonising the content of regulatory policy at different levels of government is essential. Even without achieving regulatory uniformity, harmonisation of regulatory policy at all levels

should follow certain principles, including competition principles that could lead to the attainment of common economic and social objectives. This can be done without interfering with the sphere of autonomy of sub-national powers. The objective is to maximise the efforts of regulatory reform at all levels of government. The State must retain regulatory oversight as an essential function, look for innovative approaches to improve quality in the regulatory framework and establish clear regulatory policy objectives.

4.1.2. Co-ordination for regulatory quality at different levels of government

Co-ordination is fundamental for the attainment of regulatory goals. As an important component of co-ordination, better communication between levels of governments may help to prevent conflicts and ineffectiveness. Making information available reduces inefficiencies and duplication of regulations, providing a sound legal framework. In addition, co-ordination also helps in sharing good practices and in spreading the benefits of diversification of regulatory policies.

Box 1. Regulatory policy in a multi-level context

In *Australia*, it is acknowledged that initiatives to improve regulation are required at all levels of government. Regulatory reform has been an important undertaking for state and territory governments, with most implementing or continuing regulatory reform. In March 2008, the Council of Australian Governments (COAG) agreed to a regulatory reform agenda covering 27 specific areas of business regulation where significant gains could be made through applying a nationally consistent approach, as well as broader work on regulatory reform processes and an invigorated program to progress a series of national competition reforms. On 29 November 2008 COAG agreed a new National Partnership that will provide funding of $550 million over five years to the states and territories to facilitate and reward the delivery of these reforms. The COAG has also published "Best Practice Regulation: A guide for Ministerial Councils and National Standards Bodies". This document provides guidance on best-practice regulation making and review, as a way "to maintain effective arrangements to maximise the efficiency of new and amended regulation and avoid unnecessary compliance costs and restrictions on competition."

In *Canada*, a Federal, Provincial and Territorial Working Group on Regulatory Reform has been created as a forum to help build a shared approach to regulatory reform. Its work includes developing common regulatory principles, developing a consistent approach to regulatory impact analysis and sharing best practices. The aim of the group is to develop governments' capacity to produce quality regulation and encourage regulatory co-operation across jurisdictions. Over the last 10 years, municipalities have been the object of provincial regulatory reform – moving from a traditionally rule bound system to today's more flexible framework. This reformed legislative framework allows municipal councils much greater discretion in making decisions on behalf of their electorate in an open and accountable manner.

In *Sweden*, there is no explicit regulatory policy framework for multi-level governance. The democratic basis of local government is set out in the Constitution, as the basic notion that local governments are mainly the implementers of national policies, laws, and regulations while retaining some limited areas where they may regulate as well. General principles on regulatory quality are stated in different binding ordinances and several guiding documents to ensure uniformity and high quality in the legislation.

In *Belgium*, the regulatory policy is framed by the progressive federalisation started in 1970 which aims at the distribution of competences between national and regional governments (the government of the 3 regions and the 3 communities are federated authorities whose competences remain at the same level as those of the national government). Each federated entity houses its own legislative, executive and administrative powers. Law is issued by federal parliament, royal and ministerial orders by the federal executive power and the federated entities rule through decrees and ordinances. Local governments, provinces and communes, have a residuary power derived from either decentralisation or deconcentration. Cooperation mechanisms among federal entities have been established in parallel to guarantee the harmonisation of rules and equal treatment.

In the *European Union*, the European Commission embarked on a far-reaching 'Better Regulation' programme that was fully endorsed by the other European Institutions (European Parliament and Council) and its member states governments. The programme was launched in 2002 with the aim to simplify and generally improve the EU's regulatory environment. It is designed to streamline EU's legislative procedures, cut red tape, modernise, improve the quality regulation and design better laws for consumers and business alike. Actions are being taken at different stages in the policy cycle: new initiatives, proposals still under legislative process and legislation already on the books. The programme includes a mix of inter-linked measures destined to :

- Introducing a system for assessing the impact and improving the design of Commission's policy and legislative proposals;
- Implementing a rolling programme of simplification and modernization of existing legislation;
- Testing Commission proposals still being looked at by the legislator (Council of Ministers and the European Parliament);
- Factoring consultation into all Commission initiatives;
- Looking at alternatives to laws and regulations (such as self-regulation, or co-regulation by the legislator and interested parties).

This co-ordination affects not only the relationships between the different levels of government (vertical co-ordination), but also those mechanisms in place among different institutions at the same level (horizontal co-ordination). Co-ordination mechanisms first tend to emerge at the international level and in countries where levels of government are more independent (that is, mostly in federal or quasi-federal countries). However, due to the greater complexity of public intervention, co-ordination mechanisms are increasingly spreading to unitary countries. This is particularly true when devolution processes are underway.

4.1.2.1. Horizontal co-ordination mechanisms

Horizontal co-ordination suggests that lower levels of government should also put in practice mechanisms for increased co-operation among bodies responsible for regulatory reform, following efforts already undertaken at the national level, but also among other entities at the same level of government. This co-ordination is only possible when there is awareness of the importance of regulatory policy and when political support exists to mobilise the different actors involved in the regulatory process. Trying to achieve a "whole-of-government" perspective for regulatory quality at lower levels of government requires increasing support and commitment from actors and institutions responsible for the implementation of regulatory policy.

Horizontal co-ordination between different actors at the same level of government is essential to share practices and to understand better the challenges ahead. Consolidating a permanent dialogue in which regulatory quality is commonly understood can help to improve conditions for economic activity and to make regulatory decisions more effective to solve a given policy problem. Horizontal co-ordination can also facilitate the exchange of experiences about the costs and benefits that regulation might impose on citizens and businesses.

Box 2. Horizontal co-ordination and a "whole-of-government" perspective for regulatory quality at sub-national levels

The Better Regulation Initiative of Nova Scotia in *Canada* has a "whole-of-government" perspective and horizontal co-ordination is essential for its implementation. The Initiative falls under the responsibility of the Chair of Treasury and Policy Board and every department of the Province of Nova Scotia is involved in it. Within government, the Better Regulation Initiative is led by a strong and dedicated steering committee of assistant / deputy ministers and senior people from the following major regulatory departments: Treasury and Policy Board (Chair), Environment and Labour, Service Nova Scotia and Municipal Relations, Economic Development, Justice, Finance and Communications Nova Scotia. This group has also made use of their contacts in other governments and gained insight on what they are doing to measure the impact and improve regulation.

Source: *www.gov.ns.ca/betterregulation/*

Box 3. Horizontal co-operation at the same level of government

In *Italy*, the Inter-regional Legislative Observatory (*Osservatorio Legislativo Interregionale*, OLI) was created in 1979 as a tool for exchange and training among all the legislative offices of the national Parliament (*Assamblea*) regional councils (*Consigli*) and regional Executives (*Giunte*). It is a forum for discussion and exchange of experiences, but also for continuous training of those participating in its periodical meetings. The functions of the Inter-regional Legislative Observatory are: i) to provide new information on the status and knowledge of the tendencies regarding the legislation; ii) to stimulate a better understanding about the legislative activity and the quality of the legislative decision-making process; and iii) to develop a methodological body to understand the evolution of the legislation. The OLI has a permanent secretariat in the region of Tuscany and organises periodical meetings in which a detailed agenda is discussed, including issues of interest for the regions, such as recently approved laws, discussions about issues of specific challenging objectives, the sentences of the Constitutional Court, the acts of the EU that are relevant to the regions, etc. Members of the national assembly, the Senate, the central government, universities and research institute are also invited to participate in the debates. The Observatory published in 2002 a Manual on Legislative Techniques, which contains rules and suggestions for the drafting of legal instruments. Some of the Italian regions use it as a point of reference to harmonise practices in legal drafting.

Source: OECD (2007), *Italy – Ensuring Regulatory Quality Across Levels of Government*, Paris.

4.1.2.2. Vertical co-ordination mechanisms

Vertical co-ordination is a political priority for many OECD countries. In the cases where sub-national levels of government are constitutionally responsible if the law or the Constitution does not expressly assign a given power to the State, the problem of vertical co-ordination seems to be more acute. The principle of subsidiarity reflects a real concern for clarity and calls for finding more appropriate co-ordination mechanisms that can help to avoid overlapping and duplication.

Origins of vertical co-ordination mechanisms vary from country to country. The centre, however, is not always the main driver behind this process, even if it has more resources to support the co-ordination initiatives. The devolution processes tend to speed the need for co-ordination, and also trends in the opposite direction, in cases where the centre would like to recover powers that have been devolved to other lower levels. The tension arising from this process undoubtedly generates the need for certain mechanisms to avoid conflicts and prevent inefficiencies.

a) Co-operation and co-ordination mechanisms: agreements and permanent institutional bodies

Most OECD countries dealing with a multi-level dimension have set up co-operation and co-ordination mechanisms and permanent institutional bodies to streamline the relationship between levels of government. Those mechanisms are either formal or informal, depending on the political and legal tradition and tend to have a more permanent structure, rather than an *ad hoc* basis.

Box 4. Co-ordination mechanisms for regulatory quality in some OECD countries

Federal countries require both formal and informal institutions to co-ordinate different levels of government. In *Australia*, potential conflict among different levels of government is minimised through clear separation of national and sub-national responsibilities. The different levels interact through meetings of officials and ministers. The Council of Australian Governments (COAG) is the peak intergovernmental forum in Australia. COAG comprises the Prime Minister, State Premiers, Territory Chief Ministers and the President of the Australian Local Government Association (ALGA). COAG was established in May 1992. It first met in December 1992. The Prime Minister chairs COAG. The COAG Secretariat is located within the Department of the Prime Minister and Cabinet. The role of COAG is to initiate, develop and monitor the implementation of policy reforms that are of national significance and which require co-operative action by Australian governments (for example, National Competition Policy, water reform, reform of Commonwealth and State/Territory roles in environmental regulation, the use of human embryos in medical research, counter-terrorism arrangements and restrictions on the availability of handguns). Issues may arise from, among other things: Ministerial Council deliberations; international treaties which affect the States and Territories; or major initiatives of one government (particularly the Australian Government) which impact on other governments or require the co-operation of other governments. COAG meets on an as needed basis. However, the then Prime Minister stated after the April 1999 Premiers' Conference that, since there would be no further Premiers' Conferences following the landmark Intergovernmental Agreement on the Reform of Commonwealth-State financial relations, COAG would meet at least once a year from 2000. Alternatively, COAG may settle particular issues out-of-session by correspondence. In recent years, a number of issues have been settled in this manner. The outcomes of COAG meetings are contained in communiqués released at the end of each meeting. Where formal agreements are reached, these may be embodied in Intergovernmental Agreements.

Germany places a greater premium on a common response through shared or joint tasks. The Bundesrat plays a key role in co-ordinating different levels of government. The *Länder*, or federal states, work together within their own sphere of responsibility in the Conference of Minister-Presidents (*Ministerpräsidentenkonferenzen*) and the various sector-specific Conferences of Ministers *(Fachministerkonferenzen)*. These bodies are neither federal organs nor part of the Parliament as such. There are, however, close links between the *Bundesrat* and each of these Conferences, as the politicians represented in the *Bundesrat* are also members of the various Conferences. Some of the sector-specific Conferences also have their co-ordination offices in the *Bundesrat* Secretariat. The Conferences give the federal states scope to co-ordinate their own work within the federal co-operation system. In these meetings the *Länder* agree upon their strategy for shared problems and define their position vis-à-vis the Federation but also seek to arrive at consensus-based solutions together with the Federation. As a rule, decisions on points of substance are only made if there is unanimity. However, such decisions do not have direct legal effect, although they are binding as political recommendations.

In *Switzerland*, there are a number of forums facilitating dialogue between federal and cantonal (as well as municipal) authorities, offering possibilities to debate proposals of cantonal authorities and to transmit them to federal authorities. The most relevant are the following: a) Conferences of Cantonal Directors, composed of the directors of the 26 cantons in 13 policy areas, serving two purposes: i) co-ordination between the cantons; and ii) co-ordination between cantonal and federal authorities. Although officially run by the cantonal governments, the relevant members of the Federal Council and high-ranking federal public officials are invited to these meetings. Federal authorities present plans and proposals for new laws/regulations, which are discussed with the cantonal ministers. The cantonal ministers on the other hand present proposals or requests or point to problems in federal-cantonal relations; b) A Conference of Cantonal Governments, created in 1993, serves as a co-ordinating organism among cantons and as a lobby group of cantonal interests in all matters that go beyond the range of the 13 policy oriented “conferences of cantonal ministers” as well as of the conference of cantonal chancellors. The “Conference of cantonal governments” thus discusses institutional matters of overall importance, highly important matters (mostly of cross-sectional character) and those matters that go beyond a single policy domain (*e.g.*, foreign policy with regard to European integration); c) Federal Dialogue, is a forum in which a delegation of the Federal Council and a delegation of the “Conference of cantonal governments” biannually discuss questions and projects of overall importance; d) A Tripartite Agglomeration Conference assembles representatives at the federal, cantonal and municipal level. It serves to streamline policies for the metropolitan areas and urban centres of Switzerland.

In *Norway*, several mechanisms are in place to ensure co-ordination of regulatory proposals affecting local governments. First, regular formal meetings are held between representatives from central and local government. At the political level a process of four consultative meetings per year (since 2000) brings together key ministries of the central government with high level representatives from the Norwegian Association of Local and Regional Authorities (*Kommunenes Sentralforbund*, KS). Similar meetings are held addressing issues pertaining specifically to county and municipality issues. Second – as part of the public consultation on draft laws and regulations – local government and local government organisations (KS) receive for comment those government draft regulations considered of special relevance for local governments. Third, and probably most importantly, continuous informal dialogue takes place between central and local government representatives at different levels, in many different forms, and on political as well as technical and professional issues.

In *Belgium*, co-operation between the federal state and the federated authorities (regions and communities) is institutionalised through Committees for Consultation and Inter-ministerial Conferences. As soon as a decision affects another authority's competences, this institutional framework operates to eliminate disputes derived from a complex division of responsibilities. They also facilitate co-ordination to ensure a complete and harmonious transposition of European directives.

In the *European Union*[1], Better Regulation is a shared responsibility. The European Commission submits proposals for adoption to the European Parliament and the Council. The EU laws are transposed into national law by national governments and parliaments and often applied at regional and local levels. The responsibility for regulating well is hence a shared one as well as a political priority. The European Commission relies on the close cooperation of the other European institutions, the Member States and local administrations to achieve Better Regulation goals. To enhance coherence and cooperation, a number of formal and informal mechanisms exist since the early 2000s to co-ordinate the EU's Better Regulation programme. In the European Commission, the Secretariat General oversees the regulatory and policy activities of the various departments (Directorates General). In 2006, an independent Impact Assessment Board was also established to issue opinions, addressed to the College of Commissioners, on the quality and policy coherence of the mandatory impact assessments produced by the various departments and attached to Commission's proposals. In the 2003 an Inter-institutional Agreement on Better Law-Making was concluded with the European Parliament and the Council setting down on paper how they can work together to legislate better. The agreement also includes provisions for a 'common approach to impact assessments'. The three institutions have set up the High-Level Technical Group for Inter-institutional Cooperation (HLTG) to monitor the implementation of the Inter-institutional Agreement. The European Economic and Social Committee and the Committee of the Regions are also consulted on Commissions' proposals.

To ensure coordination with national governments in pursuing the EU's Better Regulation goals, a number of additional ad hoc networks were created; the High-Level on Better Regulation chaired by the Commission, the group of Directors and Experts on Better Regulation chaired by the rotating presidencies and other thematic groups such as the independent High Level Advisory Group on the reduction of administrative burdens and the Standard Cost Model Network. All these groups meet on a regular basis to monitor and coordinate developments taking place both at Community and national levels.

In most countries, regulatory co-ordination has been promoted by associations and local authorities, for instance among municipalities and between different levels of government. This has provided a good basis for advice and better understanding of the needs and problems at different levels of government. But co-ordination has been improved mainly by special bodies and institutional mechanisms that serve lower levels of government to submit comments, to put forward specific measures and to negotiate with the central level. Co-operation agreements have also improved co-ordination by establishing specific plans with clear frameworks for implementation and financing.

Designing the ways of co-operation and co-ordination vertically and unilaterally does not seem to be an appropriate approach to tackle this issue. Top-down solutions might not always reflect the diversity at the bottom. In the same way, substituting this process by a simple juxtaposition of autonomy for lower levels of government is neither the solution. OECD countries have realised that it is essential to establish a strategic framework prior to the transfer of powers, and to define the necessary support mechanisms for this process. In particular, this is essential for the improvement of public service delivery at sub-national levels of government.

Box 5. Co-operation to improve public service delivery at local levels

Denmark, a unitary state, has regional and municipal levels of government in addition to the national government. As a result of a sustained process of decentralisation, particularly since the fusion of local authorities in 1970, much government service delivery is carried out at lower levels of government. Regulatory policy remains concentrated at the national level, although there is significant consultation with local government as a result of its major role in implementation. From the perspective of local government, the key regulatory issue is that of increasing the freedom to act to be able to achieve efficiency gains needed to allow services to be delivered within tight fiscal restraints. To achieve this goal, the Government initiated a local government reform and a five-year work reform took place in 2007. Structural setting and relations between local and central government were redefined. According to the new system, there are new mechanisms and areas in which national and central governments co-operate and co-ordinate their service delivery. For instance, prior to the local government reform of 2007, the central government was responsible for recipients of unemployment insurance benefits through the Employment Service and each municipality managed its own job centre to provide assistance to people without insurance. Under the new municipal structure, the central government seeks to ensure consistency between the national employment policies and local activities through four employment regions (corresponding to the regional boundaries except that two regions, the capital region and the neighbouring Zealand region are combined in one employment region). These employment regions have resources to help with prevention and mitigation of labour supply bottlenecks and reaction to the closure of large companies. The local job centres, which are currently staffed by both local and central government employees, are planned to be managed solely by the local municipalities from august 2009. The purpose of this reorganisation is to secure an optimal spending of the available resources and to avoid having two separate administrative systems. Hence, by creating a unified employment system the local centres should be able to provide a better service. The job centres have become a single access point for all citizens and companies needing assistance with employment matters. However, there are a large number of job centres given the size of the labour force and the municipal focus may hinder labour mobility by focusing the unemployed on services and jobs within the municipality. Consequently, the co-ordination role of the regions is particularly important.

Belgium accounts for 589 communes under the authority of the regions, Communes Associations and other more informal groups are in place to facilitate co-operation at local level on policy implementation. In addition, federal institutions also facilitate co-ordination among local level authorities when undertaking delegated responsibilities.

In the same way, co-operation is fundamental in the national interest in some areas of inter-governmental and inter-jurisdictional relations. But other solutions are also available: a competitive dimension provides incentives for governments to improve public sector efficiency as well as the effectiveness of regulatory and institutional frameworks. Interregional competition can be highly profitable because it encourages an optimal cost-benefit ratio and fosters innovation in the provision of public services. This process, however, must not result in regulatory dumping where local governments may practice unfair competition in their zeal to attract investment or retain jobs.

Setting up co-operation arrangements - and institutionalising them - can be difficult. Local levels of government do not always have the same needs and proper incentives for strengthening co-operation may not be clear to them. Tensions with the centre may be more acute if the devolution of powers does not clearly set the limits of regulatory powers between different layers of government. Weak political support, constraints in human and technical resources, financial costs associated with the co-operation process and vested interests at different levels are some of the barriers to more formal co-operation mechanisms.

Box 6. Consolidating the internal market in Switzerland

In *Switzerland*, inter-cantonal co-operation is facilitated by a dense network of inter-cantonal agreements and conferences. Even if this "horizontal" co-operation has been less important than the "vertical" one between the Federation and the cantons, this trend is changing. Federalism can be seen as a political laboratory in which the cantons constantly experiment with new policies: if a solution is successful, it is likely to be adopted by other cantons as well. In this context, it is possible to distinguish between pioneers, imitators, and laggards.

A major concern in terms of economic efficiency and improvement of economic conditions for competition is the consolidation of the Swiss internal market. The diversity of regulations across levels of government (Confederation and cantons) has a direct effect on the consolidation of the internal market with the implications for the whole Swiss territory for goods, services, people and capital. Switzerland's federal organisation and its linguistic diversity are contributing to the segmentation of the domestic market in a large number of sectors. While competition policy is a federal competence, cantons do have extensive powers to intervene in markets for safety and social concerns and by the use made of public property. They often exert strong influence on the supply and pricing of public utilities, such as water, electricity, regional transport, etc. Cantons also have a marked influence on industries such as construction and professional services with very diverse regulations that de facto constitute entry barriers.

Efforts have been made to eliminate the market restrictiveness generated by cantons and localities. The Internal Market Act helps to aid professional mobility and trade in Switzerland, in order to foster competition in the national economy. As a framework law, its aim is not to harmonise regulations of a different nature at lower levels of government, but to establish the principal mutual recognition among federal jurisdictions and outline some needed basics for the effective functioning of the internal market. First and foremost, the Internal Market Act defines the principles governing free access to the market. Any person possessing an establishment and any enterprise having its registered office in Switzerland is entitled to offer goods and services on Swiss territory. Access to the market is governed by the rules of the place of origin. At the same time, certificates of qualification issued or recognised at canton level, permitting the exercise of a lucrative activity, are valid anywhere in Switzerland. The law on freedom of access to the market also includes cantonal and communal public procurement.

Source: OECD (2005), "Government Capacity to Assure High Quality Regulation in Switzerland", Paris.

b) The principle of mutual recognition

The principle of mutual recognition is a low cost and pragmatic approach to addressing the mobility and transaction of goods and services across borders. It lowers the costs of associated regulatory barriers between jurisdictions, without the need for full harmonization of laws which, in some instances, are difficult or nearly impossible to achieve within a reasonable timeframe. Mutual recognition encourages free trade and can lead to economic efficiency gains.

Mutual recognition is an effective tool for promoting economic integration within a given area or region and is hence particularly well-suited to the multi-level dimension. The principle operates in a simple way: the acceptance of a good or service by a Party or country mutually recognizing compliance with each other's requirements without further testing or regulation. Mutual recognition is an effective way of reducing barriers to the movement of goods and services.

Box 7. The principle of mutual recognition in practice[1]

Mutual recognition of regulations was introduced in *Australia* in March 1993 and became a scheme in 1995. Its goal is to remove regulatory barriers to the free flow of goods and labour between Australian states and territories. It involves each jurisdiction recognising particular regulations created and administered by other jurisdictions, even where such regulations vary from their own rules and regulations. It enables most goods which are sold in accordance with the regulations of one jurisdiction to be sold freely throughout the country. In addition, members of registered occupations can now freely enter an equivalent occupation in other states and territories. Mutual recognition in Australia resulted from an acceptance by the Commonwealth, state and territory governments that different regulations in each jurisdiction imposed significant and unnecessary barriers within Australia to both trade in goods and the mobility of people in registered occupations. These barriers can generate considerable economic and social costs. Mutual recognition arrangements in Australia are based on the "cross-border model" where the focus is on enhancing the freedom of movement of goods and labour between different jurisdictions. It does not interfere with the regulation of goods within each jurisdiction. In addition, it does not impact on regulations governing entry to registered occupations, by new entrant residents within a jurisdiction. Nor does it directly affect international trade agreements. The Australian arrangements were extended to New Zealand in 1997 through the Trans-Tasman Mutual Recognition Arrangement (TTMRA). This agreement represents a consistent example of how mutual recognition can be established between two jurisdictions at the same level of government.

1. The EU's approach to mutual recognition is largely similar and serves identical purposes.

Source: Office of Regulation Review (1997), *Impact of Mutual Recognition on Regulations in Australia: A Preliminary Assessment*, Canberra.

4.1.3. The role, scope and influence of the supra-national level for regulatory policy

The supra-national dimension plays a relevant role in many OECD and non-OECD countries when it comes to designing and implementing regulatory policy. The impacts of regulatory institutions and processes cut across national borders. Today, new regulatory arrangements range from supra-national institutions (the European Union) to international, multilateral and bilateral agreements (NAFTA, TBTA in the GATT, etc.), as well as co-operative agreements between countries.

Concerns to improve the quality of regulation can be found also at the supra-national level and this has become an important driver to optimise regulatory quality. Scope for improvement remains valid, in particular concerning the specific role of local governments finally affected by this complex regulatory system.

4.1.3.1. Impact of the European Union

The European Union (EU) decision-making has a significant impact on the EU Member States. EU principles, legislation and case law affect Member States politically, legally and organisationally. The regulatory impact of the EU spills over to third countries, which have to comply with EU regulatory requirements as part of their economic and trade relationships. For these reasons, both the EU institutions and national governments have worked towards improving co-ordination vertically (across the levels of governance) and horizontally (across jurisdictions).

In the Community context, EU decision making takes account of Europe's diversity. While the European Commission represents the common interest, the Council of Ministers and the European Parliament represent the States and the peoples, respectively. The European Court of Justice is the independent judicial branch. Any relationship between the different layers relies on the principle of subsidiarity, which is a fundamental principle of EU law and is enshrined in the Treaty Establishing the

European Community (Art.5). In important areas the presence of European requirements has strengthened reformers in several countries and has had a very positive influence on the market orientation of the regulatory system. Competition policy is a point in case. The Single Market programme conveyed a robust, market-based, regulatory regime in product standards and services. In the environment and public safety areas, the EU has worked towards establishing EU-wide thresholds for scientific standards, risk assessment and management.

On the other hand, European legislation may prompt less favourable conditions for regulatory reform. Efforts to search for and adopt alternative regulatory solutions might sometimes be inhibited, and in some countries transposing and implementing EU law has had unintended effects on the traditional law system, rendering the regulatory system more complex. In the case of EU directives, nonetheless, Member States maintain the choice of the form and method of transposition, while they are bound by the objectives to be achieved.

The institutionalisation of the transposition process of the *acquis communautaire* has led to the creation of co-ordination units at the national level, which vary in power and size. Some differences are also visible in terms of strategies, co-ordination capacity, inter-ministerial consultation, the role of parliaments and the existence of fast-track procedures. National parliaments play varying roles in the transposition processes. Some have adopted specific procedures for this process, others have not.

The flow and quality of information from and to Brussels has been steadily enhanced. This has covered both the preparatory as well as the implementing stages of policy-making. The EU institutions have fostered their consultation practices as well as the access to EU legislation through a series of initiatives on Better Regulation, transparency and good governance. Discussions about how to further improve the supranational-national interface are ongoing on various fronts, including on how to best convey timely and useful national inputs to the impact assessment procedure of the Commission. On their side, most of the countries have established dedicated bodies and specific procedures to manage the relationships with the EU. Scholars speak in this respect of an "europeanisation" of national administrations and the emergence of a European administrative space.

Box 8. Some mechanisms in the EU to deal with lower levels of government

Established by the Maastricht Treaty in 1993, the Committee of the Regions (CoR) participates in the legislative process of the EU. It is composed by 334 members, appointed for a four-year term by the Council, acting on proposals from the member states. Each country chooses its members in its own way, but the delegations all reflect the political, geographical and regional/local balance in their member state. The members are elected members of or key players in local or regional authorities in their home region. The Committee organises its work through six specialist Commissions, made up of CoR members, who examine the detail of proposals on which the CoR is consulted and draw up a draft opinion, which highlights where there is agreement with the European Commission's proposals, and where changes are needed. The draft opinion is then discussed at one of the five CoR plenary sessions which take place each year. If a majority approves it, the draft is adopted as the opinion of the Committee of the Regions and is sent on to the Commission, Parliament and Council.

After the European Council decided in spring 2005 to focus on relaunching the Lisbon Strategy, Community Strategic Guidelines for Cohesion (CSG) were adopted in 2006 and require future cohesion policy to target resources on three priorities: improving the attractiveness of member states, regions and cities; encouraging innovation, entrepreneurship, and the growth of the knowledge economy; and creating more and better jobs. In response, all member states have been preparing a National Strategic Reference Framework (NSRF), which describes how each country proposes to implement these priorities on its own territory.

Source: *www.cor.europa.eu; http://ec.europa.eu/regional_policy/sources/docoffic/2007/osc/index_en.htm*

Finally, Member States must ensure that the new regulations are implemented and enforced properly and in a timely way. These issues go beyond the traditional formalistic scoreboards process as they focus on outcomes and real life changes. The involvement in this respect of the sub-national authorities throughout all phases of the decision-making process is therefore critical. At the EU level, the Committee of the Regions is an advisory body representing the regional dimension (see Box 8). National as well as regional representations have also blossomed in Brussels and work as an increasingly important interface.

4.2. Regulatory institutions in a multi-level context

Regulatory institutions are fundamental to ensure regulatory implementation and the appropriate use of regulatory instruments. In a multi-level context, the challenge for most countries is to ensure that the right institutions are in place, at the right level, with the right powers and accountability to allow them to exploit endogenous strengths and tackle the particular weaknesses of each area.

There are many kinds of institutions responsible for moving the regulatory agenda forward in a multi-level context. Given this multiplicity of actors, it is fundamental to identify those that complement the leadership and the political will for introducing a reform agenda that will bring benefits to the whole system. This implies finding ways to solve particular tensions between technical bodies and representative institutions that might not always have the same policy priorities. Institutions for regulatory quality at the centre of government can only succeed in implementing broad programmes of regulatory reform if they find support from other institutions at different levels of government.

In some federal countries, states have established oversight bodies for regulatory reform, emulating the ones at the central level, responsible for introducing quality controls to the way regulation is produced and enforced. These bodies also take the lead as co-ordinators and managers for reform with a "whole-of-government" approach and introduce the use of policy and regulatory tools in a systematic way. This trend, however, is not common to all federal countries and further research and evidence is needed on the impact such institutions can have on the regulatory framework as a whole.

Box 9. Regulatory institutions at lower levels of government in OECD countries

In *Canada*, some provinces and territories have established specific institutions dealing with regulatory reform issues. Some examples of this trend are the following: the Ministry of Small Business and Revenues of British Columbia has established a Deregulation and Regulatory Reform Office, which is in charge of cross-governmental activities to streamline and modernise the regulatory environment. In Quebec, the Secretariat of the Ministerial Committee in charge of economic prosperity and sustainable development (*Comité ministériel de la prospérité économique et du développement durable)* is responsible for regulatory and administrative streamlining and co-ordinates with other interested parties in the government.

In *Mexico*, regulatory improvement commissions at state level have been established following the structure and functions of the Federal Improvement Regulatory Commission (*Comisión Federal de Mejora Regulatoria*, COFEMER). In some cases, such as the State Commission for Regulatory Improvement of Puebla (*Comisión Estatal de Reforma Regulatoria*, CEMER), these bodies have a governing board composed by the Governor of the State, the president of the biggest State business association, Ministers from key State ministries and representatives from academia and civil society. In other States, institutionalisation of regulatory management is conducted by ministries of economic development, such as in the case of Aguascalientes.

Sources: *www.regulatoryreform.gov.bc.ca; www.mce.gouv.qc.ca/allegement/index.htm; www.puebla.gob.mx/cemer; www.aguascalientes.gob.mx/economia/mejreg/cte/default.aspx*

Oversight bodies are not the most common institutions at lower levels of government. At sub-national levels of government, there are local authorities with regulatory powers, regulatory agencies in specific utility sectors, legal departments of executive and legislative branches at regional or state level in charge of producing laws and regulation, and many other institutions dealing with enforcement and compliance issues. This complex institutional landscape calls for stronger partnerships between central and local agencies and authorities as a way to solve the lack of clarity of responsibilities, the costs of duplication and the possible conflict of interests resulting from an ambiguous definition of roles.

4.2.1. Empowering different institutions for regulatory quality: defining roles and responsibilities

Institutions are fundamental for regulatory reform and to maintain coherence in policy design and implementation. Institutional organisation is normally laid down in constitutions. Decentralisation has brought significant modifications to administrative arrangements as most countries are confronted by greater allocation of competences and as a consequence of responsibilities to sub-national levels, both in federal and unitary countries. In terms of regulation, the key challenge of this process is to identify clearly who is regulating what.

The right set of institutions to ensure regulatory design and implementation is fundamental at any level of government. In OECD countries, regulatory institutions have appeared at sub-national levels of government, as a way to maintain coherence and to support co-ordination. The challenge is to define clear roles and responsibilities, in particular in those areas that are of shared competence with the central government to avoid duplication and contradiction.

While defining roles and responsibilities, institutions need to be responsive to citizens' and businesses' needs, and while trying to avoid adding a new layer of bureaucracy and more red tape. Many countries have not yet found appropriate solutions to this challenge, which in part is due to particular legal and political specifics.

4.2.2. Strengthening institutional capacities for regulatory quality: resources, training, capacity-building

Institutions can only be effective if they have the necessary resources to implement policies and make use of policy tools. Without real financial means, the regulatory powers transferred to local governments will be not exerted. National agencies for better regulation depend for success on implementation at the local level.

Spreading the concept of "regulatory quality" requires training those dealing with regulations and building capacities across the administration. National governments have encouraged and assisted the development of capacities among local and regional governments, *inter alia* by providing training and development opportunities, as well as forums for developing policy.

Box 10. Supporting local governments for regulatory quality

In the *United Kingdom* a new organisation, the Local Better Regulation Office (LBRO), was set up by the Government in May 2007, to improve local authority enforcement of environmental health, trading standards and licensing and to reduce burdens on businesses that comply with the law while targeting those who flout it. Its overall aim is to secure the effective performance of local authority regulatory services in accordance with the principles of better regulation and the Government is legislating to give it powers to deliver that purpose. Its focus is on ensuring that inspection and enforcement are based on an assessment of risk, so that businesses are supported and regulatory resources are focused on those areas that most deserve tougher scrutiny. LBRO also works to ensure that businesses, particularly those that operate across council boundaries, receive greater consistency in advice, support and inspection from local authorities.

In *Mexico*, the Federal Improvement Commission (*Comisión Federal de Mejora Regulatoria*, COFEMER) has developed guidelines for municipalities on regulatory improvement (*Guías de Mejora Regualatoria Municipal*) in order to provide technical elements to municipalities to support the design of their own regulatory reform strategy. These guidelines cover not only regulatory aspects, but also methodological and technical capacities to improve administrative and institutional capacities. Examples of these guidelines are: Legal Techniques to Elaborate Municipal Regulations, Reengineering of Municipal Procedures, Rapid Business Start-up System, System for Municipal Information and Catalogue of Municipal Procedures, etc.

Sources: *www.lbro.org.uk/; www.cofemer.gob.mx*

4.3. Regulatory and policy tools in a multi-level context

Regulatory and policy tools for high quality regulation are of diverse nature. While there are some tools that help to improve regulatory design, such as consultation and the use of impact assessment, there are others that improve the implementation of regulations, such as compliance and enforcement mechanisms. In a multi-level context, some of these tools are fundamental for achieving regulatory goals, but evidence shows that there is further scope to explore their better use. It should be noted that this section does not include a discussion of e-government in relation to tools for better regulation, a topic which deserves further study (2008a).

The implementation and use of policy and regulatory tools in a multi-level context presents some challenges. In terms of their design and the specific techniques needed to put them into practice, there is certain homogeneity between the tools used at central and sub-national levels of government. The big questions, however, refer to the best strategy to maximise the benefits of certain tools and to make a coherent choice of which level should be in charge of their implementation. Tools for high quality regulation at different levels of government should be designed and used with the aim to reduce transaction costs and to identify the "optimal level" of application. The multi-level dimension requires that policy-makers consider avoiding possible overlapping in the use of certain tools that could be costly if not used in a rational way.

Regions and localities need regulatory and policy tools to build on their own assets in order to respond in a flexible way to changing economic conditions and face the challenges of globalisation. Hence the problem is not only how to increase capacities to implement regulatory quality instruments at a specific level, but what the main problems are that arise when regulatory quality instruments are applied to institutional frameworks organised as networks. In a multi-level context, duplication and overlapping in the use of certain policy tools can be even more costly, as this implies additional resources and efforts that could be better afforded by only one level. The challenge is to identify the right level and attach to it the use of certain tools, ensuring that other levels can be part of the network and take advantage of that policy tool.

The improvement of regulatory frameworks can only be achieved if there is a clear identification of these problems and challenges occurring associated to the application of different regulatory instruments. It is also essential to reflect on the necessary conditions to ensure their efficient use over time.

The following sections make reference to the use of selected regulatory and policy tools for the design and the implementation of regulations.

4.3.1. Better consultation and communication mechanisms as a way to improve transparency at different levels of government.

Public consultation and communication are two key elements to improve regulatory transparency at different levels of government. Transparency refers to the organisation of the way the state projects its regulatory powers to the society and the market, and it is fundamental in the regulatory process, from the initiation of the regulation, its formulation and drafting, to its implementation and review. The way all levels of government include participation from the public in the regulatory process and communicate the benefits of reform and the content of regulations is fundamental to the smooth functioning of the regulatory system as a whole. Transparency can address many of the causes of regulatory failures, such as regulatory capture and bias toward concentrated benefits, inadequate information in the public sector, rigidity, market uncertainty and inability to understand policy risk, and lack of accountability. In lower levels of government, these problems tend to be more acute as the interaction with more actors and the diversity of roles and responsibilities increase the complexity of the system. In a multi-level context, there is an increased need to make more information available to the public, to listen to a wider range of interests and to be more responsive to what is heard. Transparency can therefore improve the choice of regulatory policy options and avoid arbitrary decisions in regulatory implementation.

Because local governments are closer to the people they administer, local decision-makers can be allies in adapting regulation to changing needs and circumstances. A jumble of often contradictory regulations can impose major costs on the public. A great variety of solutions have been adopted for involving local governments in defining regulations and how they are implemented. What might be called "co-operative" solutions associate local governments throughout the process, or at one stage of the process (formulation of objectives, for example), and make them responsible for all or a portion of the outcomes. Initially, this approach involves negotiation and may appear inefficient, but over time it will foster better adaptation.

4.3.1.1. Public consultations

In a multi-level dimension, network structures call for new consultation mechanisms and new bargaining processes to ensure horizontal and vertical co-ordination. Regulatory decisions require the involvement of different actors whose points of view and positions should be heard. However, consultation can only achieve its goals if transparency and openness in the process is respected.

The legitimacy of a regulation has to do not only with the authority of the body adopting it but also, and increasingly, with the degree of public input. Thus, decentralisation undoubtedly contributes to the democratic process if it serves to reinforce transparency and the consultation of stakeholders. Introducing a true right of public intervention in the regulatory process can maximise the positive effects by ensuring that public services are adapted to local preferences. However, attention needs to be paid to the increased bureaucracy inherent in multilevel complexity. There is a subtle balance between an excessive formalism that induces judicial inflation and a lack of clarity that prevents citizens from identifying the relevant level and telling them what they expect. The position of citizens varies according to their role as users, taxpayers, etc., and the risk that consultation processes might be taken over or even hijacked cannot be ruled out. The public is not "neutral" and nor is the local authority concerned. It may be tempted to satisfy the wishes of its direct electorate, sometimes to the detriment of national objectives.

Box 11. Consulting with the public at lower levels of government

The province of Nova Scotia in *Canada* has launched a Better Regulation Initiative with a "whole-of-government" perspective, involving every department of the province. Consultations with business groups have been essential to shape the plan and priorities for the Initiative. Among these groups, the government has consulted with the Canadian Federation of Independent Business, the Canadian Restaurant and Food Service Association, the Construction Association of Nova Scotia, the Halifax Chamber of Commerce, etc., under the leadership of various departments on specific topics. These discussions have provided business and the public with the chance to be part of the solution.

Source: *www.gov.ns.ca/betterregulation/*.

While these points need to be borne in mind, it remains true that better knowledge of users is essential in the process of optimising public governance. This may take place in a more or less formal way, depending on particular conditions. Civil society, businesses and individual citizens can all effectively spur the adaptation of regulations to their needs. Determining the right level of government is a necessary but not a sufficient precondition for success.

Consultation also refers to the way local voices are heard at national level. In order to improve the design and the implementation of regulations in a coherent way, consultation mechanisms with lower levels of government should be encouraged.

Box 12. Integrating lower levels of government in consultation procedures

In *Sweden*, the process that precedes the development and passage of a new law includes the set up of Committees of Inquiry, whose terms of reference are stipulated by the government and members, special advisers and experts are appointed by the lead minister concerned. Often experts are recruited from local and regional authorities and from the Swedish Association of Local Authorities and Regions (SALAR). The Committee normally holds public meetings and their results are extensively circulated for comments. Even if there are only limited formal consultation mechanisms, groups and citizens present their views through the normal work of local municipal councils and committees in the course of their normal public business. Informal consultation mechanisms also involve contacts with local enterprises and business organisations, municipalities, SALAR or other state agencies.

In *Switzerland*, extensive consultation procedures are used at cantonal level and to integrate their views at the federal level. Cantonal administrations are rather small, but the number of cantonal ministries as well as their internal organisation differs considerably from canton to canton. Cantons participate and influence the decision making of the Federation through consultation mechanisms according to Art. 45 of the Federal Constitution. Since they are in charge of implementation of federal laws, the Confederation informs them in advance and in a detailed way about future projects and it is obliged to involve them into the consultation procedure. The association of cantons in the consultation is an important way to participate, but not the only one. Cantons can also raise their voice through representatives in mixed working groups or institutionalised meetings. The commissions of the Council of States consult with cantons on the applicability of laws. The Federal Law of Cantonal Participation on Foreign Policy (*loi fédérale sur la participation des cantons à la politique extérieure de la Confédération*) allows those cantons that can participate, in an early stage, to the foreign policy of the Confederation.

Sources: OECD (2007), *Multi-level Regulatory Capacity in Sweden*, Paris; OECD (2005), *OECD Review of Regulatory Reform: Switzerland,* "Government Capacity to Assure High Quality Regulation in Switzerland", Paris.

4.3.1.2. Communication

One dimension of transparency that is relevant for the multi-level dimension is the improvement of the clarity of legal and regulatory frameworks and the effectiveness of communication and access arrangements. In many OECD countries and at different levels of government, there is an increased use of legislative codification and restatement of laws and regulations, to enhance clarity and identify and eliminate inconsistency. In addition, the adoption of centralised registers of laws and regulations, to enhance accessibility, is now widespread.

Lower levels of government, in particular in federal countries, have introduced plain language drafting to support the effective communication of legislation by making laws intelligible to citizens. In particular, plain language is essential for achieving high levels of compliance and effective enforcement. It also reduces the risk of complaints and disputes.

Communication has been improved by integrating the use of information communication technologies (ICT). Used as tools to disseminate information, this has helped to make regulatory requirements easily and cost-efficiently available for relevant target groups. In terms of transactional aspects, the use of ICT has enabled and facilitated regulatory information transactions between authorities and businesses and citizens. ICT has also contributed to information sharing: ICT has contributed to common store and share information required according to regulations between different government bodies.

Box 13. Communicating with stakeholders and citizens at lower levels of government: Examples in Belgium

The Belgian Agency for Administrative Simplification (ASA) is in charge of preparing an annual programme and evaluating the results in a final report available on-line on *www.simplification.be*. This website offers more information about:

- Fulfilment of projects;
- Ongoing projects;
- Analysis of administrative impact;
- Administrative burdens measurement
- Reporting on activities
- Conclusions of seminars

The Agency for Administrative Simplification (ASA) organizes conferences for general public as well as training sessions on:

- All four public administration's initiatives each year;
- Impact analysis using the Kafka test;
- On-line consultation of data available to public officers.

In addition, a newsletter is published six times a year.

The Walloon region in *Belgium* has established a Commission for E-Government and Administrative Simplification (*Commissariat à l'e-Administration et à la SImplification administrative*, EASI-WAL) in charge of general co-ordination of cross-cutting issues on administrative simplification, e-government and processing re-engineering. As part of their mission, EASI-WAL places communication at the forefront. The main goals are to inform, to sensitive and to train. In terms of communication towards the users of public services, EASI-WAL focuses on the promotion of simplification improvements directly visible and useful for the citizens in their relationship with the administration.

In 1992 the Flemish parliament approved a decree concerning the control on the Flemish government communication. An expert commission for communication was established and a framework for communication was designed in 1996. It was stated that *"from the Flemish government is to be expected that it strives towards "communication in its policy" meaning that it has to translate its policy in clear and plain language, instead of clarifying unclear policy afterwards by means of government communication"*. The framework sets out specific requirements for government communication concerning:

- the government that sends out the message, for instance:
    - A clear distinction has to be made between "in progress" and "approved" policy;
    - A recognizable label has to accompany each communication;
    - Communication has to be planned under strict and professional criteria.

- the message sent;
    - All public administration's information must be correct to ensure and maintain citizens' trust in government;
    - Clear and simple language has to be used
    - Communication means need to be in balance with the expected results

- The receivers of the message, mainly businesses, citizens and local governments:
    - Access to information should be easy and user-friendly for all target groups
    - Information should be free of charge and timely

The Flemish Linguistic Unit monitors the compliance of plain language criteria by draft regulation and provides *ad hoc* linguistic advice to government departments. In order to provide easy access to administrative procedure forms, the Flemish government has built a one-stop shop to make all Flemish forms available through one single website www.vlaanderen.be/formulieren. In total, 1,225 forms are classified and accessible by to topic, target group and type. A quality label has been introduced for forms aiming at improving the quality of these forms. At the end of September of 2008, 553 forms had already received a quality label.

Source: *http://easi.wallonie.be*; *www.vlaanderen.be.*

4.3.2. The introduction and use of Regulatory Impact Analysis (RIA) at sub-national levels of government

Regulatory Impact Analysis (RIA) is a systematic decision tool used to examine and measure the likely benefits, costs and effects of new or existing regulation. In OECD countries its use at the central level of government has expanded in the last few decades. In those countries where sub-national levels of government have the prerogative to produce regulation, mostly federal countries, RIA could contribute to the policy and decision making by providing valuable empirical data about the consequences of regulation.

If RIA is to be implemented in a multi-level context, a number of issues have to be solved given that several institutional actors might be involved in the policy making process. The institutional fragmentation caused by this fact implies that the dynamic relationships between all these actors have to be managed by bargaining processes whose rules and characteristics vary across sectors. Moreover, in case of overlapping rules generated by different levels of government, RIA might be compromised by detailed provisions that are delegated to lower levels of government or by rules which are too specific.

Under these circumstances it is worth asking whether RIA should be undertaken at each level of government or what is the "optimal level" to do it. Solutions to these questions will depend on the specific context and sector regulated, but the usefulness of RIA for local regulations is unquestionable. Regulations produced by lower levels of government have normally a direct and decisive impact on citizens and businesses, generating substantial costs and benefits. Lower levels of government can tailor RIAs to the specific needs of their economies, aspects that could be ignored by higher levels. RIA at lower levels of government also contributes to increase efficiency and transparency while considering consequences of proposed regulation. But finding the "optimal level" is not an easy task and so far there is no empirical evidence on how to define it.

Box 14. Making use of impact assessments at lower levels of government

In *Australia*, between 2006 and 2007 regulatory reform was an important undertaking for state and territory governments, with most implementing or continuing regulatory reform programmes. In April 2007, the Council of Australian Governments (COAG) reiterated its position concerning regulatory impact analysis process, by including the requirements in its Regulatory Reform Plan, which is part of its National Reform Agenda. COAG has agreed that all Governments will establish and maintain effective arrangements at each level of government that maximise the efficiency of new and amended regulation and avoid unnecessary compliance costs and restrictions on competition by: (a) establishing and maintaining "gate-keeping mechanisms" as part of the decision-making process to ensure that the regulatory impact of proposed regulatory instruments are made fully transparent to decision makers in advance of decisions being made and to the public as soon as possible; (b) improving the quality of regulation impact analysis through the use, where appropriate, of cost-benefit analysis; (c) better measurement of compliance costs flowing from new and amended regulation, such as through the use of the Commonwealth Office of Small Business' costing model; (d) broadening the scope of regulation impact analysis, where appropriate, to recognise the effect of regulation on individuals and the cumulative burden on business and, as part of the consideration of alternatives to new regulation, have regard to whether the existing regulatory regimes of other jurisdictions might offer a viable alternative; and (e) applying these arrangements to Ministerial Councils.

Examples of RIA systems in different Australian territories are the following:

- Victoria has a comprehensive regulatory impact analysis process. This includes a statutory requirement to prepare a RIS where a proposed statutory rule is likely to impose an appreciable economic or social burden on a sector of the public. In addition, there is a requirement for a Business Impact Assessment (BIA) to be prepared for primary legislation that has a significant impact on business or competition. Where any legislative instrument results in a material change in the administrative burden imposed on businesses and not-for-profit organisations, an SCM measurement is required to be undertaken and the results publicly reported.

- In South Australia, all Cabinet submissions require an assessment of regulatory, business, regional, environmental, family and social impacts. Where the regulatory impact is significant, a RIS must be attached to the submission. Where there is a proposed restriction on competition, the assessment must demonstrate that the benefits outweigh the costs and that the objectives can only be achieved by restricting competition. In addition, where there is a significant change proposed in relation to services or infrastructure in regional areas, a formal Regional Impact Assessment Statement (RIAS) must be prepared. After Cabinet consideration, RIASs are lodged in Parliament and published on the website of the Office of Regional Affairs.

- In Queensland, proposed subordinate legislation that is likely to impose appreciable costs on the community, or a part of the community, is subject to the preparation of a RIS as prescribed under Part 5 of the Statutory Instruments Act 1992 (Qld) (the SIA). In accordance with the principles outlined in the 1995 Competition Principles Agreement (CPA), the Queensland Government requires that all new and amending primary and subordinate legislation that restricts competition is subject to a public benefit test (PBT). Where proposed subordinate legislation is likely to impose appreciable costs on the community, or part of the community, and contains restrictions on competition, a combined RIS/PBT can be prepared. The Queensland Office for Regulatory Efficiency (QORE) was established in 2007 to lead the development and implementation of the Queensland regulatory reform agenda. It has now been transferred to the Treasury portfolio to better coordinate the national and state reform agendas across the Queensland Government.

- In New South Wales (NSW), the Subordinate Legislation Act 1989 (NSW) requires the preparation of a formal RIS for a proposed statutory rule. That is, the minister responsible must ensure that the guidelines in schedule 1 of the Subordinate Legislation Act are complied with before a statutory rule is made. The Act requires that the RIS take into account economic and social costs and benefits of proposals, and that costs and benefits be quantified, wherever possible. The objectives of the regulation must be outlined and tested to ensure they are appropriate and not inconsistent with other regulations. Alternative options must also be canvassed. Further to the requirements of the Subordinate Legislation Act, regulatory impact analysis is required for all new and amending legislation and regulation in NSW, and consultation is recommended. The NSW Government established the Better Regulation Office (BRO), within the Department of Premier and Cabinet, in 2007. The NSW Guide to Better Regulation specifies that, from 1 June 2008, all regulatory proposals should be developed in a manner consistent with the 'better regulation' principles of RIA. A Better Regulation Statement, demonstrating the application of the principles, should accompany any significant new or amending legislation or regulations.

RIA at regional level in *Italy* is in its initial steps. So far, none of the Italian regions conducts RIA in a systematic way. But since 2003, the Department of Public Administration and FORMEZ (*Centro de Formazione Studi*) have undertaken 14 pilot projects on RIA with 10 regions. The exercise has involved more than 130 officials, participating in working groups from each region and representing, in general, the regional executive bodies (*Giunte*). In some cases, the exercise has involved representatives from the regional legislative bodies (*Consigli*). FORMEZ has published an evaluation on the pilot projects at regional level. For each one of the regions, evaluations contained the specifications of the RIA, technical documentation that supports the analysis and disseminate the results, an assessment of the technical and organisational difficulties encountered during the process, and a list of questions that provide some guidance on how to solve the methodological and implementation problems.

In *Canada* some provinces and territories have introduced impact assessments conducted in a systematic way. The province of New Brunswick started the integration of a Business Impact Test (BIT) in 2002 as part of the process for all new and/or amended legislation or regulations to prevent additional red tape. In 2005 the BIT application was extended to include policy advice to government as part of the original process. BIT's application ensures that decision-makers are aware of the potential impacts of any new policy, legislative and/or regulatory amendment on business. The BIT will determine whether or not regulatory change is the best option to address issues facing government, while taking into account stakeholders' views, the impact on the province's competitiveness, and the cost-benefit to government and business.

Sources: Council of Australian Governments (2007), *Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies*, Canberra; OECD (2007), *Italy - Ensuring Regulatory Quality Across Levels of Government*, Paris; *www.gnb.ca/cnb/promos/red-tape/index-e.asp*

The introduction of RIA at lower levels of government requires also an analysis of the costs and technical capacities to conduct it. States or regions producing regulations are not always properly staffed or do not have the necessary resources to undertake a process that might be costly in time and money. In this case, innovative thinking is essential to find appropriate solutions to the shortcomings. Improving co-ordination and consultation, essential for a successful RIA implementation, are only two ways in which the multi-level dimension could be addressed.

4.3.3. Reducing administrative burdens at lower levels of government

Cutting red tape is one of the most commonly used tools to improve the quality of the regulations. A recurrent complaint from business and citizens in OECD countries is the number and complexity of government formalities and paperwork. This reflects the fact that registration formalities and also procedures related to land use and construction permits are among the most visible regulatory burdens imposed on business by governments. In a multi-level context, these burdens can be more evident, especially if lower levels of government also have the power to impose formalities and lack quality control mechanisms in place that can avoid unnecessary costs to comply with them. Administrative burdens can impede innovation and job creation as well as create barriers to trade, competition, investment and economic efficiency, discouraging entrepreneurship.

A number of OECD countries have implemented programmes to reduce local formalities in order to boost economic activity, to facilitate entrepreneurship and to simplify citizens' lives. As a general trend, simplification strategies mainly focus on business, an area where burdens have the most negative effect on competitiveness and growth. Countries have, however, different priorities concerning simplification, including not only businesses, but also the public sector and citizens. As local governments are closer to citizens, reducing administrative burdens has become a priority for many of them. At lower levels of government, simplification measures try to target SMEs, since this sector is less well placed to deal with administrative burdens and the complexity of regulations can damage its development.

The use of ICT tools to reduce red tape at lower levels of government is increasing. While being more in contact with businesses and citizens, lower levels of government are asked for more on-line services to be available so that businesses and citizens, particularly in areas outside service centres, could file documentation from their locations. This also requires a stronger co-ordination inside the government with a more "client oriented" approach in its relationship with businesses and citizens. ICT tools are widely used in order to disseminate information, making regulatory information requirements easily and cost-efficiently available for relevant target groups; to facilitate transactional aspects between authorities and business and citizens; and to share information by common storing and exchanging information required according to regulations between different government bodies.

Box 15. Cutting red tape at different levels of government

In *Mexico*, starting-up a business means dealing with 3 different levels of government: federal, state and municipal. Two major procedures are related to lower levels of government: land use and licences to start-up. The Federal Regulatory Improvement Commission (*Comisión Federal de Mejora Regulatoria*, COFEMER) launched in 2002 the integrated Rapid Business Start-up System (*Sistema de Apertura Rápida de Empresas*, SARE) allowing firms to comply with federal, state and municipal regulations, and start operations in up to two business days. In a country where a large proportion of economic activity is performed by micro and small enterprises (80% of economic activity) this SARE was greatly needed to improve the climate for doing business and investing. The SARE covers today 110 municipalities in the entire country.

In *Belgium*, collaboration between different levels of government has been essential for administrative simplification efforts for two main reasons: citizens and businesses do not distinguish between the federal and the regional level when they are confronted with red tape and the effectiveness and coherence of certain actions are only optimised when they cut across all levels of power. In December 2003, a co-operation agreement concerning administrative simplification was signed between the federal level, the Flemish, French and German speaking communities, the Flemish region, the Wallonia region, the Capital-Brussels region, the Flemish communal Commission, the French communal Commission and the common communal Commission. A consultation committee gathers delegates from concerned administrations and ministries. This committee produces an annual programme to set the priorities for concrete administrative simplification projects commenced at federal level, such as the common data collection through the Crossroad Database for Enterprises (*Banque-Carrefour des enterprises*) and the public markets (*marchés publics*), the transposition of certain directives, the integrated co-operation for the Kafka one-stop shop, and the administrative burden measurement mechanisms such as the Standard Cost Model and the biannual business survey.

In *Portugal*, a number of different simplification activities take place at municipal level: one example is "Digital Cities and Digital Regions" funded through UMIC with support of EU structural funds. It consists of more than 32 projects, covering 96% of Portugal, involving e-government solutions for local governments, conditions for reinforcing the competitiveness of small and medium size enterprises and a variety of citizen-oriented services such as health, education, social support, culture, and safety. These projects have been an effective instrument to mobilise local actors and enhance their qualifications for managing joint local and regional development programs based on ICT.

In the *European Union*, the European Commission launched in 2007 an ambitious Action Programme aimed at reducing administrative burdens on businesses in the EU by 25% by 2012. The Action Programme was endorsed by the European Council which invited Member States to "set national targets of comparable ambition". The Action Programme aim is to measure costs imposed by information obligations (IOs) that impact on business. The purpose is to improve the efficiency of EU rules and suppress unnecessary requirements without jeopardizing the purpose of the legislation in case. A key part of the Action Programme consists of a large-scale measurement of administrative burdens, using the Standard Cost Model methodology, to be followed by major simplification proposals. In parallel, more substantial changes are being considered for inclusion in the EU's Simplification Rolling Programme which reviews and modernizes the body of EU law developed over the past 50 years and which may have become overly complex in certain areas. The reduction target concerns burdens stemming for EU legislation with equivalent targets being fixed by national governments on purely national legislation.

Sources: *www.cofemer.gob.mx; www.simplification.fgov.be*; OECD (2008a), *Simplifying life for citizens and businesses in Portugal – Administrative Simplification and e-Government*, Paris.

Recent experiences show that more quantitative approaches are increasingly used as the primary source for assessing and quantifying the size of administrative burdens. In many OECD countries there are increased efforts to assess burdens more systematically and develop evidence on administrative burdens. This has the advantage of properly identifying the burdens and targeting reform groups, but also tracking burdens over time and to measuring reform success. Following this trend at national level, lower levels of government in many countries have embarked on measurements of administrative burdens, as part of the efforts to cut red tape.

Burden reduction might also have financial implications which are not easy to solve. Businesses and citizens recurrently complain about the costs of fees to be paid for services provided by governments, which might be considered as inhibiting business development. But business formalities are sometimes a source of revenue for different administrative authorities. Being the case for lower levels of government, cutting red tape might have direct effects on the way local governments maintain their sources of financing, creating resistance to changes.

Box 16. Measuring administrative burdens at lower levels of government

In *Canada*, different provincial governments have integrated measurements of administrative burdens as part of their efforts to cut red tape. The province of Newfoundland and Labrador, whose 99.7% of all businesses are considered as SMEs, has set up in its Red Tape Reduction Initiative a target of 25% reduction of the number of regulatory requirements within government by 2009. So far, the provincial government has succeeded in reducing them by 10.5%. The government of British Columbia set up a target of 33% for cutting regulatory burden in 2001. Through regulatory reform efforts, the government has exceeded that target by over 40%. Since 2005 and after a first operation to reduce formalities in the province, the Government of Quebec established a strategy for cutting red tape and improving the business environment in the province, setting up a target of 20% reduction by 2010, as part of its economic development strategy called The Québec Advantage.

In *Germany*, with a cabinet decision of 28 February 2007, the Federal Government committed itself to the following goal: "the Federal Government aims to reduce unnecessary bureaucracy significantly and quickly and sets itself the target of reviewing the measured sum of administrative costs resulting from information obligations, while identifying and eliminating unnecessary costs of this kind by the end of 2011. The Federal Government aims to reduce the present administrative cost burden by 25 %." About 10 400 information obligations have been identified at federal level. Separate policies take place at sub-federal level. Some examples can help illustrating the activities in the German Länder (States): The *Land* Brandenburg started in 2006 a process called Quick Scan to have an overview over the legal framework. As a consequence some measurements of administrative costs in a number of specific laws have been conducted. North Rhein Westphalia, through the decision of the Cabinet from March 2007, has decided to work on 32 decisions of the state government after an analysis of the existing legal framework; on 23 specific projects in different departments and on 100 particular measures. Hessen has included sun-setting clauses for regional laws and procedures aimed at starting a consolidation process of the legal framework.

In *Belgium***,** the Standard Cost Model is under use to measure the existence and reduction of all burdens regardless their institutional origin. The Agency for Administrative Simplification has developed a permanent programme to measure regulatory changes to be included in those measures.

Sources: *www.gov.nl.ca/redtape; www.regulatoryreform.gov.bc.ca; www.mce.gouv.qc.ca/allegement/index.htm; www.stk.brandenburg.de; www.hessen.de; http://www.im.nrw.de/vm/13.htm*

4.3.4. The use of alternatives to regulation

Alternatives to regulation are not always explored in depth by regulators. The choice of policy instrument tends to be based more on habit and institutional culture than on a rational analysis of the suitability of different tools to address the identified policy problem. Consequently, a crucial challenge for regulatory policy is to encourage cultural changes within regulatory bodies that will ensure that a comparative approach is taken systematically to the question of how best to achieve policy objectives. Efficient and effective policy action is only possible if all available instruments are considered as a means of achieving the identified objective. The instruments to be considered include a wide range of non-regulatory instruments, as well as a number of distinctly different forms of regulation.

The use of alternatives to regulation is however not risk-free. Using untried approaches and the perception of failure to develop adequate answers are reasons to deny the possibility of using alternatives. But regulators are looking for new policy instruments to meet the expectations of what regulatory action can achieve. A growing demand from citizens and a new environment for regulatory action pressure the need to make better use of alternative mechanisms.

In a multi-level context, the use of alternatives to regulation could be explored for two sets of reasons. First, it might be argue that lower levels of government are in a better position to understand if regulation is the only possible way to respond to a policy issue. In many situations, there may be a range of options other than traditional "command and control" regulation available, including more flexible forms of traditional regulation (such as performance-based and incentive approaches), co-regulation and self-regulation schemes, incentive and market based instruments (such as tax breaks and tradable permits) and information approaches or no regulation at all. Second, when used in the right circumstances alternatives can offer significant advantages over traditional command and control regulation, including: greater flexibility and adaptability; potentially lower compliance and administrative costs; an ability to address industry-specific and consumer issues directly; and quick and low-cost complaints handling and dispute resolution mechanisms.

Box 17. Alternatives to regulation mechanisms at the sub-national level

As an example of market-based instruments, auction type mechanisms have been used by governments to purchase environmental 'services' or benefits. The Victorian State Government in *Australia* has recently piloted an environmental conservation programme: The Bush Tender scheme involves landholders bidding to provide management services to improve the quality or quantity of native vegetation on their farm. The State Government provides funds to the farmers on the basis of a Biodiversity Benefits Index, which measures the conservation value of the site and the value of services offered by the landholder per dollar of payment. Those proposals ranking the highest on the Biodiversity Benefits Index receive priority funding.

In *Japan*, the Special Zones for Structural Reform system allows for regulatory exemptions in certain areas based on proposals by local governments and private companies. The aim of the system is to vitalize regional economies by providing a more suitable regulatory environment for each local government. Moreover, if a regulatory exemption is evaluated as a sound one, then the regulation will be reformed so that the exemption can be applied nationwide. This system was established in 2002 and so far 623 regulatory reforms have been implemented to date: 214 regulatory reforms have been carried out in special zones and 409 at nationwide level.

In the framework of the *European Union*, tripartite contracts and agreements are used to develop the arrangements for the participation of the regions in attaining targets set at European level in co-operation with the national and regional authorities. These contractual tools, which are subject to a general obligation of compatibility with the Treaties, must respect the States' constitutional systems and may not under any circumstances constitute a barrier to the sound operation of the single market. They are justified where they provide added value which may take several forms: simpler implementation, political benefits, efficiency gains resulting from the close involvement of regional and local authorities, or speedier performance.

Sources: OECD (2006), *Alternatives to Traditional Regulation*, GOV/PGC/REG(2006)9, Paris; OECD (2008c), *Brazil – Strengthening Governance for Growth*, Paris; European Commission (2002), *Communication from the Commission – A framework for target-based tripartite contracts and agreements between the Community, the States and regional and local authorities*, Brussels.

There might be, however, clear constraints for using alternatives to traditional regulation in a multi-level context. The case of market-based mechanisms is an example. While market-based mechanisms are often used in combination with other policy instruments, there can also be problems in integrating them across jurisdictional borders, for example between national and sub-national levels of government. The use of fiscal instruments, including taxation and subsidies, can be difficult across jurisdictions where the rates may need to be approved by different levels of government. These cross-jurisdictional problems are not necessarily insurmountable, and there are examples of market-based mechanisms being used successfully across jurisdictions (such as the European trading system for carbon dioxide). But the need to ensure consistency with other regulatory arrangements can complicate the introduction and use of market-based instruments.

4.3.5. Tools to improve implementation of regulations

To be effective in achieving policy objectives, regulation must also be adequately applied and enforced. Understanding this final link in the regulatory policy chain involves consideration of the related issues of the practical application of the regulations, including the rights of redress accorded to the regulated, and of regulatory compliance and enforcement. All these issues involve the set of relationships between the regulators and the regulated: regulators must apply and enforce regulations systematically and fairly, and regulated groups must have access to administrative and judicial review of those actions of the regulator.

Key instruments in establishing the accountability of governments in OECD member countries are administrative procedures acts, the use of independent and standardised appeals processes and the adoption of rules to promote responsiveness, such as legislated time limits to respond to applications and "silence is consent" clauses.

The issue of regulatory implementation is receiving substantially increased attention at different levels of government in some OECD countries. There is a need to better understand the different mechanisms used to deal with the wide range of implementation issues that arise as a consequence of that process. This is directly linked to the positive trend of transparency and accountability observed in many OECD countries, in which improvements in enforcement and compliance can be seen as a reflection of more open and transparent regulatory decisions.

4.3.5.1. Regulatory compliance and enforcement

In order to achieve policy goals, regulation must be adequately applied and enforced. The level of compliance is the most fundamental determinant of the effectiveness of regulation in meeting policy objectives. Regulatory design and implementation must proceed from an understanding of the factors that determine the willingness to comply of regulated groups. Thus, the question of compliance is fundamental for the quality of the regulation.

In a multi-level framework, the issue of compliance deserves attentive analysis for the following reasons. First, compliance starts from a reaction from business and citizens that trust the government. While lower levels of government tend to be closer to their needs, businesses and citizens will be able to respond only if there is a clear understanding of regulatory requirements and of the rules. Local governments need to make an effort to ensure that stakeholders are not only well informed and know the rules, but also that regulations appear simple to comply with. Second, lower levels of government should work on the feasibility of compliance. They must facilitate the assimilation of rules, the way citizens have to comply with them and the confidence in regulators and the regulatory structure. Otherwise, the technicality of rules can lead to non-compliance by encouraging evasion. Third, lower levels of government should have a strategy on monitoring and enforcement, which is not always the case in the present situation. Lower levels of government might be in a good position to provide solutions on the enforcement and implementation phase, combining regulatory and non-regulatory measures to increase the opportunities for compliance, in particular when they are responsible for inspection and monitoring.

The enforcement and compliance dimension of regulation is clearly linked to the issue of multi-level regulatory governance. Enforcing regulations is in most cases conducted by lower levels of government as part of their responsibilities for implementation. But there are also national authorities participating in this task setting out the rules to be followed, which calls for co-ordination and coherence in the approach. Most regulators in OECD countries rely on local authorities, for instance, to conduct inspections and provide advice to those businesses that fall into the regulator's remit.

Concerns in OECD countries about the costs that are imposed by regulators to businesses and citizens while enforcing regulations are increasing, in particular costs that tend to fall disproportionally on SMEs. Those concerns include a multi-level dimension in many cases. For instance, this relates to the cost of the number of inspections,[2] as one of the mechanisms used to ensure compliance, which national and local regulators have to undertake in a given sector for a specific period of time in order to fulfil their enforcement responsibilities.

Box 18. Regulatory compliance at lower levels of government: The case of Nova Scotia

In *Canada*, the province of Nova Scotia has launched a Competitiveness and Compliance Initiative (CCI) as part of its Better Regulation programme. CCI has developed an internal checklist to track whether regulatory proposals conform to the principles and goals in the Regulatory Management Policy. This checklist ensures that proposals have considered impacts, costs and benefits, undergone stakeholder engagement, have performance measures, and meet other principles of the Policy.

According to this Initiative, compliance can only be promoted if society is aware of laws and there is a promotion to reduce burdens for citizens and businesses. To achieve these goals, strategic development of compliance promotion plans are envisaged, such as the expansion of the use of tools to promote compliance; the inventory of existing compliance promotion initiatives, such as training, plain language documents, awareness initiatives, capacity building initiatives, stakeholder engagement, website material, etc.; the use of existing initiatives as compliance promotion best practices; the completion of compliance promotion plans for regulatory areas; the profile of a number of specific compliance initiatives.

To improve compliance with the regulatory programmes, the Initiative contemplates the development of a department-wide compliance framework that sets out principles and a model for achieving compliance under which division specific compliance models are based; to work with the Public Prosecution Service to establish a dedicated Crown Prosecutor for regulatory offences with clear expectations and effective communication between the Crown Prosecutor and the department; to review department-wide compliance policies and procedures and work to make them more consistent across inspectorates; and to establish a common Activity Tracking System that tracks compliance activities of all four inspectorates and identifies areas for compliance improvement.

Sources: Office of Competitiveness and Compliance (2005), *Nova Scotia Environment and Labour's Competitiveness and Compliance Initiative (CCI) Strategy Achieving Excellence in Regulatory Practice 2005/06 - 2009/10*, Halifax.

a) Auditing as a way to improve compliance by the administration

Audit offices have progressively widened their role from a purely accounting perspective. They now often play an important part in assessing the performance of the administration, including its effectiveness in implementing regulation. Audit offices focus on systemic performance and outcomes. They are independent from government (usually reporting to parliaments), transparent in their operations and able to operate in a wide range of areas. But assessing regulatory quality at local levels of government still requires some development and improvement.

Box 19. Auditing municipalities in Sweden

In *Sweden* local levels of government are audited and these audits and reporting requirements certainly reveal some performance issues, successes and concerns. Audits, however, tend to focus on financial matters rather than on regulatory compliance per se and thus auditing cannot be regarded as a systematic tool for assessing regulatory quality. There are some however ad hoc or one-off evaluations of programmes and activities and also local committee review processes.

Source: OECD (2007), *Multi-level Regulatory Capacity in Sweden*, Paris.

b) Assessing the performance of tasks at lower levels of government

Regulations that are implemented and enforced by agency staffs that are not held accountable for compliance outcomes, and managed to maximise outcomes are less likely to be effective in achieving their goals. Traditionally, however, regulatory agencies' performance and cost-effectiveness are managed and evaluated largely by reference to their level of activity, rather than the outcomes they accomplish.

Benchmarking among different states or municipalities is another tool that might allow citizens to know if they are receiving equality in service provision, including regulatory activity and regulatory compliance activity. There is scope for improving benchmarking at lower levels of government, which requires also better data collection and monitoring.

4.3.5.2. Conflict resolution mechanisms

In the regulatory process, conflict and dispute resolution plays an important role for making regulation viable and implemented. Successful conflict resolution occurs by different mechanisms that are linked to the legal and judicial tradition of the country. An important component of this process is to listen to and provide opportunities to meet the needs of all parties involved, and to adequately address interests so that each party is satisfied with the outcome.

a) Administrative justice

Administrative justice, as one of the non-judicial remedies against regulatory measures, has two main objectives for the regulatory management of a country: to assure an effective public administration and to preserve the rights and interests of citizens.

An important general trend in administrative justice has been the more widespread adoption of independent administrative appeals processes. These have, in some cases, been adopted in general Administrative Procedures Act legislation, while in other cases, they are adopted at a more disaggregated level, with a degree of commonality in approach being provided by guidelines, or merely convention. An important principle, that is being more widely implemented, is that administrative review should include the opportunity for a complaint to be heard by an administrative body other than that responsible for making the initial decision. This provides an additional element of independence and accountability to the review process, as well as helping to ensure that standardised review procedures are followed.

Box 20. Administrative justice at lower levels of government

In *Italy*, administrative appeals enable the parties involved to request the adoption of a new decision on the contested case from the administrative authority institutionally superior to the one that took the contested decision or to petition the President of the Republic for cancellation of the contested ruling. These hierarchical appeals have lost importance with the lifting of the finality requirement for acts to be eligible for appeals to administrative justice.

In the *United States,* administrative procedures acts and regulation codes at State level have been issued to deal with the complexity of regulatory inflation and administrative justice. Administrative regulation and adjudication is not limited to the national governmental level. It has become widespread in the states and municipalities, embracing such subjects as public utilities, natural resources, banking, securities, worker's compensation, unemployment insurance, employment discrimination, rents, automobile operation and inspection, corporations, elections, welfare, commercial insurance, land use, and environmental and consumer protection. For instance, in California, the Office of Administrative Law (OAL) is responsible for reviewing administrative regulations proposed by over 200 state agencies for compliance with the standards set forth in California's Administrative Procedure Act (APA), for transmitting these regulations to the Secretary of State and for publishing regulations in the California Code of Regulations. OAL also accepts petitions challenging alleged underground regulations--those rules issued by state agencies which meet the Administrative Procedure Act's definition of a "regulation" but were not adopted pursuant to the APA process.

France experienced extensive decentralisation process in past few decades. However, local authorities only have delegated regulatory power in the areas relating to their field of responsibility. Local authority orders are enforceable after being sent to the prefect who verifies their legality and who can refer them, if necessary, to the administrative court. Consequently, while the reform has reduced the degree of administrative oversight, it has not eliminated it completely in that the prefect, the representative of the State, no longer has the power to exercise *ex ante* control over the appropriateness of local authority legislation but that of *ex post* facto review of the legality of that legislation. Checking local authority decisions for legality by the prefects includes a retrospective check, when the decision is referred to a jurisdictional court and an a priori examination. This a priori examination takes place during a "pre-contentious" phase with the submission of observations on the laws which involves between 2 and 3% of the latter. During the inductive check, the prefect may refer any bylaw approved by the local authority to the administrative Court. This check was reinforced by the law of 29 January 1993 which gave prefects the option to stop a contract from being signed or a public service being delegated if competition rules have not been observed. This law was indicative of the will to restrict certain abuses of competition responsibilities that had been detected.

Sources: OECD (2007), *Italy - Ensuring Regulatory Quality Across Levels of Government*, Paris; *www.oal.ca.gov*; OECD (2004), "Government Capacity to Assure High Quality Regulation in France", Background Report, Paris.

b) Judicial review

The availability of judicial review of administrative decisions can be seen as the ultimate guarantor of transparency and accountability and is likely to improve the effective quality of the decisions made during administrative review. In addition to operating in this way as a check on the implementation of regulation in individual cases, judicial review provisions have, in some OECD countries, taken on a wider importance, becoming an important mechanism for regulatory quality control. Effectiveness of the process arises from the ability of the judiciary to consider regulations' consistency with principles of constitutionality, including notably proportionality and the right to be heard. It also arises from courts' scrutiny of whether delegated legislation is fully consistent with primary legislation.

However, while administrative and judicial review processes are essential guarantors of fairness and accountability, and thus of the quality of regulatory implementation, it must be recognised that they are generally costly and time-consuming means of obtaining redress. Consequently, many regulated groups, particularly Small and Medium Enterprises (SMEs) and individuals, are unlikely to use these means to obtain redress and enforce their rights as the regulatory burdens falling on each individual are often small (*i.e.* more waiting days, further paperwork). Instead they will tend to accept the regulatory costs, shifting

them to consumers or reducing their level of compliance. This highlights the necessity of assuring regulatory quality ex ante as well as taking a careful approach to determining the nature and extent of administrative discretions provided in regulation.

Box 21. Judicial review in a multi-level context: the case of Italy and Turkey

Co-ordination and dispute resolution mechanisms are very important for *Italy* since the country has regional governments with extensive regulatory powers. As established by the amendment of Article 126 of the Constitution, the government can appeal the Constitutional Court about a regional law that exceeds the regional competence. In this way, even if the reform does not foresee a preventive constitutional control, the government monitors the regional legislation in order to challenge regional laws before the Constitutional Court. The amount of the constitutional dispute between the State and the twenty regions makes careful monitoring of the judgements of the Constitutional Court necessary, since these in fact define the boundary between the respective legislative competencies of the Regions and the State. Between 2002 and 2006, the Constitutional Court ruled four times on cases brought against laws of the Calabria Region (in the fields of hospital employment, the interim functioning (prorogation) of regional bodies, pollution prevention and phytosanitary products). During this period, Calabria region brought two cases against the Prime Minister's Office asking the court to rule on the constitutionality of national laws (in the fields of the environment and landscape), which are still pending. The Constitutional Court even handed down a ruling on the new Statute of 2004 concerning the labour relation of regional managers, the rules governing the Region's financial autonomy, the mechanisms for electing the President of the regional government (*Giunta*) and Vice-President and for their subsequent designation by the Regional Council (which was the only element found unconstitutional). Of the 104 laws passed by the Regional Council during 2002-05, the Prime Minister's Office challenged provisions contained in 12 regional laws and lodged 12 appeals. With regard to appeals to the Constitutional Court, the Tuscany Region was involved in various constitutional disputes with the government. It was only in 2004 that the national government filed 5 appeals regarding the constitutionality of Tuscan laws and regulations (in fields such as construction, mineral and thermal waters, professions and the adoption of the new Statute), while the Region filed some 11 appeals challenging the constitutionality of State laws in fields such as public finance, finance acts, agriculture, fishing, cinema, energy, health and ports. In nearly all these appeals the Region contested the violation of the principle of loyal co-operation.

Turkey has an administrative court system, composed by District Administrative Courts, Administrative Courts, Tax Courts, and The Council of State. The Council of State is the Supreme Administrative Court responsible also for consultation and scrutiny, and review the appeals brought against the judgments given by administrative or tax courts and judgments rendered in the cases which have been examined by the Council of State as a first instance court; for administrative cases written in the present Act, as a first instance or appellate court; for its opinion on the draft legislation submitted by the Prime Ministry or the Council of Ministers; for examining draft regulations of the Council of Ministers; for presenting its opinion on the conditions and the contracts concerning public services under which concessions are granted; and for giving its opinion on the matters submitted by the Presidency of the Republic and the Prime Ministry. The First Division of the Council has an authority which is very significant in terms of multi-level governance. The Division examines disputes arising between administrative authorities relating to competence and venue that are submitted by the Prime Ministry. In many cases, the Division has determined competent public authority in delivering specific public service. Local governments are primary competent authorities for city planning according to Municipalities Law, Special Provincial Administrations Law, and Building (Zoning) Act. However, in a controversial case some years ago and according to the Tourism Promotion Law, the Law on the Protection of Culture and Natural Resources and other special laws, in some areas the competent authority is not a local government, but public bodies mentioned in respective laws. In that case, after enactment of a new series of local government legislation, the Council of State resolved the following dispute: the Ministry of Public Works and Settlement brought the issue to the Council of State arguing that after enactment of local government laws, planning activities even for the special areas mentioned above were transferred to local governments, and other public organisations were not competent anymore. The Council of State decided in 2005 that competent authorities for planning are not local governments, but public bodies mentioned in respective laws.

Source: OECD (2007), *Italy: Ensuring Regulatory Quality across Levels of Government*, Paris;
www.danistay.gov.tr/kerisim/container.jsp

Judicial oversight as it exists in many countries, where it focuses on enforcing standards without taking the economic dimension into account, is hardly an appropriate solution, regardless of the point at which it intervenes in the process.

In this regard, multilevel governance is no exception to the rule, and the courts are not regulatory bodies. The question then arises as to whether decentralised, horizontal networks are needed to prepare horizontal public policies, addressing the question of indicators and assessment, to identify the cost-benefit ratio of each approach. Such networks could perhaps be regulated by independent authorities.

c) Alternative dispute mechanisms

Alternative dispute mechanisms are valid methods to implement regulations. They are, however, not always used and exploited as viable channels to solve disputes because there seems to be a limited conception of what they can achieve. In a multi-level context, these mechanisms seem to increase their opportunities to be used, as administrative justice and judicial review are sometimes too costly in economic and time terms.

Box 22. Dispute Managing System between central and local government in Japan

In *Japan*, the Central and Local Government Dispute Management Council is established as a dispute managing system between central and local government. This council is composed by five commissioners and investigates the legality of examining central government's involvement in local government's policy based on the complaint of local governments to the council. If the council deems that involvement is illegal, the council makes a recommendation that the central government should take appropriate actions.

d) The role of local ombudsmen

The use of an ombudsman is becoming increasingly widespread in OECD countries, not only a national, but also at local levels of government. The ombudsman mechanism is particularly important in this context for several reasons: it provides a low-cost means of seeking redress, available to virtually all groups in society; it operates informally and has a wide-ranging remit, and it usually reports to parliament, thus providing for a high level of independence and transparency.

Box 23. The role of local ombudsmen in some OECD countries

In the *United Kingdom*, there are three Local Government Ombudsmen (LGOs) that investigate complaints of injustice arising from misadministration by local authorities and certain other bodies, which comprises districts, boroughs, cities and county councils, as well as a wide range of authorities who provide local services, such as education appeal panels, national parks authorities and housing action trust. Each of the LGOs deals with complaints from different parts of the country. They investigate complaints about most council matters including housing, planning, education, social services, consumer protection, drainage and council tax. The LGOs can investigate complaints about how the council has done something, but they cannot question what a council has done simply because someone does not agree with it. Investigators take most decision on their Ombudsman's behalf and they have extensive delegated powers, being responsible for the day to day handling of complaints. The objective of the Ombudsmen is to secure, where appropriate, satisfactory redress for complainants and better administration for the authorities. Since 1989, the Ombudsmen have had the power to issue advice on good administrative practice in local government based on experience derived from their investigations. To this end, they have published six guidelines on good practice notes on the following issues: setting up complaints systems, good administrative practice, council housing repairs, members' interests, disposal of land and remedies. On 1 August 2007 the Regulatory Reform (Collaboration etc between Ombudsmen) Order 2007 came into force. In broad terms the Order enables the Parliamentary Ombudsman, the Local Government Ombudsmen for England and the Health Service Ombudsman for England to work together collaboratively on cases and issues that are relevant to more than one of their individual jurisdictions. Examples of complaints that may fall within this category include the provision of health and social care; complaints about the administration of housing and welfare benefits; and complaints about some planning and environmental issues. Courses are offered for all levels of local authority staff in complaint handling and investigation. In addition to the generic Good Complaint Handling course (which focuses on identifying and processing complaints) and Effective Complaint Handling course (which focuses on investigation and resolution), these courses are also offered specifically for social services staff.

In *Belgium*, there are Ombudsmen and mediators (*médiateurs)* at federal, regional, communal and municipal level. They can investigate a complaint arising from maladministration or in case where the institution responsible for a service did not provide it in a satisfactory manner. They act as mediators between the administration and the citizens and propose recommendations. They publish annual reports available for the public and are presented to the Parliament. They offer a common web site (*www.ombudsman.be*) at the initiative of the Permanent Consultation of Mediators and Ombudsmen (*Concertation Permanente de Médiateurs et des Ombundsmans,* CPMO), facilitating the citizens to be in contact with the pertinent ombudsman.

Source: *www.lgo.org.uk; www.ombudsman.be*

The ombudsman provides in some cases an alternative to judicial review. While the ombudsman will not investigate if the dispute turns on a point of law or statutory interpretation, since this is exclusively a matter for the courts, the ombudsman can make recommendations for changes to administrative systems in the way the courts cannot. An ombudsman's investigation can produce a comprehensive explanation about what happened in a way that judicial review proceedings rarely can because of the more open nature of his work. The work of the ombudsman can be relevant if there is a widespread failure in an administrative system which could not be identified satisfactorily without a detailed investigation. This might be relevant for a better performance by lower levels of government providing services to citizens.

In terms of costs, an ombudsman's investigation might be a suitable solution to the complaint. The cost of judicial review can be sometimes disproportionate to the remedy sought or the complainant was neither well off nor poor enough to be entitled to legal aid. Where the just remedy is a full explanation, an apology and some financial redress, recourse to the ombudsman might be preferred.

e) Other mechanisms: arbitration, conciliation, counselling

The development of other mechanisms of dispute resolution, such as arbitration, conciliation, counselling, etc. has resulted from the difficulties experienced by heavier caseloads and the rising costs and general inaccessibility of court litigation. The success of those mechanisms will depend on the quality of the professional work and stands invested in its delivery both by 'external' providers and by providers from within the court, tribunal and ombudsman organisations. These mechanisms are based in a sense of trust in the system. The regulatory system, therefore, needs to provide fair conditions for these to work well.

Box 24. Examples of the use of other conflict resolution mechanisms between levels of government

As part of the efforts to improve the business environment and client services of the Province of Newfoundland and Labrador in *Canada*, the Public Utilities Board engaged in an Alternative Dispute Resolution (ADR) process with the province's Consumer Advocate and Newfoundland Power. The ADR process, which has also been used with Newfoundland and Labrador Hydro, essentially streamlines the regulatory process and costs, resulting in potential benefits for both the utility and the consumer. As a regulated utility, Newfoundland Power observes that the overall efficiency of rate regulation has improved in recent years, and the Alternative Dispute Resolution process it participated in with the Consumer Advocate, facilitated by the Public Utilities Board, is a welcome example of that increased efficiency. This development has improved the cost efficiency associated with utility regulation, which is ultimately paid by electricity consumers.

In the *European Union*, SOLVIT is an alternative dispute resolution mechanism. SOLVIT is an on-line problem solving network in which EU Member States work together to solve without legal proceedings problems caused by the misapplication of Internal Market law by public authorities. Established in 2002, SOLVIT deals with cross-border problems between a business or a citizen on the one hand and a national public authority on the other, where there is possible misapplication of EU law. The European Commission co-ordinates the network, which is operated by the member states, the European Commission provides the database facilities and, when needed, helps to speed up the resolution of problems. The Commission also passes formal complaints it receives on to SOLVIT if there is a chance that the problem can be solved without legal action. There is a SOLVIT centre in every European Union Member State (as well as in Norway, Iceland and Liechtenstein). SOLVIT Centres can help with handling complaints from both citizens and businesses. They are part of the national administration and are committed to providing real solutions to problems within ten weeks. The use of SOLVIT is free of charge.

Source: *www.gov.nl.ca/redtape/*; *http://ec.europa.eu/solvit/site/index_en.htm*

Notes

1. For further information consult the European Commission Better Regulation websites*:*

   http://ec.europa.eu/governance/better_regulation/index.en.htm
   http://ec.europa.eu/governance/impact/index_en.htm
   http://ec.europa.eu/governance/better_regulation/admin_costs_en.htm

2. In the United Kingdom, for instance, local authorities carry out four times as many inspections as national regulators. Hampton, Philip (2005), *Reducing Administrative Burdens: Effective Inspection and Enforcement*, HM Treasury, March, p. 17.

CONCLUSIONS

Increased attention has been given to the different issues of regulatory governance in a multi-level context, as countries are realising the importance of avoiding duplication when dealing with citizens and businesses, as well as to boost economic activity and improve the delivery of services at all levels of government. These issues imply not only the definition of regulatory policies that are clear, transparent and consistent at all levels of government while establishing the appropriate institutional mechanisms to implement them, but also a more effective and systematic use of different policy and regulatory tools at the appropriate level of government.

Expanding a framework for high quality regulation at all levels of government can only be achieved if countries take into consideration the diversity of local needs and the particularities of lower levels of government. In many OECD countries, national governments have taken the lead in trying to consolidate regulatory systems for producing high quality regulation, but local governments have also proved to be laboratories in which experimental approaches to improve the quality of regulation is facilitated. Bottom-up approaches should be encouraged if they provide a room for experimentation. Building and strengthening capacities at lower levels of government is essential, which requires the allocation of appropriate financial resources to support it.

Transposing principles of high quality regulation from the centre to lower levels of government is relevant only if there is flexibility in the implementation phase and innovative solutions can be added to the process. Tensions between different levels of government cannot be solved by a simple duplication of existing models at one level. Particularities should be taken into account. Encouraging innovation in the way the quality of regulation can be improved at levels of government even without a consolidated regulatory system should be promoted, identifying new good practices in the regulatory process.

A more dynamic and evidence-based approach for regulatory decisions still needs to be embedded at all levels of government. Co-operation and co-ordination between levels of government are positive mechanisms that could lead in that direction, easing the way to sharing experiences and good practices, but much remains to be done in order to find the most effective and efficient solution. The use of certain policy and regulatory tools like RIA, for instance, can only be successful in a multi-level framework if the most concerned and directly affected level of government has the capacities to make full use of it and its results can have an impact on the decision-making process. This would require not only providing resources to the specific level of government to undertake RIA, but also and most importantly targeting with particular care those regulations that can have the greater economic impact at a particular level of government, which may not be easy to determine.

Another challenge to achieve high quality regulation at all levels of government refers to the way regulatory systems can be consolidated over time. The solution is not to add more bureaucratic layers to the existing system, but to make those institutionalised capacities efficient and strong enough to function over the long term. This calls for capacity-building and training. Political support and technical expertise are both essential to make regulatory governance credible across levels of government, serving citizens and enterprises.

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