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OECD Reviews of Regulatory Reform: France
Charting a Clearer Way Forward

PART II

Chapter 2

Regulatory Governance*

* For more information see: "Background report on Government Capacity to Produce High Quality Regulation" available at *www.oecd.org/regreform/backgroundreports*.

Context and history

The institutional strength of the French system long obscured the need for a comprehensive effort to improve regulatory quality

The institutional strength of the French system of governance relies on the principle of quality in control procedures and in the drafting of key regulations. The search for quality regulations has long been manifest in a formal respect for drafting rules, with insistence on excellence in drafting and on consistency in laws. It is also linked to the expertise of the major control institutions, in particular the Council of State and the Constitutional Council, the keystone of administrative case law. The restrictive definition of the scope of the law in the 1958 Constitution was in theory supposed to curb regulatory inflation experienced under former regimes. These procedures are managed by central co-ordination bodies that oversee the coherence and proper functioning of the regulatory apparatus. This solid institutional system, moreover, has long been based on concentrated and centralised administrative structures. The French system of regulatory governance also implies a high degree of confidence in the State, and strong attachment to the notion of public service, and to its overriding principles of equality of access and serving the general interest.

Nevertheless, the limitations of the traditional approach to regulation in France and the consequent need for reform have been revealed by three developments:

- In the first place, the regulatory approach is still marked by the priority given to legal order, often to the neglect of third parties and the economy. This drawback has become clear over time, with a growing overhang of legislation and a legal system that does not have sunset clauses. A number of mechanisms have been implemented in an attempt to manage and, if possible, reduce this complexity.
- The second factor has been the dynamic process of building Europe, where the growing cost of regulation has been viewed as an obstacle to international harmonisation. The European approach favours competition to stimulate economic growth and build up a large market. This move has had a major impact in particular on public utilities, which reflect the French public service approach. The public service has thus had to find ways to adapt, in order to take advantage of the beneficial effects of competition while preserving the essential principles that justified its existence.
- The third element is the result of the decentralisation process that began some 20 years ago to develop local initiatives and mobilise energies for reform. That process has gradually resulted in the sharing of powers between the level of the central State and territorial sublevels. This trend has led today to yet another rethinking of the regulatory system.

Significant reforms have been undertaken to modernise and liberalise the regulatory system over the last 20 years

France has been engaged in significant reforms to open up and liberalise its regulatory system for some twenty years. The long-prevalent "State does everything" approach has

gradually yielded to a more moderate vision of a Republic undergoing decentralisation, a desire to be more transparent to citizens, and an approach to regulations that takes account of the possibilities offered by the latest communication technologies. For the last decade this simplification has had a notable impact on the efficiency of the State, even if attention has focused more on bureaucratic practices than on the implications of regulations for the country's economic and social life. The liberalisation of the financial and merchandise markets, which has increasingly involved even some of the specially protected sectors, is gradually coming to reflect the European context.

Great progress has indeed been made. Questions of competition, moreover, are now being addressed head-on in discussions about the public law judicial system. Despite the burden of bureaucracy as revealed in numerous international comparisons and in national perceptions, France is still an attractive country for international investment. Today the legal quality of the French State machinery is acknowledged in many European countries, and even beyond the OECD.

Yet the institutional entrenchment of the regulatory system is such that changes have been for the most part incremental and the traditional framework of republican institutions has changed only gradually. In contrast to other countries, France has not suffered any major crises or serious economic difficulties that might have sparked a thorough overhaul of the regulatory system. To some extent, the movement to codify and simplify administration has been accompanied by increasing complexity, inherent in the historic overhang of legislation: it has failed to reduce that complexity, because it has left the substance of existing laws and regulations unchanged. In effect, moves to rationalise administration have increased complexity, while addressing only its most glaring manifestations.

The emergence of new information and communication technologies, with their promise of electronic government, has presented an opportunity to modernise the regulatory system. These new tools can improve the interface between citizens, business and the civil service, while reducing the burden of regulations. In effect, they promote a new view of the relationship between the "back office" and the "front office", *i.e.* a new approach to the way the administrative and regulatory apparatus relates to citizens and their needs. France has taken full advantage of these tools and has committed itself to vigorous modernisation efforts.

But these tools have yet to rein in regulatory inflation

Awareness of the true scope of regulatory inflation dates from the early 1990s, when it was recognised that growing State economic and social intervention had generated massive reliance on the regulatory tool.[1] In thirty years, the average annual number of new laws rose by 35%.[2] Beyond the legislative level,[3] decrees have also burgeoned: thus, while 450 new laws were passed between 1995 and 2002, the same period saw the issue of more than 11 000 additional decrees. Moreover, the average length of such texts has increased, from 93 lines for a law in 1950 to 220 in the 1990s, and the size of the Official Gazette grew by a factor of 2.4 between 1976 and 1990. Some analysts estimate that there are now 8 000 laws and 400 000 regulatory documents including decrees, orders (*arrêtés*) and circulars.[4]

These trends show the exponential proliferation of regulations, which may explain why France has steadily been losing ground in some international rankings.[5] Legal controls

by the Constitutional Council and the Council of State are of little help in curbing such trends because they do not assess the economic and social impact of regulations, confining themselves to ensuring that they are properly dovetailed with existing provisions and consistent with general principles of law. This is all the more true since Regulatory Impact Analysis (RIA) plays a minor role, compared with other countries. The vast stock of legislation also makes it more difficult to incorporate European directives, which need to find their place within the complex existing legislative provisions and regulations.

Recent awareness has sparked the beginnings of a comprehensive strategy for State reform

Although there is as yet no overall policy of regulatory modernisation, some strategic reforms have been implemented to improve the transparency and accountability of government. These efforts are allowing the authorities to respond to some of the drawbacks of regulatory inflation. They also illustrate the tension between the ever-greater complexity of the State apparatus and the regulatory system and the systematic search for rationalisation, codification and simplification. In recent times, however, the beginnings of a global strategy for reforming the State and the quality of regulations have become apparent.

A first wave of reforms to improve relations with government came in the 1970s, with the creation of the post of Ombudsman in 1973, the laws of 1978 and 1979 on access to administrative documents and the purposes of administrative decisions, and introduction of a regime of "silence is consent" for construction permits in 1977. The second wave of reforms during the 1980s and 1990s saw administrative simplification measures implemented in 1983 and extended in 1996. The intent was to reduce *ex post* the impact of regulations by cutting the number of forms and simplifying declarations. This simplification move was accompanied by the relaunch of codification in 1989.

The economic liberalisation[6] pursued during the 1980s as part of European economic integration saw the end of price controls in 1986, the opening of financial markets, and privatisations by successive governments. Finally, reforms in public utilities, particularly electricity and telecommunications, gradually opened markets in line with European moves.

This wave of liberalisation and privatisations partly preceded the modernisation of the State and the reform of overall regulatory policy. The State has had to face up to the fact that it is losing some of its most dynamic senior management to the private sector, while public service regulations make recruitment more difficult. The perceived remoteness of the State, as noted by some analysts, reflects "a growing gap between the general philosophy of government and the public service, which remain the key elements of French society and economy, and the expectations of a country that is open to the international economy and trade and benefits greatly from economic and financial globalisation".[7]

Awareness of the need to reform the State led in the late 1980s to a programme that had four objectives: increasing accountability by expanding management autonomy; revising labour relations; evaluating public policies; and improving service to the public. This was intended to be an experimental, participatory procedure based on responsible centres endowed with autonomy and a global budget. This programme also introduced a forward planning system for managing staff, strategic thinking about new technologies, increased mobility, and the need to identify any agent involved in administrative

procedures. This approach permitted a major shift in direction but it soon ran up against the rigid government financial framework.[8]

This soul-searching continued with the 1994 *Picq* report which, to address the risks posed by the proliferation of formal regulations, suggested a strategy to guide, modernise and control government action. This strategy called for refocusing the role of the State on its basic responsibilities by improving the delegation of authority and modernising budgetary and accounting rules. The *Picq* report also led to the introduction of Regulatory Impact Analysis (RIA) in 1996. This strategy takes a comprehensive approach to regulatory quality, involving:

- Drafting rules and improving the quality of regulations in line with the conclusions of the 2002 *Mandelkern* report for France.
- Modernising financial management, with the Organic Law on Finance Laws (LOLF) of 1 August 2001.
- Improving the management of human resources, with an "observatory" for public employment, the merging of some bodies, and establishment of a network of officials responsible for modernisation.

This more coherent approach to reforming the State and improving the quality of regulations reflects the efforts underway in many other OECD countries. This movement has received a sharp boost since early 2003, with the law enabling the government to simplify laws by edict (see Box 1.7), efforts to speed up e-government (see Box 1.8) and modernisation of financial regulations. On the economic front, new ideas about the State's role as shareholder have produced an agency for managing its equity interests. The latest European directives on energy have also been transposed.

Regulatory policies

France has a well-structured legal system but its approach to regulatory quality is fragmented and incomplete

The solid legal nature of the French system, with its formalised procedures for preparing and recording important regulations, laws and decrees, has long masked the necessity for reform. In contrast to the 1995 OECD recommendations on improving the quality of government regulation, regulatory reform policies long remained fragmented, without an overall conceptual framework based on unified principles. Since 2001, however, the follow-up to the Mandelkern report has led to planning conditions for transposing principles for regulating quality applicable at the inter-ministerial level. Instructions issued by the Prime Minister, such as that of 26 August 2003, stressed the importance of the quality of regulations. Yet such instructions carry no legal weight against existing laws, and their impact has yet to be assessed. Moreover, some sectoral ministries have long lacked the legal and economic expertise for responding to the demands of regulatory quality and *ex ante* evaluation.

Regulatory reform policies have historically been based on a policy of transparency, in the light of the 1978 and 1979 laws, and on administrative simplification of the stocks of existing regulations. Simplification addresses procedures and declaration obligations, as well as administrative language, and has been supplemented with a revival of codification. All of this is aimed at improving regulatory quality *ex post*. *Ex ante* improvement was begun with the regulatory impact assessments that have been required for all laws and decrees since 1997 (affecting about 1 500 instruments per year), with mixed results. While recent

circulars have set out the need for effectiveness and clear objectives in legislation, the approach does not follow the systematic framework of the Regulatory Impact Analysis (RIA). Moreover, circulars requiring impact studies contain no detailed implementation rules, and they are not backed up by any central body specially created to ensure that they are observed and with sufficient power over other public authorities. The principles of the OECD recommendations have gradually percolated through the French administration, but unofficially and without full acknowledgement of their economic purpose.

Regulatory institutions

The institutional setting is complex and involves significant inter-governmental co-ordination

Under the 1958 Constitution, the *Prime Minister* wields general regulatory powers and "has the administration at his disposal". Situated at the centre of government, the *Prime Minister's office* plays a key role in the instigation of regulatory policies. The *General Secretariat of the Government (SGG)*, which was created in 1935, co-ordinates government, and therefore regulatory, work. It monitors the drafting and publishing of laws and regulations and acts as legal adviser for the Prime Minister and members of the government. For the last decade the SGG has played a major role in simplifying formalities, promoting administrative transparency and rationalising systems. Given its role of providing impetus, and its professionalism and power, thought has been given to making it responsible for organising, encouraging and, if necessary, enforcing the quality of regulations, following the example of similar offices in other countries, such as the OIRA in the United States and the Regulatory Impact Unit in the United Kingdom. These ideas have not been pursued, however. The organisations responsible for regulatory policies as such belong to the Prime Minister's office. First established in 1995, they were restructured in 1998 and again in 2003, and now comprise three main units: the *Delegation for Modernising Public Administration and State Organisations (DMGPSE)*, the *Delegation for Users and Administrative Simplifications (DUSA)* and the *Agency for Developing E-Government (ADAE)*.

Within *Parliament* there is a permanent "law" committee dealing with legislative work[9] for each of the two chambers, the *National Assembly* and the *Senate*. Parliamentary reports have served to clarify governmental choices regarding regulatory reform, modernising and simplifying administration.[10]

The *Council of State* plays an upstream oversight role. It serves as the highest court of appeal for administrative law, and is also entitled to prior consultation. The 1958 Constitution requires that the Council of State must examine draft laws and edicts (*ordonnances*) before they are submitted to the Council of Ministers, as well as major draft decrees, as described by the "Council of State Decree" Law. The Council of State issues recommendations on the legality of legislation, on its form and its administrative appropriateness. On the other hand, it is not entitled to pass judgment on the political appropriateness of laws, which means that it has not as yet been able to engage in a broader economic or social evaluation. The government is not obliged to follow the advice of the Council of State but it may only enact the bill adopted by the Council of State or the draft in its initial form. However, if it decides to ignore an illegality pointed out by the Council of State it runs a greater risk of litigation,[11] since the regulation in question can be challenged before the Council. The Council of State has also had to be consulted for all draft Community acts since 1992 to determine whether they are to be considered a law or a regulation. In fact, the role of the Council of State exceeds its official function as such

because of the influence of its members within the government, and especially within the General Secretariat of Government, the Ministry of Justice, the Prime Minister's office and other ministerial offices.

Beyond these central agencies, the *Ministry of Finance* has a specific function in simplifying administration as it relates to businesses, because of the importance of its human and financial resources and its broad range of powers.[12] If necessary, the *Ministry of Justice* may have a consultative role in legal matters, but this is more restricted. Finally, the *Competition Council* also plays a horizontal consultative role in matters within its competence.

Despite the multiplicity of institutional players, the economic dimension of regulations is not always taken fully into account. The Council of State's approach often remains purely legal. The Ministry of Finance may take the economic dimension into account but does not have global regulatory powers. The specialised sections of the Prime Minister's office have not been in existence long enough to evaluate their activities. Finally, the role of the SGG remains substantially neutral: it confines itself to the area of administrative responsibility, without venturing into the political field to judge the appropriateness of regulations. Thus there is currently no permanent body responsible for initiating, implementing and enforcing a global, permanent policy for improving the quality of regulations.

Management of regulatory procedures is highly structured

These procedures[13] differ according to the nature of the instrument – a bill originating with government, or with Parliament, a draft edict or decree. The government has general control over regulatory and legislative documents. Bills originating with Parliament play only a residual role and represent merely 4% of legislative documents. Moreover, the scope of these initiatives is severely restricted by Article 40 of the Constitution, which prohibits proposals for laws that would reduce public revenues or increase expenses. With higher rank than regular laws, organic laws aim to clarify the workings of public authorities and are subject to a strict constitutionality check and special voting procedures.

The drafting of legislation is subject to a set of controls and counter proposals co-ordinated by the SGG, which is supposed to enable compulsory consultations while ensuring the legal quality of the legislation. This means a great many interdepartmental meetings (1 300 to 1 400 a year in 2000-2001), designed to arbitrate departmental viewpoints, subject to the Prime Minister's agreement. The process often involves confrontations between departments, which are kept in-house. Records of these trade-off negotiations are covered by the secrecy act of 17 July 1978. The SGG also prepares the meetings of the Council of Ministers and serves as its Secretariat. Draft laws are submitted to the office of the Parliamentary assembly of its choice by the government after discussion in the Council of Ministers. Draft edicts (*ordonnances*) are adopted in the Council of Ministers and are published in the Official Gazette. They allow the government to make legislative modifications by regulatory means, provided it then seeks ratification from Parliament within the time limit set by the enabling Act. Decrees are normally signed by the Prime Minister, although a few are discussed in the Council of Ministers and signed by the President of the Republic. This procedure allows the government to control the entire process, and to keep Parliament in line: the executive has a number of instruments to make Parliament enact legislation in the desired terms.

In addition to the main documents, there are many interpretive documents that are required to make complex laws more understandable or are rendered necessary by the laconic wording of the original act. These interpretations can sometimes go beyond their strictly auxiliary role and take on a regulatory character, although the judicial checks of the Council of State enable this process to be controlled. In fact, "infra-legal" texts have a real impact, beyond that of the formal rules, and their economic effect is not always properly assessed.

Legislative drafts are submitted for a constitutional check by the Constitutional Council, at the request of the President of the Republic, the Prime Minister or the Presidents of the Assemblies, or of 60 deputies or 60 senators. Decrees, orders and circulars may be challenged before the administrative courts and if necessary directly before the Council of State, by any person who has a personal interest. The Constitutional Council or the Council of State may invalidate all or part of the legislation challenged depending on the degree to which the legislation fails to conform to higher-ranking legal provisions.

These formal procedures go only partway to assuring regulatory quality. Consultation requirements relate only to the Economic and Social Council, for economic and social programme legislation, and the territorial assemblies of the Overseas Territories, for bills concerning them. On the other hand, the rules for drafting, signing and publication of laws are not subject, under administrative law, to any specific sanctions relating to their clarity, their purpose or the existence of an impact study.

Regulation at different levels of government

It is important to ensure regulatory quality at the different territorial levels from a subnational perspective and in the interplay between the national and the Community levels. The subnational level and the process of decentralisation are examined in part one of this report, which notes, in particular, that in France, the organisation of regulatory processes between the central level and the three subnational levels of administration produces a complex situation.[14] The European level of regulation is also very important, since nearly 60% of new regulations originate there. It has helped to modernise the French regulatory framework and has supported significant deregulation.[15] Yet there is still a difference of perspective between the traditional vision of public service in France (Box 1.12) and the requirements for developing a fully competitive European market. The European system and its implications in terms of independent regulators have in fact had a great effect on the traditional edifice of French law and the separation between administrative and civil law. They have led to reassessing the notion of general interest versus private interest and to integrating the competitive dimension. Recent years have witnessed the search for a better balance and mutual understanding between the regulatory world of French public service and the European perspective of an open, competitive market that preserves public-interest services.

The *General Secretariat of the Interdepartmental Committee for European Economic Co-operation (SGCI)* plays a co-ordinating role: it receives draft European directives, informs the French authorities of them, and transmits them to the Council of State. The transposition of directives is outlined in a circular from the Prime Minister dated 10 November 1998, which calls for a study of the directive's impact on existing French law. France has been slow in transposing European directives, although the situation has recently improved (Figure 1.7). This situation is a source of legal uncertainty, because it can raise doubts as to the standard

in force if there is a temporary contradiction between a European directive and national law. Transposing any new directive to France requires the heavy task of re-examining the whole existing regulatory system. Business circles see the transposition of directives as "gold plating", reflecting an exaggerated zeal for regulatory improvement, and they argue that in some cases direct "verbatim" implementation could be all that is required. Transposing directives at the local level entails additional difficulties, given the limited technical capacities of many local authorities.

The Ministry of Foreign Affairs has adopted an emergency plan to respond to this challenge, with methods drawn from the United Kingdom, making ministries responsible for the implementation rate of directives in their area of responsibility and involving the French Parliament at an earlier date. Unlike some other OECD countries, the French Parliament does not have a specialised permanent committee for European matters. Since November 2002, the delay has been reduced.

None of this will be easy. While France has long been one of the driving forces in building Europe, recent years have seen diverging viewpoints, concerning particularly the notion of public service "*à la française*" (see Box 1.11). The French legal system has collided head-on with the Community approach, and particularly with the establishment of competition and independent regulators, the dismantling of integrated management of public services, and the need to clarify the various roles of the State. The existing syncretism in public service with the confusion between its resources, its tools and its goals, has caused recurrent difficulties. The resistance of the unions betrays the reluctance of employees, who perceive any modification to public service as an attack on their status, and this has an influence on policy makers, given the size of the public sector.

France has also tried to mobilise its European partners in order to win acceptance of its approach among Community bodies. The Commission's idea of "universal service" is more restricted than that of "public service": it gives rise to narrower definitions and to institutional solutions to provide this universal service that do not necessarily include an integrated, monolithic approach. Yet, thanks to co-ordinated efforts, the recognition of Services of General Economic Interest has been making headway in Europe. At the same time, debate about public services within France has produced increasingly open positions. Recent work by the Economic Analysis Council has helped to reconcile economic analysis of the foundations of public service with the view of universal service held by the Commission. Regulation is now in the hands of independent regulators, who have succeeded in making a partial break with the traditional legal framework while gaining their own institutional legitimacy. A more rational view of the possibilities and limits of public service in France is now emerging, together with a narrowing of the gap between ideas of universal service and general interest service.

Regulatory transparency

Procedures are highly formalised, but only for the major laws and regulations

Transparency is one of the pillars of any effective regulatory system. Transparency involves a wide range of practices including formalised processes for drafting and amending regulations, consulting with interested parties, using simple language when wording legislation, publishing, codifying and other ways of making it easier to search for and understand the regulations, checks on administrative discretion and finally predictable, consistent implementation and appeals procedures.

Transparency of drafting. There are established published procedures for the wording of the most important laws and major decrees, adopted with the mandatory advice of the Council of State. The multitude of lower-ranking regulations are subject to weaker transparency standards, however, which hampers their understanding by the interested public. The publication of the Council of Ministers agenda, and the establishment since 1974 of a "Government programme", formulated every six months for the following semester, provide an overview of regulatory processes. This programme will then be used as a general framework for drawing up the agendas for the Council of Ministers and doing the necessary preparatory work – studies, meetings, discussions, consultations and negotiation. However, it is not made public, although it is not necessarily confidential. This situation differs from the United States where a standardised agenda of federal regulatory activities is published twice a year. Transparency of procedures also involves publishing the decrees required by a bill, normally within six months after the law has been promulgated. Sometimes, however, the implementing decrees are never promulgated, preventing the law from being enacted and creating an ambiguous legal situation. This remark applies to a small but significant number of laws (21 laws enacted since 1981 that still cannot be applied and 169 laws that can only be partially applied). There is no specific rule relating to the preparation of minor legislation, apart from the general directives circulated by the Prime Minister's office. This situation differs from that in Canada (Box 1.15).

The number of advisory bodies impedes effective and transparent consultation

Consulting the public on new draft regulation. It is common in the French administrative system for the parties involved in drafting a law or defining a policy to meet beforehand. However, this is neither systematically applied nor formalised in law, except in the environmental field.[16] This process can be conducted through official consultations carried out as part of the system for drawing up draft laws or decrees, as provided by the Constitution or organic laws, and through more informal methods. Formal consultations involve bodies such as the Economic and Social Council or the assemblies in overseas departments, while informal methods include exchanges of views in commissions, committees or other groups set up for the purpose, bilateral consultations with representatives of the parties involved, such as representatives of businesses concerned, and exploratory missions entrusted to MPs or influential people to examine a draft reform. These missions normally rely on administrative departments, which provide secretariat services and are fully briefed on government plans. They have often been conducted by groups from the Planning Agency (*Commissariat Général du Plan*) and they enable officials, unions, business representatives and academic experts to provide input. Ministries are now using the Internet to launch forums where the general public can react to proposals. At the end of 2001 the government decided that each national public Internet site distributing information on public policies should have some means of debate with the citizens on specific topics (such as digital fingerprinting). Local public sites would be encouraged to develop this type of functionality with links to the general sites *www.service-public.fr* and *www.vie-publique.fr*.

There are a large number of advisory bodies connected with central government that serve to explain the choices of the government, and to enable constituents to be formally involved with the government's decision by giving them a voice in the process of drawing up regulations. These bodies often do not have any specific legal status because they exist at the discretion of the heads of departments. There are a great many of them – several

thousand for central government departments alone.[17] Several *ad hoc* consultation committees may co-exist in the same sector. Most of these committees include important people not connected with government, selected either because of their expertise or as representatives of professional groups or associations. The advice of these committees may be optional, compulsory or binding. They do not have a standard consultative procedure as the rules are defined for each individual case. The structure is the same at the local level for all decisions relating to town planning, agriculture or the environment. The main problem lies in the excessive number of local commissions and advisory bodies, which generates a degree of "consultation fatigue" and makes it difficult to recruit members for local assemblies.

Consultation normally takes place in the weeks before the law is presented to Parliament, or for regulatory laws, before they are signed by the Prime Minister or the ministers. If it is compulsory to submit a draft for consultation and there is no consultation or there are irregularities in the consultative procedure, the regulatory law will be revoked by the administrative justice system.

In spite of the large number of formal options for consultation, for some topics there are fewer consultation and drafting procedures. Therefore, alongside this general system, press leaks play a significant role. The best-organised groups have privileged access to certain information. Parliament also has a downstream role in listening to the various interests and groups that are trying to make their voice heard through the (admittedly limited) amendments route. Sometimes, the lack of prior consultation triggers spontaneous reactions from the public and the unions, and public protest movements or strikes may force a second round of consultations. This non-systematic approach is very different from that of Canada (see Box 1.15).

The excessive number of consultative bodies is a source of confusion and impenetrability. In the Netherlands, the government when faced with a similar situation in 1997, decided to abolish a large number of consultative bodies as a move towards more open consultation and to limit charges of corporatism.[18] Such an approach provides an interesting example for France, which could in this way rationalise and improve the efficiency of its consultative process. In fact, this is called for in the 2003 enabling act to simplify the administration (see Box 1.7).

There is great transparency in application, publication and implementation, supported by ready access to administrative justice

Transparency in applying and publishing regulations. Once they are published officially, regulations must also be accessible. In France, governmental and ministerial laws and regulatory measures are centralised and published in the Official Gazette, which has been available in its entirety on line since 1990[19] and obtainable for the last 50 years on CD ROM. As far as "infra legal" regulations are concerned, the 1978 law on administrative transparency obliges governments to publish any document that includes an interpretation of positive law. The parliamentary chambers (National Assembly and Senate) have their own Official Gazette that can also be accessed on the Internet.[20] More generally, the *www.vie-publique.fr* site answers questions from the public on institutions, official publications and the public sites directory. The local authorities have their own dissemination system. Yet, despite major efforts at *de jure* transparency, and the indisputable technical investment, the fact remains that the large number of regulations actually prevents the general public and small businesses from understanding the

regulatory framework and analysing the nature of their obligations. *De facto,* access to the law for the non-specialist is trickier than it at first appears.

Transparency in implementing regulations. France has a transparent environment for implementing regulations, which become effective on the day after they are published in the Official Gazette. While there is no law or specific mechanism to provide for transparency in implementation, two distinct laws, dating from 1978 and 1979, have improved the French regulatory system in terms of access to administrative documents and relations between the citizens and the government.[21] The law of 1978 created an independent authority to facilitate transparency, the *Commission for Access to Administrative Documents (CADA)*. The 1979 law requires the government to substantiate any individual administrative decisions that reduce public liberties, impose a sanction, abrogate rights, or deny permission or an advantage provided by law. The notification of decisions must be accompanied by an indication of the available appeal procedures. Replies must mention the possibility of appeal as well as the rule that silence implies consent. Prime Ministerial circulars of January 1985 and February 1989 lift the anonymity of officials in their dealings with the public.

Apart from these mechanisms for transparency and substantiating decisions, there are administrative "general inspectors" in the ministries, whose status guarantees the objectivity and technical quality of their inspection. Their reports to ministers are not usually published, however, except with specific permission. The Council of State, the National Audit Office and the Court of Cassation publish a report each year that plays a major role in evaluating and advising on the application of regulations. The Commission for Parliamentary Laws publishes an annual report on the application of laws passed, as well as a global statement for each legislative session. Experiments (*e.g.* "trial bills" for subsequent evaluation) can also be used to assess the relevance of new regulations, under the revised 2003 constitutional framework.

Appeal possibilities. Administrative justice is a well-established practice in France, with a procedure that allows for ready and frequent appeals against administrative laws. Under this liberal system, an appeal may be lodged without a lawyer. The administrative justice system in 2001 handled 116 000 lower-court hearings and 15 000 appeals, and more than 13 000 cases came before the Council of State.[22] Appeals against ministerial decrees and regulatory acts are judged directly by the State Council as first and last resort. The only difficulty lies in the delays, which may run to 12-24 months for some regulatory acts. Provision has recently been made for appeals in the form of references that have suspensive effect. On the other hand, to have one of its regulations, decrees or orders invalidated by an administrative judge represents a setback for the authority concerned. From then on it will be inclined to focus its preparatory work on avoiding the risk of appeal against its decisions. There have been cases, however, where the excessive complexity of the law forced both the government and the judge to make decisions that seemed obviously inappropriate. Since 1973, France has had a readily accessible Ombudsman to resolve such difficulties and to find a fair answer to inequitable situations, handling some 40 000 appeals a year.

Alternatives to regulation: A timid approach to seeking alternatives, confined primarily to the environmental field

Seeking alternatives to regulation is not a key feature of the French system, but it is a concern at the political level: a government directive of May 2002 requires ministers to try

to prevent excessive legislation and regulation and to seek alternatives to issuing rules. Thus alternative mechanisms that constitute real alternatives to regulation have been used *ad hoc*, such as those used for the transition to the euro. Generally speaking, there are three types of alternatives:

- *Rules negotiated within the scope of a contract,* when negotiation and consultation appear to be more effective. This is customary in labour law (collective bargaining and collective agreements) and is being applied in the State's relations with its public servants, and with State-owned companies (programme contracts) and local authorities (means of transferring powers). Contracts do not replace regulations, however. Orders of general applicability or approval are still necessary to give universal effectto agreements entered into with professional organisations. Rather than an alternative solution, contracts are in fact a different means of drawing up and preparing the regulation.
- *"Delegated" rules within the scope of self-regulation* as practised by a number of professions. This is of restricted application in France, limited to cases where the field is technical and requires the association of professionals to give the rule legitimacy. Eleven professions currently have professional associations,[23] entrusted with certain prerogatives of public authority with regulatory powers attributed to them by law. The powers of the Professional Associations are limited (internal organisation and internal bylaws of the Professional Associations, drafting of essential clauses of standard contracts for the profession). Professional codes of ethics are prepared by the Associations but are put in force by decree from the Council of State. Private authorities with partial regulatory power may only exercise it where it is granted to them by law and under the supervision of the administrative judge. The accounting field has clearly demonstrated this issue. The law of 1 August 2003, on financial security, establishes a *High Council of the Audit Commission*, with supervisory, overview and disciplinary powers, in which professionals will be represented but will be in the minority. Consequently, it involves the State taking over again. Finally, the Chambers of Commerce and Industry (CCI) have had, since 1981, responsibility for running the "one-stop windows" for setting up companies, with the establishment of Company Formalities Centres, which each year handle 60% of the formalities related to the creation, takeover or transfer of companies.[24]
- *The use of alternative economic instruments in the case of the environment* has shown that it is possible to use other economic incentives, such as tradable permits and voluntary agreements with industry. These have been developed in France as in other countries of the OECD interested in an innovative environmental policy. Although in practice still rather limited, the concept of such alternatives has made great progress in France.[25] Voluntary agreements represent an interesting alternative to the fiscal approach for limiting economic losses related to public intervention, and have been used since 1975-76 to reduce pollution from classified installations. Since then, voluntary agreements have been signed by some companies[26] for motorcar, glass and aluminium manufacturing and certain heavy chemical activities. A number of agreements drawn up since 1996 have undergone comparative European assessments.[27] However, agreements require credible penalties for breach of their undertakings, and until now, they have not been recognised as legally valid by the Council of State. Taxation represents another alternative instrument to regulation: numerous taxes have been introduced, with an increase from 38 to 49 taxes between 1985 and 1996, but they are for modest amounts (less than 1% of the GDP for those relating to the environment). A general tax on polluting activities *(TGPA)* was introduced in 1999.

- Implementing the Kyoto protocol will imply introducing taxation, and also the possibility of voluntary agreements through a policy of quotas and credits for early preventive action, which could be used once there is a functioning international market for tradable permits. France is in fact making great efforts, in a very constraining legal and international environment, to seek alternatives to regulation in this field.

Regulatory Impact Analysis

Attempts to introduce true Regulatory Impact Analysis in France have failed

Use of Regulatory Impact Analysis (RIA) has remained limited in France. A 1987 decree by the Prime Minister required for the first time an assessment of the budgetary and employment impact of all regulations. Impact studies in France started following the Picq report in 1995. In 1996, a test was conducted of draft laws and Council of State decrees, followed by several critical assessments showing that impact studies were done only after the initial preparation of legislation and were therefore quantitatively and economically weak, and of little use. The practice was made permanent in 1998, with a theoretical framework stipulating that the impact study is an important document aimed at assessing *a priori* the administrative, legal, social, economic and budgetary effects of the measures envisaged and at ensuring, convincingly, that all their consequences were assessed prior to the published decision. The impact study is passed to the Parliament and the Council of State when the legislation is examined. In formal terms, then, it represents an *ex ante* evaluation of the regulation, and should generally be followed by an *ex post* evaluation. An assessment of the impact studies performed in 2002 revealed that, while the formalities were observed, the contents of the document produced were of uneven depth and quality and did not sufficiently clarify the decision in question.

An analysis of the French system in light of the best practices of the OECD[28] shows the need to:

- *Maximise political commitment to RIA*. Despite a solid political commitment in 1995-1996, when the practice was begun, it is clear that the original impetus is no longer there. The circular recommending the impact studies does not have much force of law within the French administrative legal system. Because, apart from the political sphere, the idea had no permanent champion within the government, it fell into abeyance as political support weakened.
- *Clearly allocate responsibilities for RIA*. Responsibility for the RIA should be shared between the regulatory authorities and the central body in charge of quality. In France, the official responsibility of the central unit, the SGG, is to ensure that there is an impact study, not to control its quality. The Council of State examines the legislation from a legal perspective, but impact studies as such have no legal effect, and the Council of State has no legal means to control their content.
- *Train the regulators and persons drafting regulations*. The officials drafting the legislation should have the necessary training to prepare RIAs and to understand the methodological pre-requisites and data collection strategies. Training is necessary for the RIA to be perceived as a vehicle for structural change within government departments themselves. Yet at this time the high quality of the initial training does not contain any specific component for the preparation of impact studies.
- *Use a consistent but flexible analytical approach*. In France, the content of impact studies is of uneven depth and quality, insufficient to clarify the decision. This does not mean that

decisions are not analysed, but analyses do not use a general framework for taking into account the costs and benefits in terms of social and economic externalities.

- *Develop and implement data collection strategies*. Data collection strategies exist within the economic studies and statistics analysis departments of the ministries, and of the INSEE. Where data exist, a quantitative analysis is possible. Yet France currently has no systematic registry that could be used for evaluating reporting obligations as a whole.
- *Target RIA efforts.* RIA efforts should be targeted at regulations with the greatest impact. Yet in France, impact studies have been required for all legislation and Council of State decrees, based on the legal importance of the legislation and not on its economic impact. In the United States, RIA requirements are subject to a predefined economic impact threshold.[29] Consequently, the requirement for an impact study in France becomes too costly in terms of ministries' technical resources, and observance is only perfunctory.
- *Integrate RIAs with the policy-making process*. France's deviation from this principle has effectively rendered impact studies meaningless: usually the study is carried out late, *ex post*, on average 48 hours after the decision has been brokered, and it amounts essentially to a summary justifying the legislation in question.
- *Involve the public*. Consultation also enables debate over the alternatives and over the acceptability of the regulation proposed by the parties. In France, the impact study is made public, but only at the end when it is submitted to the Council of Ministers, which prevents any public input beforehand.

Additional criteria relating to disseminating results and performing impact analyses on the existing stock of regulations are of little interest, given the embryonic state of the practice in France. Attempts so far to use impact studies to rein in regulatory inflation or improve the quality of regulations have failed. The fact that impact studies are not properly used does not mean that there is no *ex ante* assessment of regulations in France. It simply means that this assessment is performed in ways that are not very systematic or transparent. Assessments are done by ministries as a means to defend or attack a decision in the lead-up to final arbitration by the Prime Minister's office. They may be done with an economic, budgetary or legal focus, and their quality depends on the technical resources available to the ministries, the Ministry of Finance being generally the best equipped. As there is no central institution in charge of assessing the regulatory quality of legislation, this aspect is not adequately taken into account in the arbitration process.

Keeping regulation up to date and improving the business environment

There has been a major effort at codification and administrative simplification

French statutory law does not recognise sunset causes, and there is no systematic re-examination of regulations. France does not necessarily differ from other OECD countries in this respect, but its problem may be more acute given the weight of the accumulated regulatory stock. On the other hand, France has a long experience of codification, which allows laws to be systematically inventoried and rationalised. A codification committee established in 1989 led to the publication of five codes. However, the codification process ran into obstacles of a technical and legal nature, which led the government to propose new codes by means of edicts at the legislative level. Nine codes were adopted in 2000. A database, with some 57 published codes, is now available on the Internet.[30] Yet the benefits of codification are ambiguous: it tends to fossilise regulations,

and ministries come to take a proprietary interest in certain codes. Paradoxically, codification allows for an ever more complex legal structure, on a rationalised foundation.

France got off to an early start with regulatory simplification, in the 1950s and 1960s. The focus was on carrying out an inventory of reporting forms, introducing specific *ad hoc* programmes, and establishing "single windows", the Business Formalities Centres (CFEs) in the chambers of commerce and industry. A formalities simplification agency was established in 1983 (COSIFORM), and its responsibilities were expanded in 1990. Beginning in 1995, the Commission for State Reform implemented 290 simplification measures (against 4 128 authorisation systems registered). A new programme was set up in 1997-98, based on the proposal of ministries in the Commission for Administrative Simplification (COSA, directly linked to the Prime Minister's office as of 2 December 1998).[31] COSA produced significant results, affecting almost 1 000 million administrative operations each year. By 2002, of the 2 600 forms registered in 1997, 583 had been deleted, and 1 200 reviewed, of which 1 123 were accessible on line (COSA, 2002). This trend has continued, and by late 2002 only 1 580 forms were left. The work was complemented by the elimination of the marital status form (*fiche d'état civil*) and the elimination of the need for certified copies of administrative documents in 2001. To round off the effort, a Committee for the Simplification of Administrative Language (COSLA) was set up in 2001, and is open to civil society.

Simplification measures affecting businesses have been more limited, reflecting, in particular, the failure of the reform undertaken by the finance ministry in 2000, which, among other economising measures, would have offered businesses (and private individuals) a one-stop-shop for their fiscal affairs. However, experimental steps were implemented, involving companies' social security payroll declarations and simplification of annual social data declarations (DADS). These can now be filed electronically through "teleprocedures", as can VAT returns, intra-Community merchandise trade reports, and business tax returns. In the eyes of businesses, the results are still modest: COSA remains too focussed on internal administrative problems and not sufficiently open to private sector representations (CGPME, 2003).

The administrative simplification authorities were restructured in 2003. There is now an office (*délégation*) for users and administrative simplification, and an agency for developing e-government, located within the Prime Minister's office and reporting to the minister responsible for State reform. The goal of this reorganisation is to take better account of the future needs of professionals and intensify dialogue with consumers. *La COSA* was replaced in 2003 by *le COSA,* the Steering Council for Administrative Simplification, composed of elected officials (deputies, senators, member of regional and local councils) and representatives of civil society. In addition, the Ministry of Economy, Finance and Industry has set up a simplification office for businesses (MISSE). The government announced an important additional administrative simplification programme in July 2003 (see Box 1.7), intended eventually to replace the mistrust a priori (*défiance a priori*) relationship, which until now has been a feature of relations between citizens and government departments, with a relationship of trust supplemented by *ex post* control (*confiance complète par un contrôle a posteriori*). This means that instead of having to submit advance declarations with an array of supporting documentation, declarations can now be made on trust, while the government department retains its right to verify them subsequently. This approach is particularly well suited to the new e-government technology.

When it comes to businesses, the essential elements of the finance ministry's failed 2001 reform have gradually been implemented to simplify the daily running of companies, particularly with regard to fiscal matters: a department created in February 2003 for large businesses offers a one-stop window to the top 24 000 French companies, representing 50% of tax revenue. A one-stop tax window will be set up by 2004 for Small and Medium-sized Enterprises. In the case of SMEs, the economic initiatives law of July 2003 aims to simplify start-ups by setting up freely the capital amount and making it possible to register a firm online and to run it from home. This law simplifies payment of social security contributions, and allows greater use of fixed-term contracts. Having a single official contact point for self-employed workers will do much to simplify their relations with the large number of social security agencies.

Yet these attempts at administrative simplification are being made without any quantitative data on the impact of the administrative burden to guide policies. Apart from the inventory taken by COSA, which is an exception, there is no device in France for statistically measuring the economic costs of regulation. However, such devices do exist in some countries, for example the Netherlands, Norway and Italy.

The rapid growth of e-government

E-government[32] should promote transparent and ready public user access (front office) and facilitate and improve the management of back offices, which need to communicate better with amongst themselves. The tool should shift the burden of complexity back on to the administration, and off the shoulders of the public. "Teleprocedures" were introduced in 2000, with a portal site and e-mail, and are now being extended to tax returns. Thanks to its concerted catch-up effort, France now ranks rather favourably in international comparisons, particularly when it comes to online services (data from the Accenture consulting firm).[33] Yet the functionalities of these services need to be developed further, and in general, France has lagged behind, until recently, in access by the public to Internet and broadband services.

For companies, common platforms for services are being set up to facilitate social security filings for self-employed workers, shopkeepers and craftsmen. Finally, access to public procurement should be extended to most companies, in particular SMEs, by the widespread introduction of paperless procedures (which is to become effective on 1 January 2005) and the abolition of the systematic production of tax and social security certificates by bidders as well as limits on the need for supporting documents.

These reform projects are supported by two separate structures, one of them within the Prime Minister's Office (the *E-government Agency*), for the general public, and the other in the Ministry of Finance, with its *Office for the Digital Economy* and its specific projects relating to businesses and tax returns. Electronic government could in fact be a powerful vehicle for regulatory modernisation, and one that can be implemented without the prerequisite of structural reform, which is often difficult in France.

Conclusion

France has made numerous efforts to modernise its regulatory governance, by decentralising responsibilities, developing new techniques, and introducing widespread administrative simplification. These efforts have been pursued incrementally without any major upheaval, and they have made real progress. The reforms of recent decades have

enhanced transparency and improved relations between government and the public. The political priority given to administrative simplification has meant the elimination of many unnecessary procedures for citizens and businesses alike. A comprehensive policy of regulatory modernisation is now emerging, in the wake of the Mandelkern report.

Yet the pace of change is too often slowed by the need to reform public service structures and procedures, which remain very rigid. Decentralisation has been a source of new complexity in a unitary republic where the central State has never fully divested itself of power. The simplification drive has at times merely kept pace with the growing complexity of regulation. Regulations are still conceived primarily by and for the State rather than as a service to citizens, who have long been regarded merely as subjects to be governed. The system of administrative law was designed to preserve the State, as guarantor of the public interest, from private interests. The cost that regulation represents for the economy has only recently been understood and accepted.

France has yet to make effective use of *ex ante* impact studies as an integral part of administrative thinking and practice. They should be introduced selectively, and should embrace an economic and social assessment. Nor is there any tool for assessing administrative burdens as a guide to dismantling the overhang of outdated laws and regulatory provisions. Despite the structures in place, consultation is still uneven and unsystematic. With the proliferation of consultative bodies, the process is still opaque and does little to foster transparency. In some cases consultation is rendered meaningless by the abrupt implementation of reforms, the effects of which are not properly identified in advance: this was the case with introduction of the 35-hour work week, where in-depth consultation could have avoided the waste of much time and effort.

This situation is related to the fact that there is no institution with the authority and mandate to oversee regulatory quality from a comprehensive viewpoint, combining the analysis of legal aspects with that of economic and social externalities. Setting up such an institution is difficult in such a highly structured institutional environment, but it needs to be done. This is all the more important because the political drive behind reform is subject, in its priorities, to the vagaries of public opinion and the electoral cycle. Only permanent, central institutions with sufficient clout and autonomy can assure sustainable progress. The pursuit of formal juridical quality, as has always been the practice in France, is not enough to guarantee the overall quality of regulatory governance, on a par with the best international standards.

The public service and the public sector play a key role in the French debate. Serving the general interest and ensuring universal access to a range of services are the benchmarks. Yet the undisputed legitimacy of these key notions can sometimes overshadow another aspect of the debate, which has to do with practical means for achieving these ends. The syncretism surrounding the notion of public service at times obstructs the process of reform and demands a significant educational effort to reconcile the concept of universal service with the search for maximum efficiency and enhanced well-being for citizens as consumers. A more open definition would facilitate France's European integration, and could help to generate the consensus needed for any reform strategy. There is no doubt that the public service framework can accommodate this evolution, provided the debate can broaden understanding of the stakes at play, by incorporating the benefits to be reaped from more competitive markets and enhanced consumer welfare.

Policy options for consideration

1. *Create an institution responsible for the overall quality of new regulations.*

The review of other OECD countries shows that having a specific institution located as close as possible to the centre of government can be a valuable asset for improving the quality of regulation. This institution should be responsible for taking decisions and making the final trade-offs on policies and their legal implementation France currently lacks such an institution, despite the many players involved in the preparation of laws and regulations, and especially in vetting their legal quality. The first step towards filling this gap and creating an institution responsible for the overall quality of new regulations could be taken by establishing effective networking among those existing players. Such an institution, or its initial components, would in time have the mandate to promote the quality of new regulations by taking into account their costs and the induced effects on society. It would also have the task of regularly assessing the cost of existing regulations, and making recommendations to Parliament to reduce that cost. This institution could render an advance opinion at the time regulatory and legislative bills are sent to the Prime Minister's Office. The opinions of this network or this institution could subsequently be made public and transmitted to the Council of State and the Council of Ministers. To prevent it from being overwhelmed by a flood of new regulations, this institution could be selective in scrutinising initiatives, depending on their economic impact. Finally, it could encourage public debate over regulatory quality issues and in this way play an educational role, particularly *vis-à-vis* Parliament.

2. *Institute an effective practice of Regulatory Impact Analysis as a strategic tool to support regulatory policy.*

In many OECD countries, the effective and systematic use of Regulatory Impact Analysis (RIA) is a key component in ensuring regulatory quality. While France conducts some *ex ante* assessments, these are often unco-ordinated, they do not systematically take into account the overall costs and benefits of regulations from a social and economic perspective, and they are drafted prior to the RIAs, which are often no more than a formal exercise conducted after the decision has been made. This situation could be improved by using the RIA process as a systematic framework to rationalise existing practice and to ensure a relevant and consistent *ex ante* evaluation. This improvement would also allow for a sounder *ex ante* decision-making process, in terms of an evidence-based economic approach. To this end, RIA needs to be made a part of the legal framework governing the preparation of regulations, in order to ensure that a real impact analysis is conducted, and that it is subject to sanctions. To confine the RIA to significant proposals (perhaps a hundred a year), the quality enforcement authority could define precise criteria for identifying regulations subject to the assessment requirement, and it could have the power to demand a RIA in certain cases. The impact study process should also include prior consultations and their results should be made public in a timely manner. A methodological guide and training materials should be prepared for this purpose, for example by the central institution responsible for the quality of regulations.

3. *Improve the efficiency of the consultation process, making consultation of third parties systematic to improve transparency.*

The large number of consultative bodies in France does not necessarily ensure the most efficient consultation process. Many OECD countries have a transparent and

systematic process of public consultation to enhance the quality of the regulatory process by guaranteeing that the impact on citizens and businesses is taken into account. The efficiency of the consultation process in France could thus be improved through more transparent and systematic consultation processes. The Internet offers an interesting opportunity in this regard. For example, France could set up a central registry on the Internet with all the drafts currently under consultation. Effectiveness and public accountability could be further enhanced if the registry were to include the comments of interested parties and the arguments and responses of the regulatory authorities. The process could in addition be integrated into the framework of Regulatory Impact Analysis.

4. Pursue and extend the move towards simplification by introducing sunset clauses, expanding the use of one-stop windows, and introducing instruments to measure and monitor the simplification process.

France has recently expanded its efforts at administrative simplification, going well beyond previous codification initiatives. The experience of many OECD countries shows that administrative simplification is key to minimising the cost of regulation. However, the French approach has not been systematic. It needs to consider the entire stock of existing regulations in order to reduce the cost overhang. Certain techniques can be very useful in the context of administrative simplification, such as introducing one-stop windows for various groups of clients. France has introduced such one-stop windows for setting up a business, or for large enterprises in their dealings with the Ministry of Finance. This move could be extended into the social field, and also for SMEs and individual citizens. Automatic sunset clauses are another tool that could be introduced. This would reverse the burden of proof and force the administration into a systematic review of regulations, under threat of their expiry at a certain date. It is true that such an approach is very foreign to the French legal tradition. However, an educational effort focusing on its expected benefits could help move things forward. Finally, a statistical effort to measure the economic burden of regulations – whether an individual measure or a whole complex set of regulations – could help steer the current simplification efforts towards maximising their economic benefits and fixing clear objectives for the future. The COSA experiment in assessing the impact of simplifying declaration forms shows that such an approach is feasible in France.

5. Improve legal certainty by enhancing the transparency of procedures to implement the law and make up for time lost in the transposition of Community directives.

Legal certainty and transparency are key elements for the quality of regulation. Yet while the French regulatory system is highly consistent from a legal perspective, elements of weakness are apparent, particularly the delay in publishing the decrees necessary to implement laws. In some cases, the lack of decrees has made certain laws wholly or partially inapplicable. This generates ambiguous legal situations that can be harmful. Thought should be given to imposing official deadlines on the administration for publishing implementation decrees, with provisions for sanctions and legal appeals in case those deadlines are missed.

6. Clarify and rationalise the distribution of powers under decentralisation.

In a number of OECD countries, decentralisation has been a means of bringing rule-setting closer to users and setting the regulatory process at the most appropriate level. France has been engaged in a significant decentralisation effort over the past twenty years,

during which considerable powers have been transferred to local authorities. In many ways this has been a positive move. However, the inextricable overlap of powers among the levels of government is detrimental to an efficient regulatory process. A more rational distribution of regulatory powers among the various levels of subnational authorities, rigorously allocated in blocks, would help to clarify the situation. In addition, greater awareness of regulatory quality among local authorities will be essential in light of their growing responsibilities. The process of decentralising responsibilities must be accompanied by clear and effective accountability requirements at all local levels, administrative as well as judicial.

7. Rationalise the framework of independent regulators.

Independent regulators, who are now classified as independent administrative authorities, have a fairly heterogeneous status, particularly since the passage of the financial modernisation law (LOLF). The current system that allows dual appeals to the administrative and civil courts betrays weaknesses in terms of overall consistency. Procedures for consultation between regulators and the competition authority could be made systematic and mandatory for all existing regulators with an economic role. Some of the smaller independent administrative authorities could be merged. As regulators are often financed from public funds, budgetary mechanisms could also be amended to consolidate the independence of these regulators.

Notes

1. Council of State (1991).
2. Council of State, *ibid*.
3. See the reference report for a detailed description of the legal instruments, available on *www.oecd.org/regreform*.
4. Saugey (2003).
5. See World Economic Forum, quoted in Hel Thélier in CAE (2000).
6. De Margerie (2002).
7. Fauroux (2000).
8. Gérard Braun (2001).
9. The constitutional law, legislation, universal suffrage, regulations and general administration committee for the Senate and the constitutional law, legislation and general Republic administration committee in the National Assembly. Parliamentary committees are working parties specialising in examining general or specific problems, particularly legislative, before they are discussed in a public session.
10. Houssin (1997), Carcenac (2001), De Roux *et al*. (2002), De la Coste (2003).
11. In addition the government may decide not to follow the advice of the Council of State when it is based not on legal or constitutional criteria but on the criteria of administrative appropriateness, but this happens very rarely.
12. It includes economics, finance, industry, budget, external trade, craft, SMEs, independent professions, consumer goods. This ministry is referred to in the text under the generic term of Ministry of Finance.
13. See the main report for a detailed discussion of procedures.
14. See Part I of this report.
15. De Margerie (2002). See Part I of the report.
16. Background report on "Government capacity to produce high quality regulation".

17. A 1962 survey placed the figure at 4 700 (Waintrop, 1999).

18. See OECD (1999), *Regulatory Reform in the Netherlands*, Paris.

19. The légifrance site, *www.legifrance.gouv.fr*, *www.journal-officiel.gouv.fr*, governed by Decree of August 7, 2002, summarises all public law that is accessible on line in France. It is a unique site run by the Prime Minister's office. It was decided at the end of 2001 that on-line publication should be a legal obligation, which required the law to be amended. The law of July 2, 2003, allows the government to establish this obligation by edict. There are also sites as well for accessing laws: *www.adminet.fr*

20. On the assemblies' sites: *www.sénat.fr*; *www.assemblee-nationale.fr*.

21. Conseil d'État (1995), *La Transparence et le Secret*.

22. By way of comparison, all civil and commercial disputes represent 2 200 000 decisions, 20 000 for the Court of Cassation.

23. Doctors, midwives, dentist surgeons, lawyers, chartered surveyors, chartered accountants, architects, pharmacists, veterinary surgeons, physiotherapists and chiropodists.

24. The 160 CCIs have a budget of EUR 3 400 million and 26 000 employees, and also have an important training role, with 500 000 trainees. They manage 121 airports (see Chapter 5), 180 ports, numerous bonded warehouses, road networks, bridges, logistics parks and 55 conference centres.

25. See *Économie et Prévision* (2000). Cournède Gastaldo (2002), working documents of the department of economic studies and environmental assessment at the Ministry of the Environment *www.environnement.gouv.fr*.

26. *www.environnement.gouv.fr/actua/cominfos/dosdir/dirppr/reducgaz.htm*.

27. Chidiak (2000).

28. OECD (1997).

29. This means that the OMB administration examines around 600 regulations each year, *i.e.* 15 to 17% of the rules published, OECD (2002).

30. *www.legifrance.gouv.fr/WAspad/ListeCodes*. Some of these codes are available, moreover, in English and Spanish on the Web site

31. The Commission for Administrative Simplification took over the pre-existing Administrative Forms Registration Centre and COSIFORM.

32. The OECD also has specific projects on e-government, with numerous conferences organised in 2002, a summary report published in 2003 [The E-Government Imperative (OECD E-Government Studies)], and specific country studies on the subject (Finland).

33. See Accenture report (2003).

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