

Chapter 6

The Challenges of Efficient Regulation in a Multi-level Governance Context

This chapter discusses the challenges of efficient regulation in a multi-level governance context. The chapter analyses the role of the new regional statutes and of the co-ordination mechanisms between the national, regional and local levels. The chapter discusses the interface between the regions and the EU. The use of regulatory tools at regional level is analysed in some detail, including legal drafting, consultation and communication, regulatory impact analysis, as well as legislative and administrative simplification. The chapter also discusses compliance, enforcement and dispute settlement mechanisms at local level, as well as legislative review and ex post evaluation.

Enhancing an effective multi-level regulatory governance framework

Ensuring quality regulation across all levels of government is an important part of the broad regulatory policy agenda. “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 (OECD, 2008).”¹ Multi-level regulatory governance has become a priority in many OECD countries. The OECD 2005 *Guiding Principles for Regulatory Quality and Performance*, (p. 5), fully acknowledged this by encouraging “better regulation at all levels of government”, calling on governments to “improve co-ordination and avoid overlapping responsibilities among regulatory authorities and levels of government”. The framework of analysis follows on previous reviews of Sweden (OECD, 2007a), as well as a pilot study on Italy (OECD, 2007b) carried out in joint collaboration with a sample of four Italian regions.

Multi-level regulatory governance² involves numerous challenges. They may include the risk of duplication of rules, overlapping and low quality regulations. Governments need to avoid that high-quality regulation at one level be undermined or reversed by poor regulatory policies and practices at other levels. The issue is critical as it may impede adequate public service delivery at the local level, affecting citizens’ perception of local and national authorities. It also places unnecessary burdens on business services and activities as well as on investment and trade. Conversely, co-ordination and coherence can vastly expand the benefits of reform and bring improvements to the regulatory system as a whole. This can also be aligned and co-ordinated with e-government policies and tools using new information technologies in order to offer continuous and integrated services to citizens and businesses.

This section addresses issues related to the capacity of the Italian system to ensure high-quality regulation across levels of government. Elements of regulatory policies such as legislative simplification, the use of RIA and legal analyses, recourse to consultation, the implementation of administrative simplification and e-government as well as the discussion on compliance and enforcement of legislation and appeals will be considered. The analysis is supported with specific insights from 6 regions which provided specific information for the study.³

Administrative and legal framework for multi-level regulatory policy in Italy

A first issue concerns the level that bears primary responsibility for carrying out regulatory policy (Carbone *et al.* 2007; Nocilla, 2003). Until the adoption of Constitutional Law 3/2001, regulatory reform had been promoted, designed and implemented mainly at national level. With the reform, such a centralised approach lost juridical and political ground. At the same time, responsibilities for the development and implementation of Better Regulation policies have not been explicitly allocated to either the State, the regions or the local authorities. Hence, the responsibility for Better Regulation and regulatory reform lies with each of the levels of government in the matters where they exert

legislative powers. Similarly, there is no overall competence at central level to monitor and control regulatory reform programmes at the local level.⁴

Improving the quality of regulation is a key objective for Italy as part of a competitiveness-oriented strategy, which also needs to be pursued at lower levels of government. However, multi-level regulatory governance is seen as one of the most promising fronts from which regulatory inflation and the proliferation of administrative procedures can be tackled. Because of their important role in imposing regulations on businesses and citizens, regions and local authorities have been called to be part of a consistent and structured strategy to improve decision making and its outcomes. The institutional framework that resulted from the various constitutional amendments is characterised by the predominant delivery of public services at the local level. This setting constitutes a challenge for lower levels of governments, for they need to provide better economic incentives to make service delivery more efficient, as well as to develop appropriate regulatory tools such as consultation practices and impact assessments. In addition, regional and local authorities are called upon to pursue simplification of both their legislative stock and their administrative procedures.

Most of the regions have introduced some tools and mechanisms for regulatory quality, such as measures for administrative simplification, Regulatory Impact Analysis (RIA) and a comprehensive and formal procedure for drafting law proposals. Even before the constitutional reform, and particularly thereafter, administrative simplification and regulatory quality have been progressively embedded in the autonomous initiatives of the regions. In some cases, regions have played a pioneering role and the activity at lower levels in the field can be traced back to the early 1980s. In Tuscany, for instance, a handbook for legal drafting was issued in 1984. Tuscany was also among the first regions to adopt simplification laws, in 1999.⁵ In Lombardy, an Annual Programme for Simplification and De-legislation was adopted in 2001,⁶ and the first regional simplification law dates back to 2002 (Regional Law 15/2002). As to RIA, practices were launched in Tuscany at the end of the 1990s, while the first region regulating on the matter was Basilicata (Regional Law 19/2001) (Libertini, 2002). In many aspects, therefore, regions have served as important laboratories for the design and implementation of regulatory tools, sometimes beyond the experience of the national government.⁷

In the years following the 2001 reform, the constitutional and institutional transformation was not reflected in an explicit requirement to implement principles of high-quality regulation at the regional level. Nonetheless, in recent years a strategy for enhancing regulatory policy at all levels has been progressively designed in Italy. The debate enjoyed renewed attention further to the publication of a report by industrial associations setting guidelines for regulatory quality in 2004.⁸ The awareness of the regions emerged in particular from their contribution to the National Integrated Programme for Growth and Employment (PICO) in 2005,⁹ in which the regions commit to a programmatic framework for regulatory reform policies. A few regions have explicitly included regulatory quality in the work programme for the VIII Regional Legislature. Finally, as of 2006, most of the new regional statutes issued further to the Constitutional reform have included principles and elements underpinning regulatory policies.¹⁰

Reforming the regional context in Italy: The new regional statutes

A number of regions have adapted their statutes further to the reform of 2001, abiding by Article 123 of the Constitution, which imposes that the regions have “a statute

determining the form of government and the fundamental principles of the organisation and the functioning of the region in accordance to the constitution". At the end of the VII Regional Legislature, 11 of the 15 regions with ordinary statutes granted themselves a new charter.¹¹

All the regions have opted for the direct election of the President of the regional executive bodies (*Giunte*) (Osservatorio sulla Legislazione della Camera dei Deputati, 2007). At the same time, however, all the new statutes enhance the autonomy and control powers of the legislative bodies, the Regional Councils (*Consigli regionali*). Further innovations have been introduced, including:

- Apart from the one of the region: Apulia, all new statutes devote an explicit section to the legislative decision-making process.¹²
- In Emilia-Romagna, the new function of "rapporteur" (*relatore*) is introduced, a member of the Council charged with following the legislative procedure of a specific proposal.
- The statutes of Tuscany and Emilia-Romagna contain a provision on regional "falling norms" (*norme cedevoli*), which refer to matters where local authorities have competence. Such norms cease to be effective as soon as local legislative acts are enacted on the specific matter.
- A further innovation refers to the commitment by all regions to enhance the citizens' right to direct participation in decision making through referendum and popular initiatives.¹³

Most of the regions have seized the update of their statutes as an opportunity to introduce specific provisions on the need for quality regulation and the integration of the use of regulatory tools in the law-making process.¹⁴ Until recently, reference to regulatory quality in the statutes constituted a novelty. The Emilia Romagna region integrated an explicit requirement for assessing impacts of law proposals and the need to monitor the results of their application (Article 53). Similarly, Article 61 of the regional statute of Umbria lays out that the region "ensures the quality of the legal texts, adopting tools for the impact assessment, for their design and feasibility". The regional statute also contains a provision on public consultation during the law-making process (Article 4). However, the comprehensiveness and the scope of the approach differ from region to region (see Box 6.1).

Of particular relevance is the provision enshrined in the Tuscan statute to issue a general law on regulation (Article 45). If adopted, this would be the first legal act which would serve as a sort of Administrative Procedure Act in Italy, as the Italian legal system does not contemplate organic laws. The Tuscan executive (*Giunta*), moreover, decided in July 2006 to adopt a *Manuale operativo del processo strategico giuridico-legislativo*, a handbook in which the procedural steps for the elaboration of legislative proposals by the *Giunta* are specified.¹⁵ With respect to the normative initiatives of its executive, the Veneto region relies on a note of the Secretary of the *Giunta*.

Co-ordination mechanisms between the national and regional and local levels

The system of Conferences

To achieve multi-level regulatory reform, co-ordination mechanisms are essential to organise the relationship between national, regional and local levels. In Italy, the centre and the regions co-operate in carrying out good practices for regulatory quality. The main

Box 6.1. Regulatory reform provisions in the new regional statutes

The eleven new statutes adopted further to the 2001 constitutional reform include a number of provisions directly related to and affecting the quality of the regulatory process and its outcomes. Overall, 16 articles and 55 paragraphs cover these issues.¹ The statutory provisions can be distinguished between the following headings:

- **Regulatory quality** – While in some cases, such as the Campania and the Piedmont regions, the statute contains only a general article on the matter, which refers to the adoption of a dedicated regulation for the practical implementation, clear references to impact assessment (both *ex ante* and *ex post*) and to the clarity of drafting are common in most statutes.² The statutes of Marche and Tuscany also foresee the creation of dedicated structures. The Tuscany regional charter, moreover, includes the explicit rejection of legislative proposals that do not meet the regulatory quality standards laid down in the statute.
- **Codification** – The recourse to consolidated texts (*testi unici*) for the consolidation and simplification of sectoral legislation is almost generalised, although the procedures differ from one case to the other. The statutes of Emilia-Romagna and Calabria lay out the possibility to unify legislative and regulatory provisions in one single text (*testi unici misti*). In the Lazio statute, a review of the codes is foreseen, while the Emilia-Romagna goes as far as explicitly foreseeing possible de-legislation and administrative streamlining. Only the statutes of Campania, Liguria and Puglia do not contemplate the use of *testi unici*.
- **Transparency and participation** – Only the statutes of Emilia-Romagna and Tuscany contain a requirement to motivate the adoption of a piece of legislation. The regions Abruzzo, Lazio, Tuscany and Umbria decided to make the online publication of their regional legislation obligatory. Moreover, those statutes commit the region to enhance the online communication of its legislative activity to the citizens. Generally, the right of the citizens to be informed is recognised and extended to the entire administrative activity. The statute of Piedmont is the only one to explicitly articulate participation and consultation practices.
- **Programming and planning** – Many statutes (Abruzzo, Lazio, Piedmont, Tuscany and Umbria) include provisions on planning and programming as a strategic method to rationalise, streamline and better organise the public administration.
- **Oversight body** – In two regions (Abruzzo and Umbria), a so-called Committee on Legislation (*Comitato della legislazione*) is statutorily foreseen and made responsible for controlling the quality of regulation. In Abruzzo, the Committee should be composed equally by Council members from the majority and the opposition, and serve as an advisory body. The Committee reports on its activity annually to the Regional Council.

By contrast, the new statutes do not introduce innovative changes in the relationship between the regional level and the local authorities, failing thereby to fully acknowledge and deepen the implications of the new constitutional status of the latter (Articles 114 and 118 of the Constitution).

1. Only the statute of the region Liguria does not address regulatory quality. In general, it should be noted that the absence of specific and explicit provisions on regulatory quality and reform in the statute does not prevent the region from establishing dedicated institutions and developing procedures and tools.
2. In Piedmont, nonetheless, an article explicitly entrusts the Consiglio with the responsibility for ensuring regulatory quality and checking the effectiveness of the legislation adopted.

mechanism is the so called “Conference” system, which consists of three distinct co-ordination bodies (Box 6.2):

- The Conference of State-Regions.
- The Conference of State-Municipalities and other Local Authorities.
- The Unified Conference of State-Regions-Municipalities and Local Authorities.

Box 6.2. Multi-level co-ordination in Italy: The system of Conferences

Held in the Prime minister’s Office and managed by the Department for Regional Affairs, the co-ordination system distinguishes between the following three *conferenze*:

- **The Conference of State-Regions** – Instituted at the end of the 1980s (by Law 400/1988), and enhanced ten years later (Law 59/1997 and Legislative Decree 281/1997), it constitutes the “privileged platform” for multi-level political negotiation and collaboration in Italy. It is composed of the Prime minister (or the Minister of Regional Affairs) as its chairman; the Presidents of the regions; and other ministers whenever matters related to areas of their competence are discussed. The central government consults the Conference on any legislative initiative related to areas of regional interest. At least twice a year, the Conference State-Regions meets in a so-called “Community session” to address European Union matters that also affect regions and provinces. The Conference can play an advisory, normative and programmatic role and serve as a platform facilitating information sharing.¹
- **The Conference of State-Municipalities and other Local Authorities** – Active since 1996, its functions include: the co-ordination of the relations between state and local authorities; and the study, information and discussion of local authorities’ issues. This conference consists of the Prime minister, as President of the Conference, the Minister of Interior, the Minister of Regional Affairs, the Minister of the Treasury, the Minister of Finance, the Minister of Public Works, the Minister of Health, the President of the Association of Italian Municipalities (ANCI), the President of the Association of the Italian Provinces (UPI) and the President of the Association of Italian Mountain Communities (UNCCEM), 14 mayors and 6 presidents of provinces.²
- **The Unified Conference of State-Regions-Municipalities and other Local Authorities** – Since 1997 (Decree 281/1997), this conference is the institutional place for relations among the central government, the regions and local authorities. It is to be consulted on any act in fields of common competence, notably on the financial law and on the decrees concerning the allocation of personnel and financial resources to regions and local authorities. The Unified Conference is charged with implementing the 2002 Inter-institutional Agreement on the implementation of the reform of Title V of the Constitution. It includes all the members of the two other Conferences.

1. See www.statoregioni.it/.

2. See www.palazzochigi.it/Presidenza/CSCA/index.html.

The agreement on regulatory simplification and quality

All Italian authorities are required by law to sign agreements and memoranda of understanding to improve the quality of regulation.¹⁶ On 29 March 2007, the regional and local executive offices signed an agreement with the national government on normative simplification.¹⁷ Besides defining common principles for the improvement of the quality and the transparency of the normative system, the document commits all parties involved

to improve their evaluation practices, both *ex ante* (through ATN, RIA and feasibility studies) and *ex post* (VIR). The agreement foresees improved communication on legislative issues among levels of government and better access to regulation by the citizens. Moreover, parties committed to adequate consultation mechanisms with social partners, trade associations and consumers for those laws or regulations of greater impact on the activity of citizens and enterprises. The *Tavolo permanente per la semplificazione*, established in 2006,¹⁸ is a privileged platform reinforced by the *Accordo*. Article 9 of the agreement extends to the regions the target of a 25% reduction in administrative burdens on business by 2012 set at the central level. Regions commit to consider harmonised procedures and legislation across the national territory. In order to guarantee a better knowledge of the normative actions, the agreement calls for the creation of specific databases led by the national Parliament and the Regional Councils, and the standardisation of the regional and national guidelines and handbooks for legal drafting.

The agreement is rather political and non-legally-binding, and is subject to relatively soft monitoring, relying mainly on the goodwill of the parties involved. Since 31 May 2007, a *Tavolo tecnico paritetico Stato-Regioni* oversees the implementation of the *Accordo*. Initial measures included a draft agreement on business start-up notification (*Denuncia di Inizio Attività*) in the building sector; and a draft agreement on the identification of *essential levels of service* as required by Law 241/1990.¹⁹ The Department for Regional Affairs has contributed to streamline the work of the Conference State-Regions by inviting the latter to jointly discuss regional legislative proposals with a view to achieving smoother implementation and avoiding possible legal challenges.²⁰ Similarly, working groups of the Conference of the Presidents of the Regions, and notably its First Commission on Institutional and General Affairs, examine the government's legislative proposals and issue a non-binding opinion addressed to the Conference State-Regions. The end of the XV Legislature at the beginning of 2008 delayed the implementation of many actions included in the *Accordo*. The subsequent appointment of a minister explicitly responsible for simplification nonetheless indicates the firm commitment of the Italian executive to continue the established co-operation policy with the lower levels.

Co-ordination on administrative burdens

The simplification of administrative requirements on businesses has been one of the key action points of the Italian government in recent years. Simplification Law of 2005 (Law 246/2005) specifically addressed this matter. Its Article 5, Para. 2 gives the states and the regions the possibility to sign agreements on issues related to the business activity, which would facilitate the co-ordination of the application of relevant normative competences; favour the harmonisation of the related legislation; help achieve minimum levels of simplification of the requirements; and identify specific forms of simplification of administrative requirement across the national territory. Any agreement signed in this context needs to encompass all “better regulation” tools and techniques in order to simplify the administrative environment for businesses.²¹ This makes administrative burden reduction a central policy objective around which a number of regulatory reform initiatives pivot across various levels of government.

Other forms of co-ordination

Since 2003, an Office for Administrative Federalism (*Ufficio per il federalismo amministrativo*) is active within the Department for Regional Affairs.²² This office not only

advises on legal and administrative matters arising from the implementation of Article 118 of the Constitution and of Article 7 of Law 131/2005, but it also promotes measures supporting the transition to a more developed federalist system. The office collaborates with administrations both at the central and the sub-national level.

Within the framework mentioned above, a defining instrument for state-region co-operation is the so-called “Institutional Agreement” (*Intese istituzionali di programma*) (see above). Institutional Agreements are then carried out by several regional Framework Programme Agreements. Framework Programme Agreements lay down the foreseen initiatives and the related financial resources; allocate role and responsibilities; define mechanisms for monitoring; and establish procedures for dispute settlement.

The participation of local authorities in national decision-making occurs through different channels, including: i) formal and informal consultations, which sectoral ministries carry out in accordance with the principle of loyal co-operation; ii) specific legal provisions on opinions, agreements and understandings, which are enshrined in the rules of procedures of the State-Region Conference and the Unified Conference (Legislative Decree 281/1997); and iii) parliamentary hearings of local administrators. Moreover, regional councils have the right and power to table legislative proposals to the national parliament following specific procedures.

As to the interface between the regional and the local levels, good practices exist for co-ordination and support within the limits sets by the Italian Constitution. The executive of the Veneto region set up a dedicated “Directorate for Local Authorities”, which offers technical and operational assistance in matters of regional competences.

Co-ordination among legislative assemblies

Enhanced multi-level co-operation takes place not only on the executive front but also among legislative bodies. On 28 June 2007, a related Protocol (*Protocollo di Intesa fra il Senato della Repubblica, la Camera dei Deputati e la Conferenza dei Presidenti dei Consigli Regionali*) was signed to promote further exchange of expertise and experiences; the publication of studies; and the development of better regulation tools and training between the legislative assemblies at the national and local levels. A specific committee was established consisting of three Senators and three Deputies, the President of the Parliamentary Committee for Regional Affairs and three Presidents of the Regions, appointed by the Conference of the Presidents of the Regions.²³

The Italian Parliament has acknowledged the importance of regulatory quality and has contributed to its diffusion at different levels of government by establishing the Observatory on Legislation. The Observatory serves as a technical support of the Committee for Legislation, and as a documentation centre. In addition, the Observatory prepares specific guidelines, such as the Guidelines for Legislation. It also carries out analyses of legal trends, based on computerised data collection. The Observatory publishes the *Annual Reports on the Status of Legislation*, promoted by the Committee for Legislation, which compiles all the data regarding legal activity; and the *Committee’s Notes*, which are published three times a year on specific legislative issues. Finally, the Observatory takes care of the inter-institutional relations on the different problems confronted by regions on the quality of regulation and legal techniques. It organises seminars and facilitates agreements on these matters.

Forms of vertical interventions

Despite the changes brought about by the constitutional reform of 2001 (see above), a number of vertical interventions persist in Italy. They refer for instance to the duty of the government to control and intervene where necessary in substitution of local authorities. The intervention can take the form of legislative measures or the appointment of an extraordinary commissioner (*commissario*).²⁴ Sectoral legislation may establish *ad hoc* controls and obligations to report to the higher level. In cases of inertia, for example lack of action on an EU directive, this may lead to grant substitutive powers to the central level (the sectoral ministry or the Council of Ministers), which intervenes instead of the local level.²⁵ Controls may also be carried out by prefectures in cases of inspections or interventions replacing activities by municipalities on acts pertaining to the marital status, registry office, military service, etc.

The Court of Accounts (*Corte dei Conti*) and the Competition Authority also carry out some forms of oversight, notably in terms of management control, accountability and enforcement practices. The Court of Accounts can perform audits of any administrative body and present it in its annual report. The Constitutional Court has explicitly made clear that the supervisory role of the Court of Accounts does not interfere with the autonomy of the regions, but ensures respect for the budgetary balances among local levels of government and a sound financial management. The Competition Authority's enforcement activity has increased further to a number of market abuses based on regulatory measures and practices launched by local governments. The Competition Authority has acknowledged that "in the future, Regions and local authorities should be involved in a co-ordinated and not fragmented legal framework, so reforms can become sharper and facilitate the emergence of a more competitive environment, with significant benefits in terms of economic growth and job creation."²⁶

Horizontal co-ordination

Horizontal co-ordination among local governments also contributes to implementing successful, holistic regulatory reform. The consolidation of a permanent dialogue in which regulatory quality is commonly understood and regulatory and administrative practices harmonised can help foster economic activity and make regulatory decisions more effective. Horizontal co-ordination can also facilitate the exchange of experiences about the costs and benefits that regulation imposes on citizens and businesses.

Italy has a longstanding tradition of promoting horizontal co-operation among regions, notably in the forms of the Inter-regional Legislative Observatory (*Osservatorio Legislativo Interregionale*, OLI).²⁷ Created in 1979 as a tool for exchange and training among all the legislative offices of regional Councils (*Consigli*) and the regional executive bodies (*Giunte*), the OLI organises periodical meetings in which issues of interest for the regions are discussed, such as recently approved laws, particularly challenging policy 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 OLI also publishes specific thematic studies and handbooks. In 2002, the OLI published a Manual on Legislative Techniques, which contains rules and suggestions for the drafting of legal instruments. The approach is focused more on the formal aspects of regulatory quality. Many Italian regions use it as a point of reference to harmonise practices in legal drafting. The OLI has a permanent secretariat in the region of Tuscany.

A further platform promoting permanent co-ordination is the Conference of Presidents of the Regional Assemblies (*Conferenza dei Presidenti delle Assemblee Regionali e delle Province Autonome*),²⁸ which in 1991 launched an information system that helps the legislative activity, sharing standards for communication and experiences among regions and the centre. One of the results was the creation of a shared database of regional laws in 1996. Since 2003, after a long process of discussions and agreements, the portal *Normeinrete*²⁹ has provided a complete overview of the Italian legislation at different levels of government, with increased transparency and accessibility.

An example of horizontal co-ordination refers to the preparatory work that led to the adoption of regional laws on administrative simplification for the health sector. In February 2006, a mixed technical working group including representatives of the regions and the Ministry of Health produced a final report approved by the Presidents of the Regions that served as a basis for the subsequent regional legislative activity in the matter. The agreement of February 2006 in the State-Regions Conference constitutes a further example of successful co-ordination for the simplification of food safety.

Besides the common form of horizontal co-operation between Italian regions, a number of regions have established co-operation agreements with trans-border regions. In the framework of the EU INTERREG programmes, Piedmont, Lombardy, Veneto, Friuli-Venezia-Giulia, Valle d'Aosta and the autonomous province of Bolzano have developed close partnerships with their counterparts in Austria, Switzerland and Slovenia. The collaborating regions go beyond neighbouring regions, as shown by the Italy-Malta initiative INTERREG IIIA, managed by the region of Sicily.

The supra-national dimension: The interface between the regions and the EU

The 2001 constitutional reform affected not only the relationships between the centre and the regions but also the interface between the latter and the European Union. Article 117, Para 5 of the Constitution states that “regarding the matters that lie within their field of competence, the regions [...] participate in any decisions about the formation of Community law. The regions and autonomous provinces also provide for the implementation and execution of international obligations and of the acts of the European Union in observance of procedures set by state law.” For the first time, regions have been granted an autonomous role in the preparation, adoption and implementation of Community legislation.³⁰

Supra-national co-ordination is the object of formal mechanisms. For the transposition of EC directives, Law 86/1989 (the so-called *Legge La Pergola*) introduced some guidance on the way regions could participate in the regulatory process of the EU and the implementation of the Directives regarding their exclusive and concurrent legal power. The matter is now regulated by Law 11/2005 and the principal tool in this respect is regional law, which serves to transpose the directives.³¹

The Conference State-Regions and the Unified Conference play a role in the transposition and implementation of EU legislation whenever recourse is made to legislative decrees or government regulations. In these cases, one or the other Conference expresses an opinion, depending on whether the matter pertains strictly to regional competence or includes that of local authorities. This form of consultation with the lower levels of government is obligatory, but not binding. The deadline for the Conferences' opinion is set to 20 days, after which implementation measures are adopted. Nonetheless,

the government has traditionally sought to reach consensus for the implementation of EU legislation through a participatory approach. It should furthermore be noted that any implementation act adopted by the government on matters of regional legislative competence contains a “fall back clause” (*clausola di cedevolezza*), according to which the act is in force until equivalent measures are adopted by the region. Moreover, the regions, the autonomous provinces and the local authorities are jointly responsible for the application of the Community *acquis*, thereby.³²

In order to facilitate the co-ordination and sharing of information across levels of governments, a co-operative General Agreement concerning the participation of the regions and autonomous provinces in the preparation of Community acts was signed in the Conference State-Regions in March 2006, but still remains to be fully implemented. Other specific agreements have been signed within the unified Conference on the ways to abide by the Community *acquis*. A first improves the dialogue between administrations at various levels of government in order to prevent sentences of the European Court of Justice and in any event to identify the roles and responsibilities in instances of infringement procedures. A second calls for harmonising and simplifying the communication to the European Commission of information related to infringements of Community law.

Despite these arrangements, most of the regions still face challenges in transposing and/or implementing EC legislation timely and fully. Difficulties in the communication between the supra-national and the regional levels are often reported. In particular, regions are not always sufficiently equipped to directly and efficiently access and monitor EU decision making and its outcomes. The Regional Council of Tuscany is currently examining a proposal for a codified text including dispositions on the participation of the region in EU decision-making and the procedures for implementing Community acts.³³ Moreover, the agreement by the unified Conference of January 2008 on the modalities for implementing Community obligations and on the guarantee to information by the government, also with reference to the elaboration of the national annual Community Law, should contribute to improve the situation.

With regard to the so-called “ascending phase”, i.e. the process enabling regions to contribute to EU decision-making, Law 11/2005 also foresaw the creation of an Inter-ministerial Committee for Communitarian European Affairs (*Comitato interministeriale per gli affari comunitari europei*, CIACE).³⁴ Regions can request to participate directly in this Committee and they are informed about any EU legislation and initiative affecting them. This allows regions to contribute to and consolidate the Italian official position. If the proposed regulation concerns a matter of exclusive competence of the region, the government has to convene the State-Regions Conference to find a common position that will be defended in the EU Council of Ministers. Representatives of the regions are also allowed to participate in the work of various EU working groups and committees,³⁵ and in accordance with the resolution taken in the State-Regions Conference in March 2006. The latter agreement foresees that regions notify the name of their representatives participating in the various EU bodies. Discussions are still ongoing concerning the modalities for co-ordination and the functioning of the national delegation. Guidelines have been drawn in 2008 and a list of working groups has been proposed to the regions. The regional representations to the European Union continue to be a fundamental contact point and antenna for the regions in Brussels. Besides this, Italian regions are active members of the European Union committee of the regions, which is supporting EU wide efforts for better law making,³⁶ and is to hold its annual meeting in Milan in 2009.

The so-called Community sessions (*sessioni comunitarie*) of the Conference State-Regions are an important moment for co-ordination and information-sharing between the central and regional levels on EU matters. Community sessions may take place several times during the year and are devoted to the examination of the annual proposal of Community Law as well as the discussions on general approaches for implementation and criteria and ways to abide by EU legislation. Throughout 2007, efforts have been made to reform the organisation and strengthen the efficacy of the Community sessions with the aim to ensuring more timely and complete information from the government on EU legislative proposals and, more generally, EU-related dossiers.

Resources and training

Perhaps even more so in multi-level contexts, an adequate level of financial, human and technical resources is necessary for regulatory reform to succeed. A rational and efficient allocation of the financial resources across the levels of government is essential to implement policies and make optimal use of policy tools. Regulatory reform cannot be carried out and rooted in the public administration if it is not supported and shared by skilled administrators and regulators. Regular training and capacity-building across the administration are complementary measures whose development national governments should encourage and assist at the local and regional levels.

The Italian central government supports the regions through specific actions, technical assistance and focused training, with the aim to develop policies of high-quality regulation at regional and local levels. While such support is granted across the entire national territory, particular attention is given to the development of the *Mezzogiorno*.

At the regional and local levels, projects for professional training of civil servants working on the legislative process are supported by FORMEZ (*Centro di Formazione Studi*). This agency of the Department of Public Administration contributes to capacity-building over a wide range of policy areas, including regulatory policies. Overall, FORMEZ's budget for activities has amounted to EUR 180 million over 2005-07. FORMEZ has been active on promoting RIA practices within regional administrations (Box 6.3), and it has managed the projects *Simpliciter* on introducing and reinforcing administrative simplification tools at the local level. These projects seek to simplify and accelerate administrative procedures at the regional and local levels, enhance transparency and public participation in the administrative work and actively promote local and territorial economic development.

Assessment

Multi-level institutional settings are complex by definition. They consist of a multiplicity of actors and procedures. For an optimal co-ordination among the various levels, and in order to successfully promote and implement regulatory reform, it is fundamental that the system of institutions in place combine leadership and political commitment with technical skills and capacity. Successful multi-level regulatory reform depends on a mutually sustaining logic: civil servants need to be backed by committed decision makers whose support is constant and consistent; and the latter need to rely on competent and knowledgeable bureaucrats that know how the administrative and regulatory machinery ought to work. Centralising the steering functions at the higher

Box 6.3. Capacity building at the regional level: Regulatory Impact Analysis

Since 2002, FORMEZ has designed and organised RIA-related projects at the regional and local levels in Italy. Two cycles of activities can be identified, each consisting of a training phase, a trial phase and a phase in which results were analysed and diffused. The first cycle ran from 2002 to 2004 and sought to raise the awareness of the regional administration of the need for and benefits of having RIA systems in place. This involved participation by OECD experts. The second cycle (until 2007) has focused on the organisational aspects and it included a monitoring exercise of the status of implementation of RIA practices.

Overall, some 255 civil servants and managers have been trained from 15 regional administrations (Aosta Valley, Lombardy, Piedmont, Veneto, Emilia Romagna, Umbria, Abruzzo, Molise, Lazio, Campania, Calabria, Basilicata, Apulia, Sicily, Sardinia). Some 60% of the participants came from executive offices (*Giunta*), and 40% from the Regional Councils. During the second cycle, each RIA course lasted five days (seven days in Calabria, which had joined the project for the first time). Eleven regional administrations (for a total of some 130 officials) then participated in the subsequent trial phase, some of them working on more than one measure: Piedmont on three measures, Umbria, Veneto, and Campania each on two. Each administration proposed the measures they wanted to work on and the final decision was made jointly between the administration and the project staff. Finally, results and best practices were shared at regional seminars, three international conferences on regulatory quality, as well as through publications.¹

Besides its projects on training and support, FORMEZ has carried out comparative analyses, including monitoring and benchmarking at various levels. In the framework of the EU, and commissioned by the Italian *Dipartimento della Funzione Pubblica* and the Group of European Directors for Better Regulation (DBR), FORMEZ compared RIA methodologies in 10 EU member states. At the same time, a study was produced assessing the capacity of the Italian regions to ensure high-quality regulation. Finally, FORMEZ collaborated on the latest OECD multi-level study of Italy.²

1. See FORMEZ, "L'Analisi di Impatto della Regolamentazione. Le Esperienze Regionali", in *Materiali Formez*, October 2003 (2nd edition in 2006); "L'Analisi di Impatto della Regolamentazione. Le Esperienze Regionali 2003-06", in *Materiali Formez*, March 2006; "La Qualità della Regolamentazione: Casi Italiani e Confronti Internazionali", in *IterLegis* 2-3/2004, Atti del convegno.
2. See FORMEZ, "L'Analisi di Impatto della Regolazione in Dieci Paesi dell'Ue", *Quaderni Formez*, No. 32, January 2005; F. Basilica (eds) (2006), *La Qualità della Regolazione*, Maggioli Editore, pp. 235-538; and OECD (2007), respectively.

political level may be an option, provided that the same policy priorities are shared and mutual support is ensured from all institutions.

This chapter has identified positive trends in a few regions in terms of political commitment (e.g. Lombardy, Tuscany and Veneto) in which regulatory reform ranks high among the political priorities. Paradoxically, the absence of a consolidated normative framework at the regional level offers opportunities to build consistent and structured regulatory policies without suffering from legal, institutional and procedural obstacles inherited from the past. The relatively small dimensions of the regional administrative system should allow comparative advantages with respect to introducing regulatory reform and instilling a new culture at the central level. However, regions face potentially more pressing constraints in terms of financial resources and access to skilled staff. The *Accordo* of 27 March 2007 represents a positive step, as it can serve as a catalyst of political

support and commitment. Co-ordination initiatives offer opportunities to pay attention to Better Regulation policies.

However, co-ordination remains loose, with insufficient identification of respective responsibilities. No structured approach has been implemented to harmonise regulatory policies among the various regions and between the regional and national levels. In this respect, the system of conferences may not be entirely equipped to fully address the implications of the changes brought by the constitutional reform. More generally, the *Accordo* is not specifically aimed at establishing vertical co-ordination on the matter, and so far its implementation has not been subject to *ex post* assessment and control. In December 2006, a law proposal sought to unify the three Conferences into one institutional body. Despite the positive contribution of the work co-ordinated by OLI, horizontal co-ordination still often depends on informal and non systematic contacts.

Over the past years, differences of appreciation have arisen between the State and the regions on EU-related matters. The new approach designed for the ascending phase, in particular, concerns areas of intervention traditionally related to the State's sphere of action, where not all the regions have yet developed adequate structure and know-how. For instance, the composition of the official delegations remains an unresolved issue, and the creation of the CIACE implies some tradeoffs and balances, given the interface with the Conference State-Regions. The co-ordinated participation of the regions in the preparation of EU legislation is one of the more complex areas where progress has been less evident. Regions are unevenly equipped, and adequate structures are often not in place to cope with the Community agenda. The descending phase has also presented challenges for many regions struggling to cope with their new responsibilities because of difficulties in organising new structures, meeting pressing policy deadlines, or contrasting policy agendas and priorities.

Making use of regulatory tools

Regulatory reform relies on the use of a wide range of tools. In a multi-level context, their implementation presents some challenges. In particular, balance and consistency need to be struck in terms of their design and scope, as well as in relation to the modalities of their use at the central and sub-national levels of government. The main challenge in this respect is to find the way “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 (OECD, 2008).

Legal drafting

The Conference of the Presidents of the Legislative Assemblies of the Regions and the autonomous provinces produced a handbook in collaboration with OLI, whose third edition was published in December 2007.³⁷ On an individual basis, Tuscany uses specifically elaborated indicators, which to date are the only attempt to measure and benchmark regulatory quality in Italy (Box 6.4).³⁸ Abruzzo, Emilia-Romagna and Lombardy also present some forms of monitoring, although not as elaborated.

Almost all regions perform preliminary legal analyses (*Analisi tecnico-normativa*, ATN) both for acts issued by the *Giunta* and the Regional Council. Normally, the reference guidelines for such an analysis are outlined in the handbook produced by the OLI. This

Box 6.4. **Towards a comprehensive approach to high quality legal drafting: The Tuscan experience**

Tuscany has an established track record in using instruments to ensure legal drafting quality, both in the executive and in the legislative branches. A dedicated unit of the Presidency's Legislative Office (called *Area di coordinamento attività legislative e giuridiche*) has co-ordinated the contribution and expertise of the various sectoral Directorates-General on the issue. The unit has also directly contributed to defining general principles and orientation, and to establish technical normative standards. One of the most important initiatives has been the publication of an Operational Handbook (*Manuale Operativo del Processo Trasversale Strategico Giuridico-Legislativo*) in 2006.* The use of the handbook is mandatory for the regional administrations.

The manual provides general criteria for preparing and drafting legal acts, including specific standard formula frequently used. The handbook complements the use of the manual issued by the Inter-regional Legislative Observatory in 2002 (and updated in 2007) on *Regole e Suggestimenti per la Redazione dei Testi Normativi*. The Operational Handbook is not limited to legal drafting provision. Criteria are indicated that help regulators reduce primary rule-making. A whole section of the manual is moreover explicitly devoted to outlining procedural steps of the regional executive decision making, as provided for by Decision 11/2004 of the *Giunta*, and in accordance with the relevant articles of the new regional statute. The handbook also includes templates for legal acts and important documents supporting the preparatory stages. The handbook constitutes a critical tool that integrates legal drafting into a wider, comprehensive understanding of how decision making is structured and its functioning organised. This approach combines the emphasis of high-quality legal drafting without framing it into a rigid legalistic perspective.

* www.consiglio.regione.toscana.it/leggi-e-banche-dati/Oli/Corso-qualita-normaz-UNIFI/06-LEZ-07-mar-08/Manuale_operativo.pdf.

wide use of ATN contrasts with the limited implementation of RIA, reflecting a general tendency by the Italian administrations to follow a strictly legal approach. In Lombardy, a formal checklist is used by the legal services of the *Giunta* and the Council enforces ATN, while some regions (Marche, Molise, Tuscany and Aosta Valley) grant the power to amend the legislative proposal without consulting the responsible administration.

Consultation and communication

Although not formalised, consultation practices are also diffused at the regional level. They take various forms and rely on various means and procedures. Most commonly, they consist of *ad hoc* closed negotiations and hearings (*concertazione*), often leading to a “memorandum of understanding”. Interested parties are invited to express their positions at different stages of the decision making, often through informal meetings. Most of the regions involve stakeholders and third parties on a facultative basis and on the voluntary initiative of the administration in charge of the legislative dossier, while only a small number of them (Calabria, Campania, Marche and Veneto) abide by their own specific legal requirements – enshrined either in their statutes or in regional laws.³⁹

The following examples are worth mentioning:

- The Veneto region has acquired a certain experience with consultation since the mid-1970s (Regional Law 25/1974), with articles in the regional statute and in the rules of the

Regional Council. The executive authority has also developed and consolidated consultation practices, notably by establishing consultative boards (*tavoli*).

- In Tuscany, the *Giunta* also interacts with third parties in formalised institutions such as a *Tavolo generale* and an Inter-Institutional Consultation Board (*Tavolo di concertazione inter-istituzionale*), which is open to the presidents of the regional association of local authorities (ANCI Toscana, UNCEM and URPT). The Tuscan statute foresees consultation practices (Articles 19, 72 and 73), yet consultation remains optional for the Council's committees, while the *Giunta* can carry out consultation whenever it deems opportune. The executive offices have always consulted with local constituencies in the framework of their RIAs. More elaborated forms of consultations have been designed, such as "focus groups", and "notice and comment" practices supported by the Computer Assisted Web Interviewing (CAWI) method.
- In Lombardy, although not expressly foreseen by the law, consultation practices are also relatively well structured and consolidated within a dedicated unit of the *Giunta's* Presidency office. In 2000, moreover, permanent sectoral tables were established to consult economic operators while Regional Law 1/2005 foresees the recourse by the region to external organisations to integrate the stakeholder's view in the framework of *ex post* evaluations.
- In Piedmont, consultations are normally carried out by the *Giunta*, and reaching out to stakeholders is promoted by the statute (Articles 2, 12, 72 and 86).

However, consultations are not systematically extended to the whole citizenship, and recourse to online practices has remained limited. In Veneto, the initiative "Terzo Veneto" seeks to expand upon the notion of e-democracy, and it foresees the access to online consultations.⁴⁰ In that region, public hearings are mandatory if so required by at least one-fourth of the members of the committee responsible for the legislative proposal or on request of the provinces, municipalities, and of the presidents of the main social and economic organisations.

The situation is more favourable in terms of overall institutional communication. All the Italian regions have official websites, which very often include the online publication of the official journal, and a dedicated Communications Office (*Ufficio per le Relazioni con il Pubblico*, URP). There is currently no overall obligation to publish the technical documents supporting the preparation of the legislative acts. Some regions have introduced a spokesperson (Calabria), implemented regional communication plans (Basilicata, Calabria and Tuscany), and open access to newsletters, journals and databases. In Veneto, a section of the website of the Regional Council is to familiarise citizens with the administrative jargon and illustrate the decision-making process.⁴¹ In Tuscany, a law of 2007 specifically calls on the executive to promote the communication of information on legislative proposals as widely as possible.⁴² In Piedmont, a database has offered access to regional norms since many years ("Progetto Arianna").

Regulatory Impact Analysis

Since the mid-1990s, models and practices of RIA have been diffused among most OECD countries. This phenomenon affected mainly the central level of government, and a less consistent evolution has occurred at the sub-national level. One reason for such an uneven pattern lies with the difficulty to ensure capacity to conduct RIA in a multi-level context. Regional authorities are not always properly staffed, lacking the necessary

resources to undertake an often costly and long process. In addition, data may be more difficult to obtain, collect and process, at sub-national level. Methodologies may be less developed than in central administrations.

However, lower levels of government share the same rationale for applying RIA to their regulatory process, as it can potentially bring valuable cost-benefit analysis for evidence-based decision making. International experience so far indicates that much depends on the specific context and sector regulated. Multi-level RIA systems will probably have to be *ad hoc* and certainly innovative, taking into account the mentioned challenges and shortcomings. Improving overall co-ordination and enhancing consultation practices appear to be factors for successful and efficient implementation of RIA (see Box 6.5).

In Italy, RIA at the regional level is still at an early stage. In a few regions, RIA was made obligatory by law: Basilicata pioneered this approach in 2001, and Lombardy and Piedmont followed in 2005.⁴³ The region of Tuscany has a longer-standing practice with impact

Box 6.5. Making use of impact assessments at lower levels of government, Australian and Canadian examples

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 the regulatory impact analysis process, by including the requirements in its Regulatory Reform Plan. 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: i) 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; ii) improving the quality of regulatory impact analysis through the use, where appropriate, of cost-benefit analysis; iii) 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; iv) broadening the scope of regulatory 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 v) 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 (Regulation Impact Statement) 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 with 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 RIA 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, RIAs are lodged in Parliament and published on the website.

Box 6.5. Making use of impact assessments at lower levels of government, Australian and Canadian examples (cont.)

- In Queensland (QLD), 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. Regulatory governance arrangements in Queensland ensure that impact assessment processes for both PBT and RIS requirements are properly enforced. For example, Queensland Treasury is responsible for ensuring that legislation is reviewed in accordance with the CPA. The Queensland Cabinet Handbook requires that departments consult with Queensland Treasury on any proposed legislative restrictions on competition.
- 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.

In Canada, provinces and territories have introduced impact assessments conducted in a systematic way. For example, 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. 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 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; This box has been drawn from OECD (2008), "Multi-level Regulatory Governance Issues: Policies, Institutions and Tools for Regulatory Quality and Coherence", Document GOV/PGC/REG(2008)10, p. 27.

assessment, with experience dating back to 2001. Overall, the region has carried out 15 trials since 2000. This region appears to be the most advanced in terms of *ex ante* evaluation practices, which involve stakeholders and formal consultation processes. The selection of the proposals subject to RIA takes place annually and follows a set of criteria for exclusion and inclusion.⁴⁴ A technical unit at the Presidency's Directorate General of the *Giunta* serves as the steering committee and contributes to parts of the analytical work. The findings are collected in a final technical report joined to the legislative proposal. Besides Tuscany, Emilia-Romagna has introduced forms of "feasibility analysis", which represents also an interesting attempt even if this is not a full-fledged RIA system.

However, most Italian regions are far from conducting RIA in a systematic way. This is also valid for the transposition of EU Community laws. Procedure and institutional settings remain to be adjusted. The majority of the regions⁴⁵ use evaluation clauses in specific

pieces of legislation. Besides regions, trial projects also exist at the local municipal level but this remains sporadic. The Commune of Lucca (Tuscany) has for instance worked with the *Consorzio MIPA* towards introducing RIA practices.⁴⁶

Even if regions do not carry full cost-benefit analysis, most of them make some assessment of the financial and budgetary impacts when preparing draft proposals. However, practices vary, from systematic use in Liguria to rare implementation in Abruzzo and Calabria. The Marche region relies on external consultants, while Veneto launched the *SAPER* programme (*Sistema di Analisi per la Politica Economico-fiscale Regionale*),⁴⁷ which assists regulators in forecasting tax revenue and macroeconomic scenarios on the impact of national legislative activities on the region. Emilia-Romagna, Sardinia and Sicily would appear to lag behind, in terms of preparatory financial analysis (Coco, 2005).

Legislative simplification

Regions are increasingly aware of the necessity to simplify the regulatory environment, especially further to the constitutional changes of 2001. However, initiatives often remain partial and lack consistency. Not all regions have introduced the instrument of the annual simplification laws. Recourse to the *testi unici* at the regional level has remained relatively sporadic over the past regional legislatures. Overall, 17 codes and about 180 codifying laws have been adopted by the regions between 2000 and 2005, with cases where the *testo unico* represents a mere compilation of the existing stock of regulations in force. The procedures for the adoption of codes vary from one region to the other, depending on the relationship between the *Giunta* and the Council. Lombardy appears to be ahead, as in 2006, it modernised and regulated the procedure for the drafting and approval of *testi unici* seeking to codify entire sectors or policy matters,⁴⁸ which thus far has led to the adoption of five related codified acts. A number of regions have also introduced forms of “guillotine” (*taglia-leggi*), even if these often remain one-off measures aimed at repealing laws that were already considered to be unnecessary and out of date.

Administrative simplification and e-government

A study by FORMEZ and the *Dipartimento per la Funzione Pubblica* (2005) shows uneven progress with implementing programmes for administrative simplification and for streamlining administrative procedures. The so-called *Accordi di programma* agreed upon in Campania, Liguria, Sicily and Veneto are reported to have had a limited impact. The Conference of Services (*Conferenza di servizi*), appear to have been particularly helpful, as they speed up procedures for authorisations, ensuring that different competing public interests are represented simultaneously. This allows for stipulating agreements, obtaining approval and commitments from the institutional bodies involved at the same time. Normally, decisions made using this instrument substitute for the provisions of standard procedures. A number of regions in Italy have introduced the Conference of Services.⁴⁹ Tuscany is even more advanced as it is about to implement an online version of the instrument.⁵⁰

A permanent Commission on Technological Innovation in the local authorities and the regions has been established as part of the Unified Conference.⁵¹ This Commission is chaired by the Minister for Regional Affairs, and offers opportunities for discussing technological innovation, following joint submissions for a given semester by the Ministers for Innovation and for Regional Affairs to the United Conference. This results in specific

guidelines and agreements binding local autonomies and the government, with responsibility for implementation delegated to the Permanent ICT Commission. In 2007, agreements concerned information mobility and broadband networks. The PORE VALORE LOCALE (see above) serves as the technical secretariat of the Permanent ICT Commission.

The Department for Regional Affairs has activated the ELISA programme,⁵² which is a EUR 45 million project that over three years (2007-09) seeks to extend the application of ICT beyond internal tools of the local administration to reach out citizens. The programme is managed by the PORE VALORE LOCALE. In 2007, ELISA focused on sectors such as mobility, taxation and the land register, work computing and monitoring of online services.

Administrative simplification and the re-engineering of administrative procedures have recently received a higher profile. A number of Framework Programme Agreements on Information Society have been signed between the central administrations, the CNIPA and individual regions. Lombardy has signed an agreement with the National Association of Communes (ANCI) to unify the procedures for business start-up declarations, which represents a form of “one-stop shop” (*dichiarazione di inizio impresa*, DIA). This results into one single declaration, instead of 1 465 previously (one for each of the municipalities of the region).⁵³ Overall, 15 authorisation procedures have been abolished or simplified, with significant gains: for example the resulting time reduction represents a gain for businesses of about 1% of Lombardy’s GDP, or about EUR 2 billion, in the food sector only (production, processing and distribution of foodstuffs).

FORMEZ has supported local initiatives related to one-stop shops since 1999, with a well organised website.⁵⁴ Useful databases are available online, notably those referring to legislation on the sectors related to the one-stop shop, on the required administrative procedures, as well as lists of one-stop shops in the municipalities. The website facilitates regional co-ordination, i.e. sharing information on regional and international simplification as well as best practices for the development and diffusion of one-stop shops. Studies are also organised in collaboration with business organisations, Confindustria, the CNA and Confartigianato. Veneto is very advanced, as almost all its municipalities have established one-stop shops since 1999. This reflects a bottom up approach rather than top down centralised initiatives. The projects have been carried forward autonomously, often with the public administration benefitting from the support and input of local chambers of commerce and other economic and professional associations. The role played by chambers of commerce also proved to be significant in other regions and provinces. In Campania, they have contributed to the promotion of the internationalisation of local businesses.⁵⁵

As part of the March 2007 Unified Conference agreement, regions have committed themselves to the measurement and 25% reduction target of administrative burdens by 2012. The target is the same as the one adopted by the central government. Four regions (Emilia-Romagna, Liguria, Tuscany and Friuli Venezia Giulia) have joined a trial project co-ordinated by FORMEZ,⁵⁶ which complements state initiatives for the measurement of burdens nationwide (see Chapter 2). These pilot projects are to be extended and systematised in 2009, according to the budget law.⁵⁷

Compliance, enforcement, appeals and dispute settlement mechanisms

Responsibility for the implementation of regional norms lies with the executive offices (*Giunta*). Administrative sanctions as well as premium clauses and subsidies provide incentives for compliance. Regions do not enjoy competence in penal matters. Local authorities are often primarily responsible for implementation and monitoring, for example through local health agencies (*Aziende Sanitarie Locali*, ASL), etc. Dedicated regional inspection offices are sometimes charged with following implementation and compliance, in cases of significant financial commitments. In Veneto, for instance, regional companies are subject to oversight by the regional directorates, audit and corporate investment activities, which are responsible for oversight and assessment of regional investments in stock companies and control of operations co-financed by structural funds. Health agencies are controlled by the regional directorate, audit and supervision of the public health sector. In some instances, such as in Tuscany, recourse has been occasionally made to evaluation clauses, according to which the executive is required to present regular reports on the progress of implementation to the Regional Council. The new Tuscan statute foresees a more frequent use of such an instrument (Article 45, Paragraph 2).⁵⁸ However, data on implementation and compliance rates remain scarce.

Two possible cases can be identified in terms of appeals concerning regulations and administrative measures:

- *Administrative appeals* are filed with the region itself or the President of the Republic. They enable the parties involved to request the adoption of a new decision on the contested case from the administrative authority above the one that took the decision, or to petition 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.
- *Judicial appeals* can be filed with the Regional Administrative Tribunals (*Tribunali Amministrativi Regionali*, TAR). Only interested parties may file appeals with such courts. The challenges that Italy faces in managing overall judicial procedures, exist, and are even exacerbated, at the regional level (see Chapter 2). Delays are significant. TARs are reported to suffer from lack of staff. Another cause for delays lies with the lack of clarity and quality of regional regulations. While the Italian Constitutional Court rules on average in about 18 months, the regional administrative courts take 3.5 years (OECD, 2007b). The power of the regions to streamline the processes is limited by the fact that regions do not have any legislative competence on judicial and procedural matters, whose remit pertains to the state only.⁵⁹ However, room of manoeuvre remains. Tuscany for instance is considering the possibility of introducing conciliation offices to reduce delays.

A number of regions have established a regional Ombudsman as an alternative mechanism to judicial appeal, (*Difensore civico regionale*). The office of the regional ombudsman was first instituted in 1974 in Tuscany and was progressively diffused and consolidated in the 1990s further to Law 142/1990 on the Reform of Local Autonomy. In some regions, however, the person has never actually been nominated, or the office functions have been temporarily suspended.⁶⁰ The ombudsman is usually appointed by the Regional Council and selected among citizens with sound legal and administrative professional experience, and serves for the entire legislature. While their initial responsibility was more informative, competences have evolved over time since 1998 to cover information on the

initiatives undertaken by the peripheral offices of the State, with the exception of those administrations active in fields such as defence, public security and justice.⁶¹ The Ombudsman constitutes an effective interface between the citizens and the regional public authorities, providing free support to citizens in cases of maladministration. In Lombardy, the *Difensore civico* currently also serves as the guarantor of tax payers and prison inmates.⁶² Interventions follow *ex officio* or on online request of the parties – citizens, enterprises or associations. The Ombudsman’s decisions are not binding on any administration. Efficacy therefore depends strictly on the respect of the independence of the office as well as the acceptance of its interventions by the public and the government.

At the regional level, various forms of alternative dispute settlement mechanisms have also been pioneered, with satisfactory results. For example, the National Consumer and Environment Association (Adiconsum) has implemented conciliation agreements with a number of service operators in the telephone sector. Similarly, in the insurance sector since 2004 it has been possible to resolve automobile accident disputes by conciliation through an agreement with other consumer associations and the association of insurance companies. Chambers of commerce contributed to establishing arbitration and conciliation commissions. Examples include the Chamber of Commerce of Belluno, Rovigo and Venice; Arbitration Chambers of Venice, Padua and Vicenza; and the “WebCuria On-Line Dispute Resolution” of Treviso (making it possible to conduct a full conciliation proceeding online). Chambers of Commerce are also active in southern regions: the Chamber of Commerce of Naples has for instance introduced on its Internet site an online conciliation service for informally settling disputes between companies and consumers/users and disputes with the Commune of Naples.

Legislative review and ex post evaluation

“Closing the loop” of the policy cycle is a key aspect of better regulation. In most OECD countries, legislative review and *ex post* evaluations are generally considered as the last link in the policy cycle chain. Italian regions have acquired some experience in this respect, although practice is not evenly diffused and initiatives are not yet systematic or consistent. There is generally no legal requirement for carrying out *ex post* evaluation, and so-called “sunset clauses” are not regularly used. Simplification and recasting exercises in the framework of *ad hoc* codifications through the *testi unici* offer opportunities to examine the relevance and effectiveness of existing legislations.

One of the most effective recent developments is the CAPIRe project, established by the Conference of the Presidents of the Legislative Assemblies of the Regions and the Autonomous Provinces in 2002.⁶³ CAPIRe seeks to disseminate the policy evaluation culture, building on the capacities of regional administration in carrying out evaluations and promoting the use of evaluation clauses in legislative texts. Reports on regional experiences posted on the CAPIRe website allows for information and best practice sharing. Of particular interest are the so-called “evaluation missions”, which are launched on the initiative of a committee or by a quorum of regional counsellors to monitor and control legislation. The adoption of such an instrument is helpful in the absence of formal evaluation clauses in the original legislative text, and it makes the legislators themselves promote and commission such activities outside the legislative process. For those regions with longer participation in the CAPIRe project, *ex post* evaluation has become a much more established practice than at the national level. Lombardy has a dedicated office to assist the Regional Council since 2004 on this matter.⁶⁴

Assessment

Evaluation practices at the regional level vary widely, both in terms of *ex ante* (RIA) and *ex post* assessments. Regions remain heterogeneous in terms of their awareness of regulatory tools and the type of instrument adopted. The usual geographical divide remains, together with a capacity factor linked to the size of the region. Smaller regions with less than 2.5 million inhabitants usually are less advanced in relying to such tools (Coco, 2005). Often legal requirements are in place, but are not matched by common practice. Nonetheless, a majority of regions has had some experiences, with significant support received from FORMEZ, and significant investments in simplification efforts, for example with one-stop shops. As for *ex post* evaluation, the experience accumulated by some of the regions participating in the CAPIRe project is significant, although it relates more to an assessment of policies than of legislation *per se*.

A rather legalistic approach tends to prevail at regional level, with a lack of consideration of alternatives to regulation, which reflects the limited adoption of RIA. Italy is experiencing a general increase in the regional normative stock, which is not mitigated by a systematic previous assessment of impacts of the various options. This lack of assessment of options has also had implications for regulations with significant economic impacts, as is the case for commercial distribution (see Chapter 7).

Consultation practices are widely diffused but remain uneven in terms of formal and systematic processes. A great variety of legal frameworks and practices exist across regions, without standard guidelines. Recourse to ICT remains limited in terms of consultation procedures. *Ad hoc*, informal and negotiated discussions take place between public administrations and sectoral parties and selected representatives of civil society, following the *concertazione* format. While this may help identify specific needs and interests and achieve compromise, it also increases the risk that vested interests that have better and more frequent access to public administration are those that are stronger and better organised. This accentuates the risk of capture. This element has significant implications for the regulation of specific sectors, as will be illustrated by the retail trade and local transport chapters.

Notes

1. Paper presented at the OECD Working Party on Regulatory Reform and Management of 21-22 October 2008, p. 13.
2. See OECD (2004), Multi-level Regulatory Governance, GOV/PGC(2004)10. These issues were further developed under the cross cutting work on multi-level governance undertaken as part of the 2007-08 Programme of Work, and presented to the Working Party on Regulatory Management and Reform at its meeting on 21 October 2008.
3. Piemonte, Tuscany, Veneto, Sicily, Lombardy, Molise.
4. Article 127 of the Constitution states the duty of the State to check the constitutionality of regional laws, not their substance and their quality.
5. See Regional Law 12/1999; Regional Law 19/2000; and Regional Law 11/2002.
6. See Programme Annuale di Semplificazione e Delegificazione della normativa regionale (P.A.S.), adopted through the D.C.R. VII/268 of 10 July 2001.
7. See for instance the CAPIRe project outlined below.
8. Confindustrie regionali del nord-ovest d'Italia (Liguria, Piemonte, Valle d'Aosta), Guidelines per la Qualità della Regolamentazione, July 2004, at www.semplificazione.it/Documentazione/Guidelines.pdf. For an overview of the experiences of the regions in the field of better regulation during the

- VII regional legislature (2000-05), see Osservatorio sulla Legislazione della Camera dei Deputati (2005), “Tendenze e problemi della legislazione regionale”, in Rapporto 2004-05 sullo stato della legislazione, XIV Legislative Session, 11 July, p. 101 ff.
9. See Contributo delle Regioni Italiane alla Definizione del Programma Innovazione, Crescita e Occupazione (PICO) di Rilancio della Strategia di Lisbona, adopted by the Conferenza delle Regioni e delle Province Autonome on 22 September 2005, at www.regioni.it/mhonarc/details_confpres.aspx?id=85131.
 10. See l.r. Calabria 25/2004; l.r. Emilia-Romagna 13/2005; l. statutaria Lazio 1/2004; l. statutaria Liguria 1/2005; l. statutaria Marche 1/2005; l.r. statutaria Piemonte 1/2005; l.r. Puglia 7/2004; Statuto Toscana of 2005; l.r. Umbria 21/2005; l.r. Abruzzo 28/2006, and Delibera 8/L/2004 (first reading) for the region Campania.
 11. At least approved after first reading. The four regions that still have their old statutes in force are Basilicata, Lombardy, Molise and Veneto.
 12. This however does not mean that in the regions with the old statutes still in force there is no legal basis for carrying out regulatory reform (see for instance l.r. Lombardy 1/2005 and l.pr. Trento 2/2003).
 13. Further to the ruling 372/2004 of the Constitutional Court.
 14. See M. Trani (2005), “I nuovi statuti regionali: Lo stato dell’arte. Prime considerazioni di sintesi”, and M. Gallinaro, “Semplificazione normativa. Qualità della regolazione”, both in Osservatorio Legislativo Regionale (eds), Nuovi Statuti Regionali: Lo Stato dell’Arte, at www.consiglio.regione.toscana.it/leggi-e-banche-dati/Oli/Pubblicazioni/NUOVI%20STATUTI%20REGIONALI/Indice.htm. See also Osservatorio sulla Legislazione della Camera dei Deputati (2005) and (2007).
 15. See www.consiglio.regione.toscana.it/leggi-e-banche-dati/Oli/Corso-qualita-normaz-UNIFI/06-LEZ-07-mar-08/Manuale_operativo.pdf.
 16. See the new Article 20-ter of Law 59/1997 as modified by the Simplification Law 246/2005.
 17. Accordo fra lo Stato, le Regioni e le Province Autonome di Trento e Bolzano, le Province, i Comuni e le Comunità Montane in Materia di Semplificazione e Miglioramento della Qualità della Regolamentazione.
 18. Article 5 of DPCM of 12 September 2006.
 19. The Administrative Procedure Law of 1990 (Law 241/1990) focused on improving the structure of each procedure by reducing steps and mechanisms that reduced the administration’s capacity to delay and forbid action (e.g. the “silent is consent” rule, self-certification, transformation of concessions and licences into notifications). The law complemented simplification with crucial provisions on the rights of citizens and accountability mechanisms.
 20. See www.affariregionali.it/Contenuti/?PageID=154.
 21. Such tools and techniques are RIA, ex post evaluation, the “guillotine” procedure, consultation, administrative simplification, self-regulation, de-legislation and identification of best practices. On this point see Carbone et al., 2007, p. 209.
 22. DPCM of 24 November 2003. On the Office, see www.affariregionali.it/Contenuti/Default.aspx?PageID=19.
 23. www.consiglio.regione.toscana.it/leggi-e-banche-dati/Oli/Corso-qualita-normaz-UNIFI/BIBLIOGRAFIA/DOCUM-N-95-2007bibliogr-qual-governo.pdf.
 24. In accordance with Article 120 of the Constitution as implemented by Law 131/2003 (Article 8).
 25. This is for instance what happens in matters related to the preservation of the landscape (Legislative Decree 42/2004) and the environment (Legislative Decree 152/2006).
 26. Autorità Garante della Concorrenza e del Mercato (2005), Relazione Annuale sull’Attività Svolta, Rome, p. 8.
 27. See www.consiglio.regione.toscana.it/leggi-e-banche-dati/Oli/default.asp.
 28. See www.parlamentiregionali.it.
 29. See www.normeinrete.it/.
 30. See for instance G. Di Danieli (2005), “I rapporti tra regioni e Unione europea. Il nuovo potere estero delle regioni”, in Osservatorio Legislativo Regionale (a cura di), Nuovi Statuti Regionali: Lo Stato dell’Arte, at www.consiglio.regione.toscana.it/leggi-e-banche-dati/Oli/Pubblicazioni/NUOVI%20STATUTI%20REGIONALI/Indice.htm.

31. For a more detailed analysis of the matter, see the chapter on ensuring regulatory quality at the national level above.
32. Art. 120 of the Constitution, as reformed in 2001, confers thereby “substituting powers” to the State.
33. See Title II of the *Testo Unico per le Relazioni Internazionali della Regione Toscana* of 26 November 2007.
34. On this point, see Chapter 2.
35. Article 5 of Law 131/2003.
36. In its opinion on Better Law Making 2005-06, CONST-IV-010. CDR 397-2006 fin.
37. *Regole e Suggestimenti per la Redazione dei Testi Normativi. Manuale per le Regioni*, December 2007.
38. www.consiglio.regione.toscana.it/leggi-e-banche-dati/indici-di-qualita/default.asp.
39. For Calabria, see Article 4 of the new statute and Regional Laws 5/2001; 26/2001; 19/2002; 11/2003; and 23/2003. For Campania, see Article 55 of the internal regulation of the Regional Council. In the Marche region, a number of specific laws require consultation, such as Regional Law 46/1992. In Veneto, the Giunta and the Council must consult in accordance with Articles 22, 35 and 36 of the statute, Article 21 of the Council’s Regulation and Article 3 of Regional Law 25/1974.
40. See www.consultazioni.terzoveneto.it/.
41. See www.terzoveneto.it.
42. Article 19 of Regional Law 69/2007 on Norme sulla promozione della partecipazione alla elaborazione delle politiche regionali e locali.
43. See l.r. Basilicata 19/2001, and l.r. Lombardy 1/2005, and l.r. Piedmont 13/2005, respectively. In Lombardy, the trial phase was carried out in 2006 on two cases: intellectual property rights and disabled persons.
44. See the decision by the Giunta 2/2006.
45. Exceptions here are the regions Lazio, Sicily, Aosta Valley and probably Liguria.
46. www.consorziomipa.it/qualita_1_scheda_lucca.html.
47. www.regione.veneto.it/Temi+Istituzionali/Finanza/Politiche+fiscali+e+SAPER.htm.
48. L.r. Lombardia 7/2006 of 9 March 2006 on Riordino e semplificazione della normativa regionale mediante testi unici. Overall, the simplification activity in Lombardy has resulted in the repeal of some 650 regional laws out of the 1 900+ adopted since the 1970s.
49. Regions presenting a legal basis for the conference of services are Basilicata, Calabria, Friuli-Venezia Giulia, Marche, Sicily, Tuscany, Umbria, Valle d’Aosta, and the autonomous provinces of Bolzano and Trento. See A. Soldani, “Semplificazione normativa e amministrativa”, in *La qualità della regolazione delle regioni italiane. Risultati di un’indagine*, Formez e Dipartimento della Funzione Pubblica, p. 33, at <http://regolazione.formez.it/node/176>.
50. A study by Formez presented at the ForumPA 2008 shows that 11 of the 12 regions considered do not foresee to introduce the online conferenza. See F. Ferrara, *Nuove politiche di semplificazione: I fabbisogni delle regioni*, 14 May 2008, at http://semplificazione.formez.it/files/indagine_regionale_forumpa.ppt, slide 23.
51. Article 14, Para. 3 of the Codice dell’Amministrazione Digitale of 2006 (Legislative Decree 159/2006) created.
52. On the basis of the funding allocated by the 2007 Budgetary Law (para. 893)
53. Further to the regional “simplification package 2007” (further to Regional Laws 1/2007 and 8/2007).
54. See www.sportelloimpresa.it. One-stop shops for productive activities were introduced under Legislative Decree 112/1998, while Legislative Decree 143/1998 introduced one-stop shops for the internationalisation of enterprises.
55. See the Eurosportello, a specialised branch of the Chamber of Commerce of Naples, at www.eurosportello.napoli.it/web/guest/home, and the Intertrade project, a specialised branch for international activities of the Chamber of Commerce of Salerno, at www.sa.camcom.it/indicezione.asp?IDSezione=27.
56. “Sperimentazione della Misurazione degli oneri amministrativo (MOA)”.

57. Documento di Programmazione Economica e Finanziaria (DPEF) of 2008. See <http://semplificazione.formez.it/node/377>.
58. The new statute of Lombardy, which has not yet entered into force, also includes a provision establishing a Joint Committee on Control and Evaluation tasked with proposing the introduction of evaluation clauses.
59. As per Article 117, Para 2 l) of the Constitution.
60. It is worth noting that Italy is one of the few countries where an ombudsman has not been established at the national level.
61. Laws 127/1997 and 191/1998.
62. Such a function will be extended upon the entry into force of the new regional statute, which establishes the office of a Difensore regionale (Article 61) and of a Commissione garante dello Statuto (Articles 59-60).
63. See www.capire.org.
64. See www.consiglio.regione.lombardia.it/web/crl/Servizi/Analisi.

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