OECD Reviews of Regulatory Reform

ITALY

ENSURING REGULATORY QUALITY ACROSS LEVELS OF GOVERNMENT

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Foreword

Multi-level regulatory governance deserves increasing attention as countries move their regulatory frameworks closer to local levels, to better serve citizens expectations and address diversity. Over the last 20 years, aspirations for greater democracy and more efficiency have sparked regionalism across OECD countries. This issue is common to countries with different institutional and constitutional structures and political and social values. Top-down and bottom-up, regional competitiveness, regulatory coherence and cross-border co-operation are only some of the terms which connect multi-level issues to the challenges of reinforcing trust in government based on the principles of accountability, transparency and leadership with better framework for public services. This should facilitate growth and prosperity, and increase living standards and choice through competition and market dynamics.

Ensuring regulatory quality, i.e., *reforming regulations so that they contribute fully to achieving public policy objectives without placing needless restraints on competition, innovation and growth, is a political priority. The economic and institutional landscape is becoming ever more complex, and economic players and citizens alike are increasingly insistent in their demands for better services. Globalisation and economic interdependence have increased the need for regulation as a framework for the market, placing increasing challenges for policy makers, both at the national and local levels. This has given rise to new, more sophisticated and more participatory mechanisms of regulatory governance.*

In this context, the multi-level dimension deserves special attention. Regulatory systems are composed of complex layers of regulation stemming from sub-national, national and international levels of government, particularly for a country like Italy, which is one of the founding members of the European Union. The regional dimension has become increasingly important in a European context. Complex and multi-layered regulatory systems have long been a subject of concern with respect to the efficiency of national economies and the effectiveness of government action. High quality regulation at one level can be undermined or reversed by poor regulatory policies and practices at other levels, while, conversely, co-ordination can vastly expand the benefits of reform.

OECD country reviews have highlighted the contribution of different levels of government to regulatory reform efforts. Yet there has been little analysis of the degree to which this aspect is taken into account in reforms of the regulatory framework at the national level. The success of such an undertaking will depend in part on the capacity of political leaders to promote high-quality regulation at each level of government, and to enhance overall efficiency by instituting appropriate co-ordination mechanisms.

This report on Ensuring Regulatory Quality across Levels of Government *is divided in three main sections. The first analyses the institutional set-up for multi-level regulation in Italy, the specifics of power sharing between the State and the regions, as well as the horizontal and vertical co-ordination mechanisms in place in the country. The second section concentrates on the use of policy instruments and regulatory tools in four Italian regions: Veneto, Calabria, Campania and Tuscany. In the final section, the report includes the country-specific policy recommendations developed by the OECD during the review process.*

Acknowledgements. *The country reviews on regulatory reform are co-ordinated by the Directorate for Public Governance and Territorial Development. This report was produced by the Regulatory Policy Division, under the responsibility of Josef Konvitz. The OECD would like to thank the Italian Department of Public Administration which initiated this pilot project and review on multi-level regulatory governance.*

The Review on Ensuring Regulatory Quality across Levels of Government in Italy *reflects contributions from all participants in Italy, including the Department of Public Administration, FORMEZ, the Department of Regional Affairs and the Unit for Simplification and Quality of Regulation at the national level and participants in Campania, Calabria, Tuscany and Veneto. Three of the regional chapters have been discussed at regional seminars held in Campania, Calabria and Veneto. FORMEZ provided support to liaise with the regions and to organise the regional seminars and missions. The overall report was also discussed by the Working Party on Regulatory Management and Reform of the Public Governance Committee.*

Delia Rodrigo, Administrator, prepared the general parts of the report. Stéphane Jacobzone, Principal Administrator, supervised the report. The regional chapters for Calabria, Campania and Veneto were prepared by Nicoletta Rangone, Professor, Polytechnic Institute of Milan, and the chapter for Tuscany, by Elisabetta d'Agostino, Consultant. The documentation was prepared by Jennifer Stein.

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Executive Summary

Italy has experienced a rapid devolution of legislative and regulatory powers to the regions. The 2001 Constitutional amendments provided a new framework for sharing regulatory competences between the national level and the regions, in particular in areas of concurrent legislation (between the State and the regions) and those that are now of the exclusive competence of the regions. These areas cover key economic sectors, such as retail trade, agriculture, tourism, transportation, professional education, etc. This governance framework requires effective co-ordination mechanisms between levels of government in order to reinforce policy coherence and providing legal certainty through judicial review. It is also very important to promote accountability across levels of government.

In terms of co-ordination, an institutional agreement recently signed between the State and the regions aims at broadening the scope of regulatory programmes at regional level. This agreement completes a set of existing co-ordination mechanisms, including the Conference of State-Regions and of State-Municipalities, as well as the Unified Conference bringing them together. These co-ordination mechanisms serve to develop human and technical skills required to integrate regulatory policy in the regional decision making process. This also reflects the need to continued political support at different levels of government for regulatory policy. The current Inter-Regional Observatory provides a tool for exchange and training among all the legislative offices of regional Councils (*Consigli*) and Executives (*Giunte*).

In the current framework, regions enjoy significant regulatory powers and have their own Statutes defining the regional regulatory framework. However, the state of development of regulatory policy differs significantly across the regions of the study, which include Veneto, Calabria, Campania and Tuscany. While Tuscany is relatively advanced, few of the regions have introduced an explicit regional regulatory policy in their Statutes. Still, some regions have integrated some principles of high quality regulation for law-making procedures. There are still significant gap in implementation, for example to make full use of regulatory quality tools, such as Regulatory Impact Analysis (RIA), alternatives to regulation and administrative simplification.

Improving capacity for quality regulation at the regional level requires to further systematise consultation procedures and to train regional authorities on the use of RIA. Efforts to consolidate regional legislation at an early stage with a view to simplify it and to better use Information and Communication Technology (ICT) to reduce red tape for citizens and businesses should be encouraged. Economic activity would be fostered by setting up a better legal framework in which legal certainty, clarity and transparency of procedures is guaranteed and which promotes competition. Effective regulation and regulatory reform, with increased transparency and competition, could contribute to improve the economic performance of Italian regions.

This report analyses multi-level governance in Italy and the capacity of regions to produce high quality regulation, an important theme to achieve overall regulatory coherence. The study focuses on the evaluation of co-ordination mechanisms and competence sharing between the State and the regions. The study involves a general discussion of multi-level regulatory governance as well as regional chapters. These regional chapters concentrate on the use of regulatory tools, such as consultation, communication, appeal processes, regulatory impact assessment, administrative simplification and introduction of Information and Communications Technology to support high quality regulation. They also include a section to specific economic sectors in which regions have regulatory powers. The report concludes with a general discussion of key issues and policy options.

The policy options aim at consolidating governance structures to improve the overall effectiveness of regulatory activity and co-ordination between levels of government. They cover improving the definition and roles and responsibilities for regulatory quality; strengthening capacities for regulatory quality in a multi-level context; strengthening existing co-ordination mechanisms between the State and the regions; improving policy coherence facilitating the attainment of economic policy objectives; encouraging the use of RIA in a multi-level context; continuing and deepening administrative simplification efforts; and streamlining the frameworks for appeal processes and dispute mechanisms.

PART I

Multi-Level Regulatory Governance in Italy

Regulatory competence-sharing between levels of government

Administrative and legal framework for regulatory policy

The 2005 *OECD Guiding Principles for Regulatory Quality and Performance* advise governments to "encourage better regulation at all levels of government, improve co-ordination and avoid overlapping responsibilities among regulatory authorities and levels of government".[1] This challenging task is increasingly important as regulatory responsibilities are shared among supranational, national and sub-national levels (see Box I.1). High quality regulation at one level can be undermined or reversed by poor regulatory policies and implementation at other levels, but co-ordination can vastly expand the benefits of reform. The policies and mechanisms for co-ordination between levels of government are thus increasingly important for the development and maintenance of an effective regulatory framework.

The Italian experience is illustrative. As will become clear, different constitutional amendments have established an institutional framework in which public services are mostly delivered at local level, bringing challenges for the regions, such as the search of better economic incentives to make service delivery more efficient, to develop appropriate impact assessments, the simplification of administrative procedures, and the application of competition principles at local level.

Italy is divided in 20 regions, 106 provinces and 8 101 communes. Strong decentralisation movements have shaped politics in the country. The 1948 Constitution granted a degree of regional autonomy: local autonomy was recognised, protected and promoted, ensuring that services at State level are as decentralised as possible, and adapting principles and laws establishing autonomy and decentralisation.

The country has experienced major reforms of the relationships between the central and sub-national governments. The first, between 1970 and 1972, required that regions issue their ordinary statutes (*i.e.*, regional basic laws). The second major step was in 1977 when the central government began to transfer the constitutional competencies of Articles 117 and 118.[2]

The third phase of this reform, a central part of the "Bassanini" reforms (Laws No. 59/1997 and No. 127/1997), accelerated the transfer of specific powers to the sub-national governments and, based on the "vertical subsidiarity" principle, explicitly delimited the powers of the centre and left non-specified powers to regions and local authorities. The first Bassanini law allocated to regions competences and controls on issues related to agriculture, transport and trade, industrial and energy sectors, public investment, community amenities, cultural and historical heritage, education and professional training. It also provided the framework for the introduction of simplification instruments, such as one-stop shops. One-stop shops for productive activities were conceptualised under Legislative Decree No. 112/1998, while Legislative Decree No. 143/1998 introduced one-stop shops for the internationalisation of enterprises.

A fourth step was taken in October 2001 with a constitutional reform through the constitutional Law No. 3 that remarkably widened the competences of the regions, in particular concerning legislative powers, and abolished most State controls. The reform of Title V of the Constitution revised Articles 114-133, providing a framework for new institutional structures, the division of legislative and administrative powers, the financial scheme and financial relations between diverse entities, the possibility of ways of differentiated autonomy for regions with an ordinary statute, and the abrogation of budgetary controls of regional actions. Some of the articles that are of most importance for this reform are the following:

- Article 114 recognises that the Italian republic consists of municipalities, provinces, metropolitan cities, regions and the State. Municipalities, provinces, metropolitan cities and regions are autonomous entities with their own statutes, powers, and functions according to the principles defined by the Constitution.

Box I.1. **Multi-level regulatory governance in some OECD countries**

The multi-level dimension of regulatory governance calls for systematic analysis of the interaction between players. Based on OECD country examinations, the success of regulatory reform at all levels of government depends in part on the capacity of political leaders to promote high-quality regulation at each level of government and to enhance overall efficiency by instituting appropriate co-ordination mechanisms. Over the past 20 years, dynamic regionalism in OECD countries has been stimulated by aspirations for greater democracy and more efficiency for service delivery and economic performance. The institutional model and the degree of decentralisation depend on the political, historical and economic factors of each country. Yet in most countries, whether unitary or federal, there has been increasing emphasis on sub-national levels of government as the appropriate level for the deployment of public policies.

In **Canada**, the Constitution confers on the federal Parliament general authority to legislate for the "peace, order and good government" of the country, other than on matters exclusively assigned to the provincial legislatures. There are a number of important areas of shared jurisdiction, where federal law prevails in cases of conflict. In addition, all "residual" powers – that is, those not specifically granted to the provinces – accrue to the federal parliament. Inter-governmental co-operation is particularly important in the context of a federal country. Co-operation is needed to address issues of regulatory overlap and duplication, as well as issues of internal barriers to trade. In **Germany**, the 1949 Constitution established a two-layer federal system consisting of the federal and *Länder* levels, with the municipalities as constituent parts of the *Länder*, which set important parameters for the operation of local governments. The Constitution provides the *Länder* with strong independence as well as regulatory powers and responsibilities. They have exclusive or almost exclusive regulatory powers in areas such as health, education and security. They are responsible for implementing most federal regulations as a matter of *their own concern* under their own responsibility. They perform as *agents* of the federation when implementing specific federal statutes referred to in the constitution. In **Spain**, the 1978 Constitution provides a framework for continuous and extensive devolution of powers from the General State Administration to the Autonomous Communities. The various governmental functions are distributed between the State and the 17 autonomous communities in three categories: exclusive functions over matters in which either the State or the autonomous community have full legislative and executive power; shared functions for joint legislative and executive powers and concurrent functions over matters in which both the State and the autonomous community may act.

- Article 117 of the Constitution defines the role and the legislative powers between the State and the regions, indicating those matters for which the State has exclusive legislative power and those for which concurrent legislation of both the State and the regions is possible (see Annex I.A1). The regions have exclusive legislative power with respect to any matters not expressly reserved to State law. As a result, the regions have sufficient power in areas where they have exclusive power, such as agriculture, tourism, retail trade, handcrafts, transportation, professional education, etc. as soon as these activities guarantee the social and civil rights of the population along the country.
- Article 118 introduces the subsidiarity principle, according to which all functions are exerted by municipalities, while the possibility remains to confer them to higher levels of governments (metropolitan cities, provinces, regions, central State) to guarantee the uniform implementation of spending functions across the country.
- Article 119 relates to the financing of sub-national governments and introduces the possibility for lower levels of government to establish and levy their own taxes and other own revenues in accordance with the Constitution and in co-ordination with the national public finance and tax system. In addition, sub-national governments must be ensured with a sufficient amount of unconditional revenues such as their own taxes or transfers – either in the form of tax sharing arrangements on national revenues or of equalisation transfers – to finance decentralised spending functions.

The constitutional reforms have been followed by intense debates in Italy on the way to make federalism feasible in practical terms. The different changes introduced required the adoption of different rules that would lead to concrete implementation of the amendments. Among these, Law No. 131 of 5 June 2003 (*legge La Loggia*),[3] supported and approved by a vast majority in Parliament, included some guidance on how to adapt the law to the new requirements of the Constitution. The main points of this law were: set up the general limits to the legal powers of the State and the regions; delimitation of concurrent legal powers between the State and the regions; explicit equivalence of explicit and inferred principles; transfer of administrative powers to the regions and local authorities; definition of the legal power of the local authorities; practicality of the EU legislation and the legal power of the regions in relation to international law; the new competences of the Court of Accounts (*Corte dei Conti*) and the integration of the right to appeal to the Constitutional Court.

Alongside the Constitution, case law produced by the Constitutional Court after the amendments of 2001 recognises that institutional conflicts arising over the allocation of powers between the State and the regions contribute, in a concrete way, to define the boundaries between the issues of competency and the legislative power involved. Regional laws can be challenged before the Constitutional Court for inconsistency with the Constitution and conflicts of authority between regions or between the State and regions. The latter conflicts have initially increased substantially as a result of the new division of legislative competences among the State and the Regions, often leading the former or the latter to challenge laws and regulations deemed to adversely affect the respective authority. After the mentioned reform, the Constitutional Court dealt with a first period of increasing conflicts between State and Regions. But since 2006, the Court has provided guidelines in some key fields and co-ordination mechanisms between State and Regions have improved. These two factors are reducing substantially the amount of conflicts.

For delegated law making, the Constitution also foresees that "the power to issue by-laws is vested in the State regarding all matters where it has exclusive legislative power, insofar as it does not devolve such power to the regions. The power to issue by-laws is vested in the Regions in any other matters" (Article 117).

Municipalities, provinces and metropolitan cities have also regulatory power with respect to the organisation and the fulfilment of the functions assigned to them.

In the new constitutional balance of powers among different levels of government, co-ordination mechanisms have a fundamental role to regulate the relationship between national, regional and local levels. The main mechanism in Italy for this purpose is the so called "Conference" system, based on three specific co-ordination bodies: 1) the Conference of State – Regions; 2) the Conference of State – Municipalities and other Local Authorities; and 3) the Unified Conference of State – Regions – Municipalities and Local Authorities. The three Conferences are held in the Prime Minister's Office and constitute the most important co-operation instrument to co-ordinate the different levels of government. The three Conferences are described as follows:

- *The Conference of State-Regions*. The *Conference of State-Regions* was instituted in 1988 by Law No. 400. Its functions were enhanced by Act 59 of 1997 to allow regional governments to play a key role in the process of institutional innovation, especially relating to the transfer of functions from the centre to the regions and local authorities. Its composition includes the Prime Minister (or the Minister of Regional Affairs) as president of the Conference, the Presidents of the Regions and other ministers whenever matters related to areas of their competence are discussed. The central government consults the Conference of any legislative initiative related to areas of regional interest.
- *The Conference of State-Municipalities and other local authorities*. Instituted by decree of the President of the Council of Ministers in July 1996, its composition includes the Prime Minister, as President of the Conference, the Minister of Interior, the Minister of regional affairs, the Minister of 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 (UNCEM), 14 mayors and 6 presidents of provinces. The Conference carries out the following functions: *i)* co-ordination of the relations between State and local authorities; and *ii)* study, information and discussion on local authorities' issues.
- *The Unified Conference of State-Regions-Municipalities and other local authorities*. Instituted in 1997 (Decree 281 of 1997), it is the institutional place for relations among the central government, regions and local authorities. The Unified Conference includes all the members of the two Conferences (State-Regions and State-Regions-Municipalities and other local authorities). It is to be consulted on any act in fields of common competence. In particular, the Unified Conference is consulted by the central government on the financial law and on the decrees concerning the allocation of personnel and financial resources to regions and local authorities.

A law proposal presented in December 2006 aiming at unifying the three Conferences into one institutional body is pending in Parliament.

The amendments made to the Constitution in 2001 also implied the abolition of direct supervision and control mechanisms from the State to the regions. Controls are now made through a monitoring and evaluation system established at national level. A defining

instrument of co-ordination among the State and the regions is also the "Institutional Agreement" (*Intesa istituzionale di programma*), which is the institutional setting where the central administration and each region negotiate major public investments on a multi-year basis. This instrument allows the regions to direct national resources for public investment towards their priority projects. OECD countries have tried different options in this regard (see Box I.2).

The implementation of the Institutional Agreement is carried out by several "Framework Programme Agreement" (*Accordo di programma quadro*). This is the consensual document that the central administration and regions stipulate with local authorities and the private sector to define the intervention plan to be implemented. Among the necessary elements for stipulating the Framework Programme Agreement are: the definition of initiatives and related financial resources; the identification of responsibilities and commitments; the definition of monitoring procedures and the actors to whom it is entrusted; the identification of the body with substitutive power in the case of delay or default; the definition of settlement procedures.

Box I.2. **Institutional forms of co-operation among levels of governments in different OECD countries**

In **France**, co-ordination instruments have been put in place to manage a complex system created by the process of decentralisation, with notably planning contracts between the State and the regions from 1984 onwards. These contracts serve to bring together one or more authorities through multi-partite agreements to carry out common projects in a number of areas, as local authorities have overlapping powers. They make it possible to establish an agreement between the State and the regions, and more broadly with local authorities at various levels, on the financial contributions to be made to specific projects. The involvement of local government other than at the regional level still needs to be strengthened, but this type of mechanism is useful in terms of optimising public expenditure.

In **Spain** the relations between the central government (General State Administration) and the Autonomous Communities are based on the essential principle of co-operation between public administrations. This co-operation is implemented by a series of instruments, such as administrative agreements, sectional conferences and bilateral co-operation commissions, as well as various bodies that debate and take decisions on important issues concerning all public administrations.

In **Sweden** the State monitors the development of local government activities with reference to national objectives. Such objectives are intended to ensure that all citizens, in all parts of the country, should get equally good services. At the same time, local self-government implies the possibility for local authorities to carry out their tasks on the basis of specific local and regional conditions. In each of the 20 counties there is a county administrative board. This board is a government agency that represents the parliament and the government in the county. It is responsible to see that decisions taken by these central institutions have the best possible effects in that county: ensuring that national goals are reached at county level, co-ordinating different interests within the community from an overall national perspective, watching over conditions in the county, keeping the government informed and exercising supervisory powers by checking that various bodies observe the law and guidelines. They also have important responsibilities with regard to many of the services provided by the local authorities, checking up on and monitoring compliance with laws and guidelines.

At sub-national level, the co-ordination is exercised through the regional operational programme (*Programma Operativo Regionale*, POR), which contains the management by the regions of the financial resources provided by the EU in the framework of structural funds. The POR defines the development strategy of each region, the priorities identified and the conditions that need to be improved in order to foster economic growth.

In the current structure, there are relevant sectors in which the production and delivery of services, being ensured by some institutions that operate at certain levels, is under the supervision of some control institutions at both national and regional level.

Among the instruments used in the execution phases of public intervention, of particular relevance is the Conference of Services (*Conferenza di servizi*), an instrument that accelerates the procedures for authorisations, ensuring that the different competing public interests are represented by simultaneously stipulating agreements, obtaining approval and commitments from the institutional bodies involved. The decisions made with this instrument substitute for the provisions of standard procedures (see also Box I.6).

Programmes to support regions and local governments

The transformations that the constitutional amendments brought to policy making in Italy have required continued support to the regions. In a diversified country, where important disparities still co-exist between the North and the South, the national government still has an important role.

The Department for Regional Affairs is the unit used by the President of the Council of Ministers to co-ordinate government action for relations between the State, the regions and the local authorities. Its main functions are:

- co-ordination for the development and collaboration between State, regions and local authorities;
- improved relations between State, regions and local authorities;
- assurance of the coherent and co-ordinated exercise of the powers and solutions in case of default;
- care of the activities of the regions abroad, of the enforcement of the regional statutes, of the linguistic minorities, and of the promotion of government action to safeguard the mountain zones; and
- provision of judicial and administrative fulfillments to the analysis and review of regional laws and their consequences for the compatibility to the Constitution.

The Department of Public Administration, created in 1983, has been responsible for the adoption of policies tending to modernise and make more efficient the Italian public administration. One of the pillars of this policy is the adoption of regulatory reform as a key component of the strategy. Better regulation (*migliore regolazione*) implies the better quality of regulation and the simplification of procedures that affect businesses and citizens. The Office for Legal and Administrative Activities tending to simplify the production of laws and their procedures in the Department is currently in charge of a vast programme of administrative simplification. The Department promotes the effective start up of one-stop shops (*sportelli unici*) in the whole territory.

An Inter-ministerial Committee for a strategic guidance for simplification and high quality regulation policies (*Comitato interministeriale per l'indirizzo e la guida strategica delle politiche di semplificazione e di qualità della regolazione*) has been established at the centre of

government as a general instrument of co-ordination of the policies of simplification at national level, with the technical support of the Unit for Simplification and Regulatory Quality (see below). The Committee is headed by the President of the Council of Ministries and is composed by the Ministries of Reform and Innovation of the Public Administration, Regional Affairs and Local Autonomies, European Politics, Action of the Government Programme, Interior, Economy and Finance, Economic Development and the Under-Secretary of State of the Presidency of the Council of Ministries. The main tasks of the Committee are:

- Preparation of an Action Plan to attain the government's objectives on simplification issues.
- Co-ordination of the activities proposed to achieve the Plan's goals.
- *Ex ante* examination of legal measures for simplification.
- Guidance and co-ordination for the national administration on issues of simplification.
- Help to co-ordinate with other governmental bodies and other levels of government.

In September 2006, a Unit for Simplification and Regulatory Quality was set up in the Prime Minister's Office, which provides technical support to the Inter-Ministerial Committee. This Unit is supported by a technical secretary and is responsible for implementing an Action Plan for Simplification (see below). The Unit is articulated among the following operating areas:

- Legal simplification and reduction of the number of laws.
- Measure and reduction of red tape.
- Simplification of RIA.
- Monitoring and reduction of time frames for procedures.
- Consultation with social partners and relations with regions and local authorities.
- Control, verification and up-date of high quality regulation indicators.

In March 2007, a permanent board for simplification (*Tavolo permanente per la semplificazione*) was established, composed by some Ministries and high senior representatives from the Presidency of the Council of Ministries. This board is the main place to reach consensus on simplification issues among the institutional bodies and the social partners, represented by all business associations, trade unions, and the regions and local authorities through the presidents of the Conference of State-Regions, the National Association of Italian Communes (*Associazione Nazionale Comuni Italiani*, ANCI), the Association of Italian Provinces (*Unione delle Province d'Italia*, UPI) and the National Union of Mountain Municipalities, Communities and Authorities (*Unione Nazionale Comuni Comunità Enti Montani*, UNCEM).

The 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 (see Box I.3). These are addressed to all the regions in the country, but also, and in particular, to the southern ones (*regioni del Mezzorgiorno*), through the funds of the Inter-ministerial Committee for the Economic Planning (CIPE). This institution has co-ordination functions regarding the planning and national economic policy, in particular in: *i)* defining the main lines of economic policy at national, EU and international level; *ii)* identifying the priority areas for economic development in the country and co-ordinating with the regions, provinces and local authorities, assigning the

financial resources from the State through institutional programmes of territorial development; and *iii)* defining the guiding lines for the public institutions that have regulatory functions of public services.

At regional and local levels there are also projects for professional training of civil servants working on the legislative process, supported by FORMEZ (*Centro di Formazione Studi*), an agency of the Department of Public Administration that gives support to public administration in several policy areas, including the quality of regulation, and other institutions specialised in the field of regulatory reform.

Box I.3. **Support to the regions: introducing regulatory impact assessment**

Since 2003, the Department of Public Administration and FORMEZ (*Centro de Formazione Studi*) have undertaken 14 pilot projects on Regulatory Impact Analysis (RIA) with 10 regions in Italy. The exercise has involved more than 130 officials, participating in working groups from each region and representing, in general, the regional *Giunte* (executive bodies). In some cases, the exercise has involved representatives from the regional *Consiglio* (legislative bodies), like in Veneto. Current exercises are carried out with Calabria and Campania.

The following table shows the different measures undertaken:

Region	Measure	Sector
Piemonte 1	Regulation of the opening hours and management of skii installations	Tourism
Piemonte 2	Regulations for the rationalisation of the public interventions to support enterprises	Crafts
Piemonte 3	Commercialisation of the daily and periodical press	Trade
Veneto 1	Law 67/87 – Regulating the local craft industry	Crafts
Veneto 2	Basket Veneto at controlled price	Trade
Emilia Romagna	Law proposal on the abolition of the health-book and its substitution by compulsory training	Health
Umbria 1	Adoption of regulations dealing with the picking and growing of truffle	Agriculture
Umbria 2	Regulation for pathways and minor routes	Viability
Lazio	Regulation concerning the issuing of authorisations for opening and service provision to the people and structures of residential and semi-residential cycle	Social services
Molise	Waste collection and disposal	Environment
Campania	Study of the design of a law on entrepreneurship of young people	Productive activities
Abruzzo	Request to abolish the proscription of new fairs and markets on holidays and Sundays in towns of mountain regions and national and regional parks	Trade
Sardegna	Touristic and recreational activities in the maritime government properties	Tourism
Sicilia	Waste collection and disposal in small islands	Environment

FORMEZ has published an evaluation on the pilot projects at regional level. For each one of the regions, evaluations contained the specifications of the RIA, technical documentation that supports the analysis and disseminate the results, an assessment of the technical and organisational difficulties encountered during the process, and a list of questions that provide some guidance on how to solve the methodological and implementation problems.

Source: Dipartimento della Funzione Pubblica/FORMEZ (2006), *L'analisi d'impatto della regolamentazione. Le esperienze regionali 2003-2006*, Roma.

FORMEZ is also in charge of supporting the projects *Simpliciter* aiming at introducing and reinforcing administrative simplification tools at local level. The goals of these projects are to simplify and accelerate the administrative procedures at regional and local level, to increase transparency and public participation in the administrative work and to actively promote local and territorial economic development thorough the country. The main rationale is the idea of integrating principles of good quality regulation at the core of the activities of regional and local institutions, which are now devolved with new legislative and regulatory powers.

Budgetary implications

The constitutional reforms of 2001 substantially advanced the process of decentralisation. These reforms expanded the transfer of administrative functions from the centre to the regions, resulting in a roughly equal sharing of total government expenditure between the central and regional levels (53 and 47%, respectively).[4]

According to Article 119 of the Constitution, three main aspects define the structure of the new financing system of the sub-central governments:

- *Ordinary resources*. The financing structure relies on the fundamental principle of fiscal autonomy. Municipalities, provinces, metropolitan cities and regions have the power to introduce taxes within their own boundaries (for regions it is the legislative power, while for other local authorities this power reduces to laws and rules relating to the implementation of regional or central laws). The equalisation transfers, established by a central law, should be allocated to regions according to their fiscal capacity. The use of the equalisation grants is not constrained by specific purposes of spending.
- *Additional resources*. The State may allocate additional resources or carry out special actions to the benefit of certain municipalities, provinces, metropolitan cities and regions, in order to promote economic development, social cohesion and remove economic and social inequalities.
- *Borrowing to finance investment outlays*. Municipalities, provinces, metropolitan cities and regions have their own assets, established by central law. They may only contract loans in order to finance investment expenditure, not current expenditure. The law sets a limitation to the level of local borrowing, up to 25%. Moreover, no State guarantee is made on the debt issued at the local level.

As a result of the decentralisation process and along with the principle of subsidiarity, most of the citizen services have passed to the regional level. There are, however, no earmarked financial resources in the regional budgets related to the exercise of the regulatory powers. This lack of specific funds is part of the general problem linked to the resources constraint that creates recurrent problems for the delivery of services and the activities and capacities of the institution concerned.

Since most public services are delivered at local level, new challenges for the regions arise: the search for new and better economic incentives to make them more efficient for service delivery, the integration of mechanisms to simplify procedures for the economic activity and the introduction of competition in some key areas at sub-national level.

Regulatory policy and management

Regulatory policy: content and main objectives

The amendments introduced to the Constitution, through the constitutional Law No. 3 of 2001, laid out the transfer of legislative and regulatory competences from the State to the regions in various matters. In general, regions have acquired legislative powers due to the increase of matters of concurrent competence. They have also reinforced their competences in such issues that are no longer in the hands of the State. In some cases, however, there are still open questions concerning the competences between the State and the regions, especially in the areas where the regions have not adopted regional legislation and the national one provides, by inference, the regulatory framework. Moreover, the regions' lack of an explicit power to produce legislative instruments, such as decree laws, increases tensions between the State and the regions, as it is not clearly stated which level should react in cases of urgent and dangerous matters.

In a changing administrative, institutional and regulatory context, the amendments had important consequences for the institutional set up for regulatory policy as well as the evaluation and analysis of the regulatory quality. As the regulatory framework is profoundly reshaped with the new allocation of powers, there is an urgent need for a widespread awareness of simplification policies and tools among regional and local decision-makers and administrators. Even if the production of regional laws has decreased in recent years in most of the Italian regions (see Table I.1), mainly due to technical and political constraints, the promulgation of laws and regulations emanating from them remains a core responsibility of regions.

Table I.1. **Number of laws by regions (2000-05)**

Region	2000	2001	2002	2003	2004	2005
Abruzzo	121	88	38	28	51	47
Basilicata	62	47	40	36	27	33
Calabria	22	38	52	30	36	18
Campania	19	19	33	30	16	25
Emilia Romagna	38	44	36	28	28	23
Lazio	30	41	46	44	21	19
Liguria	48	47	41	32	34	20
Lombardia	28	29	34	30	41	22
Marche	30	35	28	29	30	36
Molise	48	20	45	37	38	52
Piemonte	61	38	33	37	40	17
Puglia	28	37	28	30	25	20
Tuscany	82	54	39	55	62	73
Umbria	43	38	35	26	35	30
Veneto	26	40	35	42	38	26
Total	**686**	**615**	**563**	**514**	**522**	**461**

Source: Databases from the websites of regional Councils, quoted by Commitato per la Qualità e fattibilità delle leggi (2006), *Secondo Raporto sulla qualità della legislazione regionale calabrese*, Consigio Regionale della Calabria, Reggio Calabria.

Up to now, this transformation has not been reflected in an explicit prescriptive obligation to implement principles of high quality regulation at regional level. However, most of the regions have introduced, spontaneously, 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.

Taking into account the importance of the quality of regulation, the Italian Parliament has also established mechanisms to promote regulatory policy at different levels of government. The Observatory on Legislation is a structure of the Parliament that supports documentation. Besides being a technical support of the Committee for Legislation, the Observatory has the following tasks:

- Analysis of the tendency of the legislation, based on the computerised collection of data and precedents, statistics and research on the legal activity, in order to monitor the tendencies of the legal production at national level. To reach these goals, the Observatory is responsible for the following publications:
  - *Annual Reports on the Status of Legislation*, promoted by the Committee for Legislation, which compiles all the data regarding legal activity (see Box I.5).
  - *Committee's Notes*, published every four months, on specific issues of the legislation.
- Preparation of guidelines, such as the Guidelines for Legislation.

Box I.4. **Regional regulatory powers according to regional statutes**

Since the legislative powers of the regions were strengthened by the constitutional reforms of 2001, various regions have adopted statutes that lay out the organisational principles and the functioning of the regions. Tuscany, Emilia Romagna, Calabria, Latium, Marche, Piedmont, Apulia, Umbria, Abruzzo and Liguria have already adopted their regional statutes to the constitutional reform. According to Article 123 of the Italian constitution, "every region must 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". The constitutional Law No. 1 of 1999 foresees that regions can approve their statutes autonomously without the control of the national Parliament. Only the central government can appeal the statute before the Constitutional Court, according to the Decision No. 2/2004.

In the Constitution, regulatory powers are explicitly assigned neither to the regional council (*Consiglio*) nor to the regional cabinet or executive power (*Giunta*). The capacity to exert the regulatory power, as a consequence, is only clarified through the adoption of the regional statute. In those cases where the statute is not yet implemented, regulatory powers are executed by the *Giunta* and the *Consiglio* following the old procedures.

In different regions, the statutes lay out the principles for establishing public institutions in charge of the quality and feasibility of the laws and regulations. According to Article 123 of the Constitution, "the statute defines the exercise of initiative and or referendum on regional laws and regional administrative decisions and the publication of regional laws and regulations".

Some of the regional statutes mention the need for quality regulation and the integration of the use of regulatory tools in the law-making process. But the comprehensiveness and the scope of the approach differ from region to region. The regional statute of **Emilia Romagna**, for instance, refers in Article 53 to the requirement for impacts of law proposals and the need to monitor the results of their application. The **Calabria** region has integrated the need for public consultation during the law-making process (Article 4), in order to guarantee public participation. 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".

- Inter-institutional relations for the quality of regulation. 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 organizes seminars and agreements on these issues.

The impact of the national regulatory policy into the regions and local levels of government

Since the 1990s, regulatory policy and simplification measures have been fundamental for the modernisation of the Italian administration. During the 1990s, Italy launched an expanding programme of regulatory simplification. 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.

Since the 13th Legislature (1996-2000), the regulatory policy has been organically integrated in the public administration. The efforts of simplification and up-date of regulations have been included in a broader framework for better regulation. To achieve the goals for better quality of regulation, new tools and mechanisms, such as simplification of procedures, RIA, *ex post* evaluation, etc. are used at the national level. Annual laws for simplification are approved to frame the efforts to simplify the procedures that affect the life of citizens and businesses.

Box I.5. **Annual Reports on the Status of Legislation**

Since 1998, the Observatory on Legislation of the Italian Parliament publishes, annually and in close co-ordination and collaboration with the legal departments of the Regional Councils, a Report on the Status of the Legislation (*Rapporto sullo stato della legislazione*), which compiles all data regarding the legal activity in the regions and the centre. This report also analyses the synergies and dynamics of different levels of legal production (legislation proposed by the Councils, legal and regulatory activity by the Executives, regional legislation, EU legislation). The Reports are prepared in close co-ordination with the legal departments of the Regional Councils, the Observatory on Sources from the University of Florence and the Institute of Studies on the regional, federal and autonomies of the National Council of Researches (*Consiglio Nazionale delle Ricerche*, CNR). The Observatory on Federalism and Government Processes also participated in the 2004-05 Report.

The publication of such Reports correspond to a growing need in Italy to have a complete picture of the legislative activity of different levels of government: State, Regions and European Union, taking into account the inter-sectorial and inter-territorial nature of the legal production. All reports contain a synthesis note that provides an overview of the legislative phenomenon in the context of the Italian framework. The topic of such a note varies according to the needs, but it tries to highlight the different drivers of the legal activity between levels of government. The following parts of the Report concentrate on tendencies and challenges of the legal activity in the regions, constitutional law in the relation between the State and the regions, data and tendencies of the regional legal production, tendencies of EU law, and international comparative legal production.

The regulatory approach taken by the Italian government consists of two main pillars:

- *Simplification of the normative order.* The Italian legal framework is complex and requires efforts to make it more understandable, transparent and clear. The different laws on simplification have introduced a complete revision of the legal corpus which has lead to the abrogation of a big number of laws. This recasting was expected to contribute to a full exercise of codification.
- *Administrative simplification.* Different efforts have been taken to reduce the burden on citizens and enterprises. In 2003, for instance, 2 756 procedures including issues affecting business activities, but also the internal functioning of the administration, were revised and streamlined. More than 5 million people benefited from the creation of one-stop shops. The estimated time to start-up a business was reduced from 11 to 5 days and the cost for enterprises decreased from 1 150 euros to 340 euros.[5]

An interesting institutional innovation was introduced by Law 246 in 2005 (annual Law on Simplification and Normative Recasting), which renewed Article 20 of Law 59 from 1997 (Bassanini I). According to this regulation, the government, the regions and the autonomous provinces, in the framework of the works of the "Unified Conference", already mentioned, and based on the principle of mutual co-operation, should conclude agreements and understandings[6] with the aim to "improve the quality of the different laws and regulations". Those agreements should:

- facilitate co-ordination during the execution of regulatory powers and carry out activities of common interest in issues such as administrative simplification, legal reorganisation and quality of regulation;
- define homogenous principles, criteria, methods and tools to improve the quality of State and regional regulation, according to the general principles established in Law 246/2005 and the annual Law for Simplification and Normative Recasting, in particular to the processes of simplification, reviewing and codification, analysis and evaluation of impacts of regulation and consultation;
- agree on common modalities for the analysis and evaluation of the impact of legislation and consultation mechanisms with business associations for the production of State and regional legislation; and
- evaluate, with the help of the established working groups in different regions, the configuration of procedural models to be implemented in the whole national territory for specific private activities and improve the public activities for the harmonisation of regional legislation.

Law 246/2005 also reinforces the use of Regulatory Impact Analysis (RIA) and alternatives in Italy. Article 14 of this law provides a new framework for the use of these regulatory tools, as it states the need to "evaluate *ex ante* the possible effects on activities of the citizens and enterprises and on the organisation and functioning of the public administration, also using comparisons among the alternative options". Following this law, some regions have introduced the use of RIA by regional law (Piemonte and Basilicata) and others have continued with the efforts to test it in practical terms.

The efforts suggested by the government in 2006[7] intended to integrate a broad programme of simplification to reduce the costs that affect enterprises and have a direct impact on the competitiveness of Italy and the economic system as a whole. Those costs (mainly for management of staff, taxes, and compliance with environmental and social

regulations) represent EUR 5.7 billion.[8] Regions and local authorities are called to be part of this programme, since they play an important role in imposing regulations to businesses and citizens.

After the amendments of the constitutional Title V, administrative simplification and regulatory quality, as important tools to increase the competitiveness of the country, are embedded in autonomous initiatives of the regions. This is of particular interest in areas such as industry, retail trade, handcrafts, tourism and agriculture, which are part of the legislative prerogative of the regions. In particular, simplification of administrative procedures is part of the regional policy: regions decide the way they regulate procedures in those fields where they have legislative and administrative powers, but national regulations are still valid when it comes to activities that fall into concurrent legislative powers.

In September 2006 the Italian government approved a law proposal presented by the Minister for Reform and Innovation in the Public Administration aiming at introducing more simplification measures for citizens and businesses and facilitating their relationship with the public administration. This proposal amends some of the articles of the Administrative Procedure Law 241/1990, in order to reduce the time needed for administrative procedures, to provide certainty and clarity on the time used by the administration to give answers to citizens and businesses' requests, to repair legal damage against citizens and businesses and to impose a fine to the administration and in favour of

Box I.6. **Impact of simplification strategies and policy at regional level**

FORMEZ and the Inter-regional Legislative Observatory (*Osservatorio Legislativo Interregionale*, OLI) undertook a research in 2005 to analyse the regional status of administrative simplification measures, following the main lines of the Administrative Procedure Law of 1990 (Law 241/1990) and different resulting application laws, as well as the constitutional amendments of 2001.

The results of this research showed that regions are now more interested in introducing and implementing administrative simplification practices and good quality regulation policies than before. The results are, however, contradictory. A full application of simplification measures taking into account the framework laid in Law 241/1990 and the successive simplification laws at national level has not been accomplished by the regions and local entities, mainly due to application problems, incompatibility of existing normative instruments and a complex legal framework for implementation. But the solutions proposed by national laws have been replaced, in some cases, by innovative proposals at regional level that are more effective than the ones suggested at central level.

Since Law 241/1990 has been in force, 10 Italian regions have tried to get their own administrative procedure law. The Conference of Services (*Conferenza dei Servizi*) has been set up by this law as the main instrument to accelerate and simplify particular complex administrative procedures, which require the validation of different parts of the administration representing diverse public interests. It is a core mechanism that helps to join different interests in order to co-ordinate among concerned institutions. Many regions have not been able to include in their regional legislation a comprehensive institutional framework for the Conference of Services, but they have institutionalised the process through specific laws for economic activities.

Source: FORMEZ (2006), *La semplificazione tra stato, regioni ed autonomie locali. Il caso della legge 241*, Roma.

the affected citizen and business in case they do not respect the time required to act, to increase transparency of the administrative procedures and to better use e-government techniques for administrative simplification.

On 31 March 2007, the Italian government presented an Action Plan on Simplification, supported by the Inter-ministerial Committee for Simplification, which sets specific targets to cut red tape in Italy: 25% of administrative procedures produced by national law by 2012. This Action Plan will be put in place with the agreement and on consultation with regions, local authorities, different social and economic associations, etc. It will contain clear objectives, results, time and clear responsibilities for each one of the foreseen action. The Action Plan would help the government to continue efforts not only on the issue of simplification, but also on recasting and the quality of regulation. Among the areas of interest are: normative simplification, codification, RIA, reduction of charges for enterprises and reduction and certainty on the time for administrative procedures.

Box I.7. **Action Plan on Simplification**

The main initiatives proposed in the Action Plan on Simplification are the following:

- Legal simplification and reduction of the number of laws.
- Measures to improve the quality of legal proposals by the government, including a RIA for simplified regulation.
- Efforts on administrative simplification, in particular for sectoral measures, among them:
  - single communication for business start-up;
  - abolition and simplification of red tape for new enterprises;
  - single communication for citizens;
  - simplification and process reengineering for migrants.
- Introduction of a programme to measure the administrative costs for enterprises.
- Reduction of time frames for administrative procedures.
- A broad programme for high quality regulation at regional level through the agreement State-Regions-Local authorities, targeting at principles and tools for legal and administrative simplification, and a common target for reduction of red tape.

Horizontal and vertical regulatory co-ordination

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

The centre and the regions co-operate in carrying out good practices for regulatory quality, implementing a number of instruments that range from the obligation to share information to more formal agreements. Administrative and regulatory relationships include proposals, requests of advice, conventions, consultations, etc.

The distribution of powers and functions resulting from the 2001 constitutional reform has been accompanied by the introduction of the Conferences mentioned above as the main mechanisms of governance to allow the participation of regions and local authorities. This type of mechanism is also used in other OECD countries to strengthen co-ordination among levels of government (see Box I.8).

In the framework of the Conference of State-Regions and the Unified Conference, there are efforts to integrate administrative simplification mechanisms at all levels of government. A special roundtable to define future co-operation agreement has been established to revise the different steps to take.

On 29 March 2007, Italian regions signed an agreement on normative simplification with the national government in the framework of the Unified Conference. The adopted document defines common principles for the improvement of the quality and the transparency of the normative system, in order to uniform the legislative technique through a constant dialogue between the State, regions and provinces. The agreement engages the State, the regions and the local authorities to apply, within the respective normative activity, *ex ante* instruments, such as impact analysis and feasibility studies, and *ex post* evaluation clauses. The parties also agreed to improve the communication on legislative issues among levels of government and to make regulations available to citizens. Moreover, they ensure 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. In order to guarantee a better knowledge of the

Box I.8. **Institutionalising inter-governmental co-ordination between the State and regions in OECD countries**

Canada has an extensive set of institutional arrangements for managing between federal and provincial governments. Central to this are the "First Ministers' Meetings", which are called by the Prime Minister as the need arises, rather than according to a set timetable. These meetings constitute a forum for promoting inter-jurisdictional co-operation and a substantial number of inter-governmental agreements have been signed at such meetings, many of which are related to regulatory harmonisation and co-operation.

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

normative actions, they agreed to create specific databases led by the national Parliament and the Regional Councils, and have decided to standardise the regional and national guidelines and handbooks for legal drafting.

Other ways of co-operation between the State and the regions result from accountability and enforcement practices carried out by the Court of Accounts and the Competition Authority. The Court of Accounts can perform audits of any administrative body of the local level administration and give an account in its annual report. The Constitutional Court has explicitly made clear that the control 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 has become increasingly concerned by market abuses based on regulatory measures and practices of local governments. The Competition Authority has reviewed different sectors that are constrained by a restrictive regulatory framework, whose source is mainly the production of laws and regulations at sub-national level. 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".[9]

Concerning horizontal co-operation, the Inter-regional Legislative Observatory (*Osservatorio Legislativo Interregionale*, OLI) was created in 1979 as a tool for exchange and training among all the legislative offices of regional councils (*Consigli*) and Executives (*Giunte*).

Box I.9. **The Inter-regional Legislative Observatory: functions, working groups and publications**

The Inter-regional Legislative Observatory (*Osservatorio Legislativo Interregionale*, OLI) is a forum for discussion and exchange of experiences, but also for continuous training of those participating in its periodical meetings. The functions of the Inter-regional Legislative Observatory are: i) to provide new information on the status and knowledge of the tendencies regarding the legislation; ii) to stimulate a better understanding about the legislative activity and the quality of the legislative decision-making process; and iii) to develop a methodological body to understand the evolution of the legislation.

This institution has different Working Groups that produce different research materials and organise national seminars on technical issues dealing with law-drafting. The Working Groups deal with the following issues:

- Working Group on simplification.
- Working Group on the implementation of the regional statutes.
- Working Group on the elaboration of the annual Report on the Legislation.
- Working Group on the feasibility and implementation of the laws.
- Working Group on the elaboration of standardised formats of legal disposals commonly used in the regional legislation.
- Working Group on the amendments of the Title V of the Constitution.

The Observatory published in 2002 a Manual on Legislative Techniques, which contains rules and suggestions for the drafting of legal instruments. Some of the Italian regions use it as a point of reference to harmonise practices in legal drafting.

The OLI has a permanent secretariat in the region of Tuscany and organises periodical meetings in which a detailed agenda is discussed, including issues of interest for the regions, such as recently approved laws, discussions about issues of specific challenging objectives, the sentences of the Constitutional Court, the acts of the EU that are relevant to the regions, etc. Members of the national assembly, the Senate, the central government, universities and research institute are also invited to participate in the debates.

The Conference of Presidents of the regional assemblies (*Conferenza dei Presidenti delle Assemblee regionali e delle Province Autonome*) has agreed to promote permanent co-ordination of the information systems concerning State and regional legislation. Since 1991 the entity in charge of this project supports the development of an information system that helps the legislative activity, sharing standards for communication and experiences among regions and the centre. A concrete product has been the set up of a shared data bank of regional laws, a project that resulted from a common understanding of the different presidents of regions and the institutions involved in 1996.

In April 2003, after a long process of discussions and agreements, the portal *Normeinrete* (NIR) was created, providing a complete overview of the Italian legislation at different levels of government, in order to increase transparency and accessibility for the public. This portal provides a more decentralised overview of the legal production in the country.

The supra-national dimension: EU impact on regional and local regulation

Amendments to the Constitution in 2001 also introduced changes in the way regions interact in the framework of the European Union. Article 117, 5 of the Constitution lays out that "regarding the matters that lie within their field of competence, 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".

In particular, representatives from the regions participate in the work of different working groups and committees of the EU, in agreement with the Ministry of International Affairs and with the resolutions taken in the State-Regions Conference.

As a way to improve the co-ordination mechanisms with the EU, Italy established a formalised mechanism to transpose directives. Law No. 86 from 1989 (*Legge La Pergola*) introduced some guidance on the way regions could participate in the regulatory process of the EU and the implementation of the EU Directives regarding their exclusive and concurrent legal power. This procedure helped Italy to make up for its past delays in implementing European law, caused by slow legislative procedures.

The procedures for the execution and implementation of commitments by the State, regions and local authorities are now regulated in Law No. 11 of 4 February 2005.[10] The principal mechanism is represented by the regional law. In particular, this is implemented by singular and specific laws that transpose the communitarian directives. This law also has foreseen the set up of an Inter-ministerial Committee for Communitarian European Affairs (*Comitato interministeriale per gli affairi comunitari europei, CIACE*) which is in charge of finding consensual positions inside the Italian administration *vis-à-vis* the materialisation of EU proposals. Regions can request to participate directly in this Committee and they also should be informed about any EU regulation that might affect them, providing comments to consolidate the Italian 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 Council of Ministers of the EU.

Notes

1. OECD (2005), *Guiding Principles for Regulatory Quality and Performance*, Paris, p. 5.
2. Articles 117 and 118 of the Italian Constitution refer to State and regional legislative powers and administrative functions, accordingly.
3. Legge 5 giugno 2003, No. 131 – Disposizioni per l'adeguamento dell'ordinamento della Repubblica alla legge costituzionale 18 ottobre 2001, No. 3.
4. OECD (2005), *OECD Economic Surveys: Italy*, Paris, p. 77.
5. Department of Public Administration.
6. Following Law 287/97.
7. Department of Public Administration (2006), "Linee programmatiche d'indirizzo. Audizione per il ministro per le Riforme e le Innovazioni nella pubblica amministrazione" in Dipartimento della Funzione Pubblica, *Funzione Pubblica*, Rivista Quadrimestrale, Year XII, No. 2, pp. 14-15.
8. FORMEZ and Rosellini Foundation (2002), *Pubblica amministrazione e imprese: radiografia in chiaroscuro*, Roma.
9. Autorità Garante della Concorrenza e del Mercato (2005), *Relazione annuale sull'attività svolta*, Rome, p. 8.
10. *Norme generalli sulla partecipazione dell'Italia al processo normative dell'Unione europea e sulle procedure di esecuzione degli obblighi comunitari*, Law 11 of 4 February 2005.

ANNEX I.A1

State and Regional Legislative Power in Italy

The Italian Constitution, in its Article 117, establishes the way different matters are subject to State and/or Regional Legislative power. The Regions have residual exclusive legislative power with respect to all matters not mentioned in Article 118. The following list provides a picture of the division of legislative power in the Italian context:

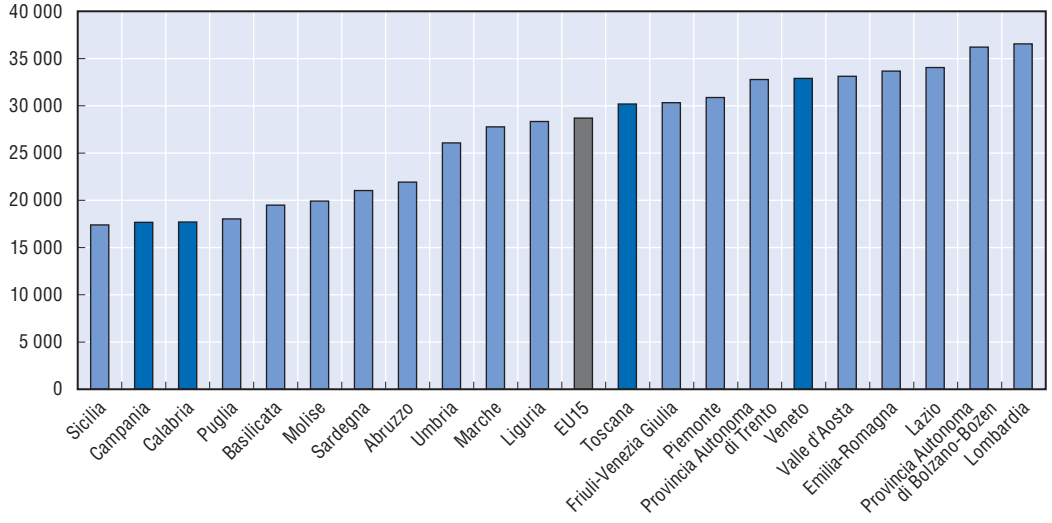
Exclusive legislative power of the State	Concurrent legislative power between the State and the regions
Foreign policy and international relations of the State; relations of the State with the European Union; right of asylum and legal status of the citizens of States not belonging to the European Union	International and European Union relations of the regions
Immigration	Foreign trade
Relations between the republic and religious denominations	Protection and safety of labour
Defense and armed forces; State security; weapons, ammunitions and explosives	Education, without infringement of the autonomy of schools and other institutions, and with exception of vocational training
Money, protection of savings, financial markets; protection of competition; currency system; State taxation system and accounting; equalization of regional financial resources	Professions
State organs and their electoral laws; State referenda; election of the European Parliament	Scientific and technological research and support for innovation in the productive sectors
Organisation and administration of the State and of national public bodies	Health protection
Law, order and security, aside from the local administrative police	Food
Citizenship, registry of personal status and registry of residence	Sports regulations
Jurisdiction and procedural laws; civil and criminal laws; administrative tribunals	Disaster relief service
Determination of the basic standards of welfare related to those civil and social rights that must be guaranteed in the entire national territory	Land-use regulation and planning
General rules on education	Harbours and civil airports
Social security	Major transportation and navigation networks
Electoral legislation, local government and fundamental functions of municipalities, provinces and metropolitan cities	Regulation of media and communication
Customs, protection of national boundaries and international prophylactic measures	Production, transportation and national distribution of energy
Weights, units of measurement and time standards; co-ordination of the information, statistical and information-technology aspects of the data of the State, regional and local administrations; intellectual property	Complementary and integrative pension systems
Protection of the environment, of the ecosystem and of the cultural heritage	Harmonisation of budgetary rules of the public sector and co-ordination of the public finance and the taxation system Promotion of the environmental and cultural heritage, and promotion and organisation of cultural activities Saving banks, rural co-operative banks, regional banks Regional institutions for credit to agriculture and land development

PART II

Capacity to Produce High Quality Regulation in Italian Regions

Italy is part of the G7 and a founding member of the European Union, with a GDP per capita close to the European average. However, its economic growth has been below the euro-area average, with low total factor productivity growth (OECD, 2005). Italian economic development has been traditionally characterised by marked regional disparities in particular between the Centre-North and the South. Today, Italy features one of the widest geographical dualisms among OECD countries: GDP per capita in the southern regions is around half that in the northern regions (see Figure II.1).

Figure II.1. **GDP per capita in Italian regions, 2004**

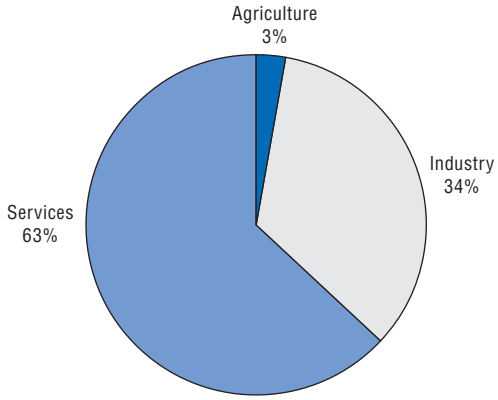


Source: OECD (2007), *OECD Regions at a Glance*, Paris; OECD (2005), *OECD in Figures*, Paris.

Disparities are also reflected in the economic pathway the country has followed: in the North, a growing industrialisation process in the 1950s and 1960s was later compensated by an expansion of the service sector, while the Southern regions experienced fast economic growth only until the 1960s, often supported by State intervention at the national level which slowed down in recent decades. Economic activities are mainly concentrated in the service sector (see Figure II.2), even if this tendency varies across regions (see Figures 1.1, 2.1 and 3.1).

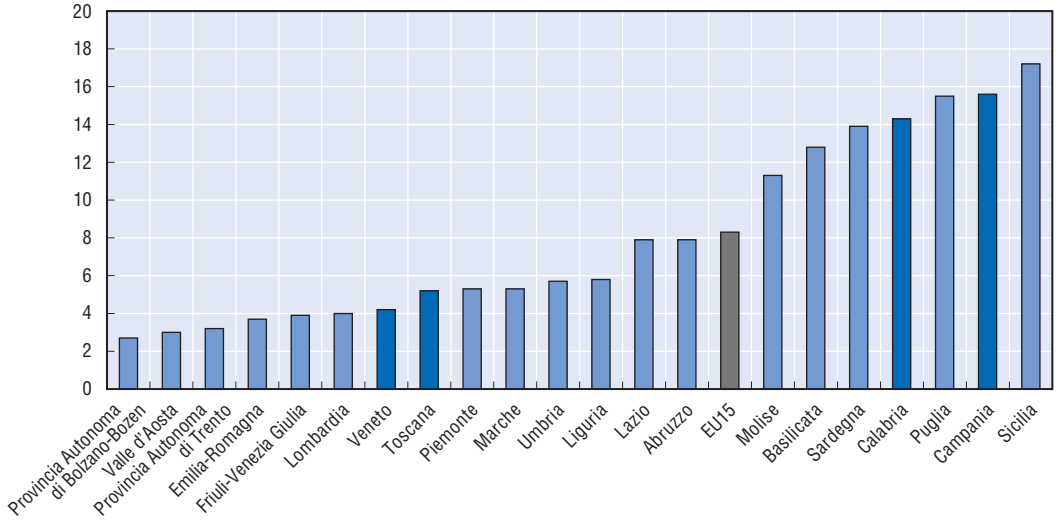
Italy has been one of the very few OECD countries to have enjoyed robust employment growth since 2000, and its national unemployment rate has fallen substantially. However, regional disparities remain acute. The northern regions are among the most prosperous in Europe, with almost full employment, while southern regions face high unemployment, with unemployment rates which are four or even five times higher than in the Centre or in the North (see Figure II.3).

Figure II.2. **Employment by sector in Italy, 2003**



Source: OECD (2007), *OECD Regions at a Glance*, Paris.

Figure II.3. **Unemployment by region, 2004**

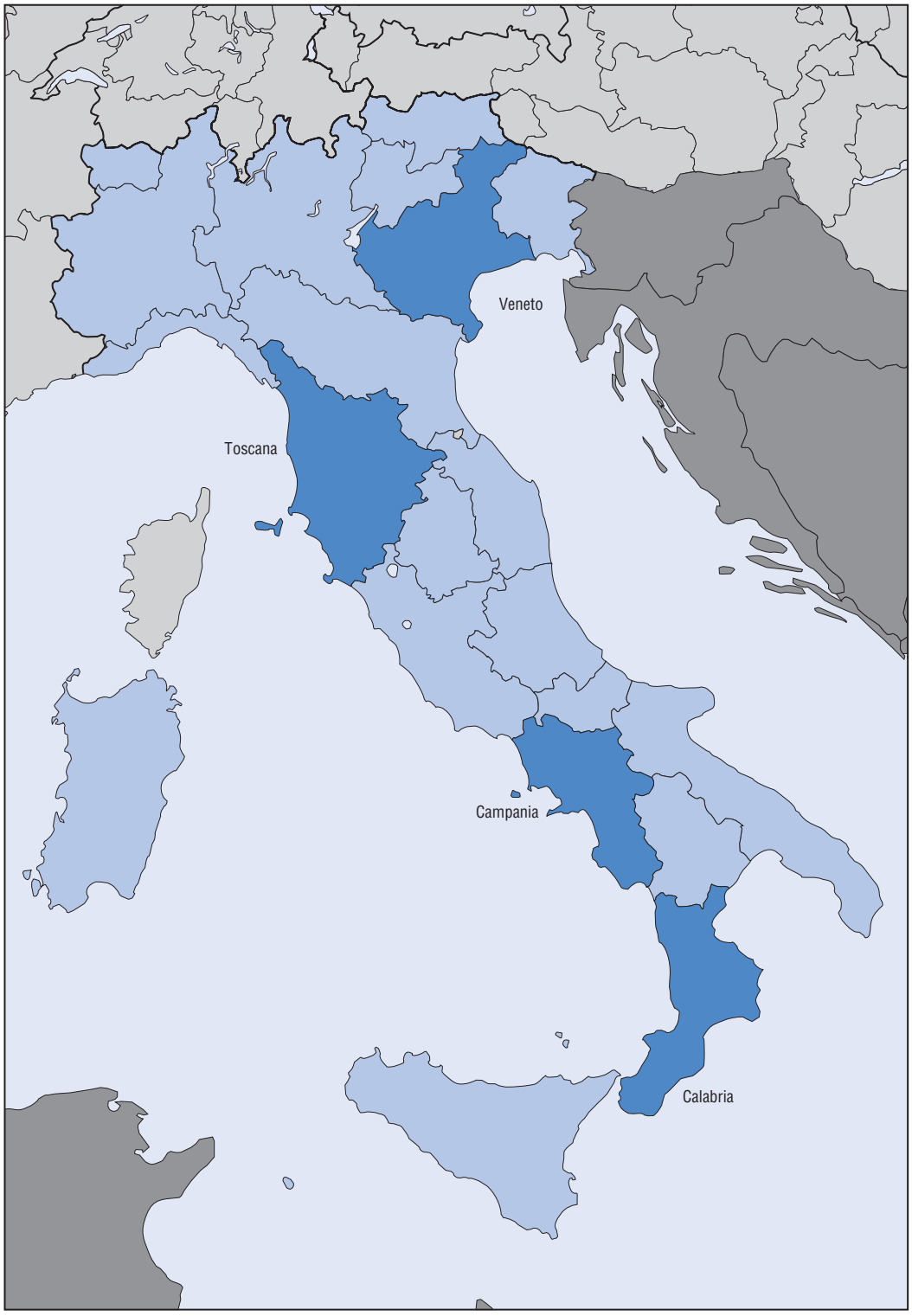


Source: OECD (2007), *OECD Regions at a Glance*, Paris and OECD (2005), *OECD in Figures*, Paris.

This dualistic structure represents the heart of the challenges of public governance in Italy, to frame national policy objectives while respecting the diversity of the country and offering better opportunities to all citizens. The following sections of this chapter refer to the capacities to produce high quality regulation and the use of regulatory tools in four Italian regions: Veneto, Calabria, Campania and Tuscany. The framework for analysis is derived from the OECD reviews of regulatory reform, in terms of government capacity to ensure high quality regulation. These reviews have been conducted for 23 countries to date, including Italy at the national level. This framework provides elements for comparability with an outline for the study but has been adapted to reflect the specific scope of regulatory powers devolved to the regions in Italy.

One of the key issues in Italy is also to ensure regulatory quality and improve competition in the delivery of services at the local level. For these reasons, for each region, the research has been complemented by the analysis of a particular economic sector. Retail trade was selected by Veneto and Calabria and regional passenger transport by Campania. The sectoral analysis aims at giving evidence on the economic impact of regulatory frameworks in a specific sector as an illustration of broader challenges.

Figure II.4. **Map of Italy: geographical distribution of the regions of the study**



The regions are displayed on the map above. Campania and Calabria are close to each other in the south of the peninsula, while Veneto is close to Switzerland, Austria and Slovenia in the North. Tuscany is located in the middle of the country.

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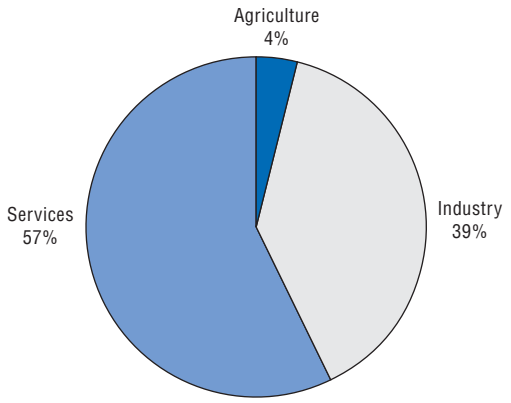
PART II

Chapter 1

Veneto

Veneto is one of wealthiest and most industrialised regions in the North of Italy. Veneto is sub-divided into seven provinces: Belluno, Padua, Treviso, Rovigo, Venice, Verona and Vicenza. With more than 4.6 million inhabitants, Veneto's population accounts for 8% of the national population and its size is close to that of some smaller European countries. The region covers 18 391 km^2, and its population density is 254 inhabitants per km^2.

Figure 1.1. **Employment in Veneto, 2003**



Source: OECD (2007), *OECD Regions at a Glance*, Paris.

Making use of regulatory tools

Regulatory transparency

Transparency of procedures: making new regulations

Democratic participation as the underlying principle of the regulatory function is expressly confirmed in the Statute of Veneto.[1] In this connection, the public, local authorities, and social, economic, and professional organisations are entitled to be informed and to participate in regulatory activities.

Legislative powers are incumbent on the Council [*Consiglio*] that works with the President of the Region and with the Regional Executive [*Giunta*] to define policy orientations, and has the ability to propose draft laws to the national parliament.[2] While holding the power of legislative and regulatory initiative,[3] the Giunta enacts resolutions of the Council and regional laws and regulations, engages in administrative activity, prepares the budget, and rules on contracting.[4] Based on the new arrangement established under the 1999 constitutional reform, regulatory powers are likely to be transferred to the Giunta when the statutory reform will be completed.[5] This reform is still pending (adaptation of the Statute to the constitutional reform has been completed in Tuscany, Emilia Romagna, Calabria, Latium, Marche, Piedmont, Apulia, Umbria, Abruzzo, and Liguria).[6]

The procedure for drafting new laws and regulations (defined by the Statute) begins with the submission to the Presidency of the Regional Council of draft laws and regulations by the Giunta, councillors, Provincial Councils, and Councils of the communes of provincial

seats from at least 5 communal councils or 5 000 electors. Drafts are assigned to one of the seven council commissions with due competence, and at the end of the assessment process, they are included on the Regional Council's agenda for discussion and final approval. The Council holds public meetings three times a year (or when called at the initiative of the President, the Chair of the Giunta, or one fourth of the councillors) and deliberates with a combined procedure that includes phases of proposal, examination in committee, and approval by the Council, for each individual article, and on a final basis. The Chair of the Giunta is subsequently responsible for publishing the text in the official gazette of the region within five days after promulgation, and it will enter into force on the 15th day after publication,[7] unless the text is approved for the short procedure.

All draft laws (independently of initiatives) are generally supported by a *report* that illustrates the content and purposes, and by an *economic and financial analysis* sheet (which can be prepared by the proposing directorate and by the Budget Directorate of the Giunta). This sheet is limited to information on the instrument being adopted. It does not include an assessment of alternatives, and the impact assessment is limited to the regulatory administration, without considering the addressees of the laws and regulations. It therefore cannot be considered a regulatory impact analysis.

Draft laws submitted by the regional Giunta are also appended with an advice on legislative legitimacy by the Legislative Affairs Directorate under the General Secretariat of Programming of the Giunta (that generally provides the bodies and units involved with assistance and counsel in the preparation of draft laws, regulations, circulars, and administrative measures, as well as counsel activities).

Draft laws at the initiative of other parties include a *technical and legislative analysis* that consists of a control of internal legislative references, referrals to the Constitution, and a monitoring schedule for administrative decentralisation and consistency with constitutional regulations for the distribution of legislative authority, prepared at the request of the Council commissions of the Legislative Assistance Directorate, the General Secretariat of the Council (which provides assistance and counsel to the bodies and units of the Council and to its individual members). Draft laws also include an information section containing legislative references, providing an opportunity for an initial control on observance of drafting rules by the Legislative Assistance Directorate.

In regulatory proposals, however, the focus is only on the preparation of the informational section.

Transparency as dialogue: public consultation

Participation of the public and local units of government in legislative regulation functions is allowed in the initiative phase, through the presentation of draft laws and regulations, and in the hearing phase, through consultations.[8]

Consultations of the Communes and Provinces are obligatory in discussions of drafts involving local units of government, and occur through the appropriate body, the Regional Conference-Local Autonomies instituted under Regional Law No. 20 of 1997. Consultation of third parties is not obligatory and is subject to different procedures in the Council and the Regional Giunta, where there are no clear indications concerning the activation phase, completion modalities, or the use of results.

Specifically, in the Council, citizens and associations may submit comments on draft laws to the competent commission (and "adequate mention" must be included in the report to the Council). Hearings must be held when requested by one fourth of the members of the Commission. More generally, for instruments subject to discussion, the Commissions will directly consult citizens or associations.[9] During the seventh legislature, there were 5 479 hearings, consultations, and meetings with public agencies and social parties.[10] In the framework of the Giunta, consultations are not obligatory nor are they subject to any specific rules. A number of methods are used, ranging from informal consultations, notices and comments, committees, and other official dialogue events with representatives of interest organisations and technical round tables provided under some regulations.

Transparency in the implementation: communication

Veneto uses all available instruments to ensure effective public reporting of regional operations, the official gazette, on the websites of the Giunta and Council, Offices for Relations with the Public, and the annual report on regional legislation (*Rapporto annuale sulla legislazione regionale*).

The regional official gazette is used to publish texts from legislative and regulatory sources within five days after promulgation by the Chair of the Giunta.[11] The official gazette is also easily accessed at the regional Giunta's website (*www.regione.veneto.it*), which is also used to publish draft laws and circulars (from 2000), regulations (from 2000), decisions of the Giunta and Council, announcements of competitive and contracting procedures, and decisions and orders. The Regional Council website (*www.consiglioveneto.it*) is used to publish laws, draft laws, and decisions of the Council. In addition, through initiatives particularly advantageous to users, these websites provide public access to historical texts of laws and regulations, as well as current ones (this initiative is still in the project stages in other regions such as Campania). These websites are highly transparent and user-friendly, and provide a high level of transparency, although overlapping of content might be avoided with more effective information.

Offices for Relations with the Public, as regulated in State Law No. 150 of 2000, have been operating in Veneto since 1988, based in the seven provincial seats. The Offices for Relations with the Public are now units of central structures that play a strategic role – not only in public information (through a newsletter that is available on line), but also by providing access to regional services and by verifying satisfaction with the services they provide.

Since 2002, the Council (through the Regional Legislative Assistance Directorate) has prepared an annual report on regional legislation that includes quantitative data on legislative activity since 1970. The report is published at the Council's website (while an update for the first year of the eighth legislature, in progress, is available on CD-ROM), at the website of the Conference of Presidents of the Assembly of Regional and Autonomous Provinces Councils (*www.parlamentiregionali.it*) and is distributed to the offices of the Council and Regional Giunta, and to the Presidents and Chairs of the Councils and Giunte of other regions and autonomous provinces. The Legislative Affairs Directorate submits, to the Regional Giunta, an annual report on its activity during the prior year, including, *inter alia*, quantitative data on the legislative texts examined, opinions issued, and appeals to the Constitutional Court.

The content of instruments subject to communication, in connection with formal drafting operations, also receives special attention. The rules and suggestions for drafting regulatory texts ("*Regole e suggerimenti per la redazione dei testi normativi*") are particularly helpful in this connection. These Rules are published at *www.consiglio.regione.toscana.it/leggi-e-banche-dati/Oli/Manuale/drafting.asp*. They were prepared in 1992 and updated in 2002 by the Interregional Legislative Observatory (which encompasses all regional legislative offices, with permanent offices in the Regional Council of Tuscany). This technical legislative manual (comprising sections dedicated to legislative language, drafting of texts, structure of instruments, references, and amendments) was adopted by the Office of the Presidency of the Regional Council of Veneto in 2002, and has served as a base for training Council staff (in two 16-hour components) and is systematically applied by the Legislative Office of the Council and the Legislative Affairs Directorate of the Giunta. Nevertheless, the sector legislation offers numerous examples of inadequate formal drafting. For example, despite the broad incidence of the 2004 trade rules on urban planning, numerous references were made to the Urban Planning Law of 1985, that had been abrogated by the new Law No. 11 on Urban Planning of 2004 (*e.g.*, the reference in Article 16 to parking facility standards) and to other texts no longer in force (such as Article 26, which refers to a regional law abrogated by the new urban planning law in the area of operations to rehabilitate buildings having features of artistic, historical, and environmental interest).[12] The same Law No. 11 of 2004 of the Region of Veneto, in the area of urban planning, contains lengthy, confusing rules with continual references to other vague, unqualified rules and concepts in the customary introductory definitions. There is no shortage of examples of substantial inadequate drafting (see the section on appeals for further discussion).

Compliance, enforcement and appeals

Inspections

The regions and local authorities exercise control of implementation and compliance with legislative and administrative regulations. Specifically, each regional unit has representative offices to verify and control activities in their respective areas of competence, while, for sensitive environments or in areas of substantial public financial intervention, these functions are assigned to the appropriate regional offices responsible for audit functions. For example, regional companies are subject to oversight by the Regional Directorates, audit and corporate investment activities (responsible for management, oversight, and assessment of regional investments in stock companies and control of operations co-financed by structural funds), while health agencies and units operating in the public health sector are controlled by the Regional Directorate, audit and supervision of the public health sector.

Dispute mechanisms

Non-judicial remedies against regional regulatory measures include administrative appeals, the Regional Ombudsman, and arbitration and conciliation procedures. This approach involves alternative, rather than substitutive, mechanisms in respect of judicial appeals (Article 113 of the Constitution) characterised by cost and time advantages.

Administrative appeals enable the parties involved to request the adoption of a new decision on the contested case from the administrative authority institutionally superior to the one that took the contested decision, or to petition the President of the Republic for cancellation of the contested ruling. These hierarchical appeals have lost importance with

the lifting of the finality requirement for acts to be eligible for appeals to administrative justice. In the case of Veneto, this loss of importance is also due to the decline in regional laws that provide such instruments, while special recourse to the President of the Republic continues to be used as the time frames for such recourse (120 days) are longer than those provided for appeals to the regional administrative court (60 days).

The *Regional Ombudsman* provides free support to citizens, even in cases where no judicial oversight exists (in the absence of legitimate interests or rights); although his or her decisions are not binding on general government, (the only penalty provided consists of disciplinary responsibility for persons who impede the Ombudsman's activities). Efficacy therefore depends strictly on the acknowledgement and acceptance of the instrument by the public and general government, where communication problems of primary importance have been observed. The Ombudsman intervenes *ex officio* or on the request of the parties – citizens, enterprises, or associations, through the appropriate electronic mailbox, using the complaint scheme or requests for intervention submitted at the website. During the past five years, 22 500 of such petitions were filed, of which, among those under the authority of the Ombudsman, about 80% were accepted.

The office of the Ombudsman was originally instituted at the regional and autonomous province levels (the first example dates back to 1974 in Tuscany), and was subsequently extended to the provinces and communes under State Law No. 142 of 1990 on Reform of Local Autonomy. The institution of the Ombudsman of Veneto, though provided under Regional Law No. 28 of 1988, did not become operational until 1994. Five provincial ombudsmen and 50 communal ones were also instituted. The Ombudsman of Veneto has five examining staff, including three attorneys, and works in the offices of the Council. The independence of the Regional Ombudsman is ensured by the appointment mechanism (the Ombudsman is appointed by the Regional Council for five years, from among citizens having sound legal and administrative professional experience. The appointment can be revoked only in the event of serious violations of the law or proved incompetence) and the operational mechanism (the Ombudsman operates without any form of organisational or functional control). The Ombudsman submits an annual report on his or her activities to the Council (published in the regional official gazette and forwarded to the Presidents of both chambers of the Italian parliament), and can request a hearing. Accordingly, the Ombudsman has two different instruments to bring proposals to the Council's attention, in terms of the quality of the general regulations, with relative efficacy, in light of experience with the discussion of only two annual reports in meetings.

Appeals

Constitutional Court. Veneto is concerned in terms of judicial review by the Constitutional Court in the area of health, public works, and tourism. During the seventh legislature, only 10 laws of Veneto were challenged, leading to decisions favourable to the Region in nine cases.[13] In August 2006, Veneto filed appeals against measures in respect of commercial distribution under the Bersani Law for alleged violation of regional autonomy.

Against the regulations, general administrative measures, and specialised measures, interested parties may, however, file appeals with administrative justice (first with the Regional Administrative Court, and with the Council of State for appeals) to cancel instruments found to have legitimacy flaws, and for compensation of any damages deriving therefrom. Challenges may only be filed by those with an interest in personal, current, and direct claims – circumstances normally not present in connection with

Box 1.1. **Some examples of Alternative Dispute Resolution**

The National Consumer and Environment Association (Adiconsum) has implemented conciliation agreements with a number of service operators in the telephone sector (for example, through protocol agreements with telecom operator Wind, and with the Telecom group, and the "satisfaction or reimbursement" agreement signed in 2006 with other associations and Telecom involving regulation of services not requested and billed), 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), Poste italiane S.p.A., and a number of banks.

Chambers of commerce (public institutions normally with competence at the provincial level) may promote the establishment of arbitration and conciliation commissions to resolve disputes between enterprises, consumers, and users (for example, arbitration and conciliation procedures with the Chamber of Commerce of Belluno, Rovigo and Venice, Arbitration Chambers of Venice, Padua, and Vicenza, and WebCuria On Line Dispute Resolution of Treviso (making it possible to conduct a full conciliation proceeding on line).

general regulations, which may therefore be challenged along with measures considered to have adverse effects. Even though the administrative judge may not have autonomous power to re-examine the legislation, he can bring a question of constitutionality before the Constitutional Court.

The effectiveness of judicial protection is affected by the adjudicatory backlog that, along with organisational inadequacy (in Italy there are 450 working administrative magistrates, as compared with 1 000 in France and approximately 2 500 in Germany), contribute to the increase in proceeding times: while the Constitutional Court adopts decisions in approximately one and one half years, the regional administrative courts require an average of about three and one half years (although short procedure decisions require only three months in cases that are manifestly founded or unfounded, non-receivable, inadmissible, or lapsed) and the civil courts require approximately 10-12 years.

An analysis of the administrative caseload of Veneto shows that, at end-2005, appeals pending before the regional administrative court (comprised of 15 judges and divided into three sections) in the area of trade, industry, and crafts amounted to approximately 2 000, some of which were more than 10 years old. A number of appeals relate closely to the presence of poor quality regulations. Where substantial drafting inadequacies are concerned, in the text governing commercial distribution adopted under Law of 13 August 2004, which did not become immediately operative, a period of 20 months is required for the issue of authorisations for medium-scale distribution in most communes of Veneto.[14] In fact, the text was drafted to presuppose, for full efficacy, adoption of a series of secondary standardisation acts (such as communal provisions defining criteria for the issue of authorisations for medium-scale sales structures) in turn contingent on the requirement for regional interventions adopted with the delays in the times provided (these communal criteria can in fact be adopted only after approval of the decision of the Giunta defining the density ratio between medium and large-scale sales structures and neighbourhood businesses, published on 15 March 2005). It has been subject to various disputes against the administration's denials of access authorisations. A further example

of inadequate legislative technique was the reference in Article 27 of the law on trade to the rules outlined in a programming act with the effect of blocking an instrument owing to its flexibility.[15]

These examples provide information that is useful to the regulatory authority, which may benefit more from experience of administrative judges, who in turn might devote a section of the report at the beginning of the legal year to pointing out critical areas in the regional legislation derived from the case load.

The use of Regulatory Impact Analysis at regional level

The regions currently have not provided general requirements for the drafting of *ex ante* and *ex post* analyses of regulatory interventions. In Veneto, Regulatory Impact Analysis (RIA) is not provided under the Statute or under a rule of law. To date there have been no plans for its systematic introduction,[16] nor has testing co-ordinated by FORMEZ (*Centro di Formazione Studi*) followed.[17] It might be more useful for the Council to prepare an information file based on an analysis of the application framework of the law (objective, planned activities, and problems to be solved), the framework of regional competence, the impact on other laws or sectors of solutions adopted in other regions, financial and economic repercussions on the region and other public and private parties, as well as the administrative and organisational impact and the systematic and carefully laid out analysis, which should in any case not be considered a substitute for the RIA, as it lacks fundamental elements, *i.e.*, identification and comparison of alternative options (including the zero option) and the quantification of advantages and disadvantages using economic analysis instruments. The impact analysis should also be extended to all general regulations with external implications (and not limited to laws).

Where ongoing analyses are concerned, the only instruments that are not systematic pertain to the *valuation clauses* that may be incorporated into certain legislation (for example, to verify the efficacy of innovative therapies) and the *reporting requirement* to the Regional Council on the status of activities provided in some laws (such as Law 11 of 2003 and Law 2 of 2004). Specifically, this involves a form of *ex post* assessment of the results of the regulations, that identifies the scope and size of the impact of the operation, the level of resource use, and the information required to improve future operations. With Decision 175 of 2003 of the Office of the President of the Regional Council, a specific discipline was adopted to activate monitoring of reporting activity and to draft a quarterly Council report to summarise by category the *instruments* received and the status in the Giunta and other regional bodies;[18] it now does not seem possible for a direct connection to be defined between the outcome of *ex post* assessment and initiatives to amend the legislation.

With reference strictly to expenditure laws, an observatory was also instituted with the First Council Commission, having the task of monitoring and verifying the direct and indirect impact and compliance with the established objectives (Regional Law 39 of 2001). This assessment is summarised in a monitoring sheet, that by law should provide information on the activities, role, and reactions of the various players (institutional and otherwise) involved in the implementation of the law, results obtained, and the effects induced on the parties targeted by the expenditure law in question.

Choice of policy instruments: regulations and alternatives

Owing to the absence of an obligatory RIA, the regional regulatory authorities are not required to consider alternative intervention instruments in respect of the formulation of the

proposed regulations. In this connection, the practice is for recourse to the law and regulations at the regional level (for example, when required to accommodate community rules) with preference for administrative instruments under the authority of the Giunta. Moreover, this approach is not derived from an assessment of different impacts of legislative regulations when compared with administrative ones, in terms of considerations involving adoption procedures, which in the former case seem to be highly differentiated and vulnerable to obstructionism (any Counselor may, for example, present an unlimited number of amendments), while instruments under the Giunta's authority are approved during closed sessions normally held on a weekly basis.

Keeping regulations up-to-date at regional and local levels

Updating and reviewing regulations

Despite an explicit policy commitment to reduce the quantity and improve the quality of the regulations,[19] instruments such as *single texts and recasting laws* (designed to abrogate laws or regulations no longer in force or applicable) do not constitute routine simplification methodologies, although they have been used many times (for example, the innovative single text in respect of tourism adopted under Law No. 3 of 2002 and Regional Law No. 33 of 2004 that abrogated 249 regional laws).[20]

The only systematic simplification efforts in this connection are *appendices to the finance law* (provided under Regional Law 39 of 2001), through which the Giunta can annually propose regulatory and procedural amendments and additions by uniform sector, and the express abrogation of incompatible earlier regulations (for example, Regional Law No. 41 of 2003 appended to the 2003 budget law in the area of prevention, health, social services, and social security, confirms the abrogation of two regional laws of 1991 and 1993). This also entails the use of an inappropriate reform instrument, in light of Decree No. 76 of 2000 that, among the principles to which the Regions are subject, prohibits orders and/or organisational rules in financial laws.[21] During the seventh legislature, 19 "appendices to financial laws" were approved.

Although lacking a policy on regulatory quality, regional experience would seem to be particularly advanced in terms of monitoring legislative output, carried out through an expanded report on the Status of legislation (*Rapporto sullo stato della legislazione*) prepared annually by the Legislative Office of the Council. According to this report, legislative output for 1970 (monitored for each individual legislature) entails 1 842 measures (which include 18 253 articles), of which 60 in the area of trade, exhibitions, and markets.[22] In 2004, in Veneto, 38 laws were adopted (35 in Umbria, 62 in Tuscany, 25 in Apulia, 40 in Piedmont, 38 in Molise, 30 in Le Marche, 41 in Lombardy, 34 in Liguria, 21 in Latium, 28 in Emilia Romagna, 16 in Campania, 36 in Calabria, 27 in Basilicata, and 51 in Abruzzo).[23] No regulations were adopted (as compared to two adopted in Umbria, 17 in Tuscany, 14 in Apulia, 16 in Piedmont, 2 in Molise, 13 in Le Marche, 10 in Lombardy, 2 in Liguria, 3 in Latium, 1 in Emilia Romagna, 7 in Campania, 2 in Calabria, 4 in Basilicata, and 3 in Abruzzo).[24] Further, 52 legal provisions of the Region of Veneto abrogated other laws or legal provisions in the region during the seventh legislature, coming to a total of 1 133 laws abrogated out of 1 842.[25] This shows that a number of abrogations were deferred to future times that were not always precisely determined, which may raise questions about the certainty of the law and the understandability of the laws and regulations in force. Moreover, while fewer laws were approved by the seventh legislature, these laws contained

more articles. This progress in quantitative monitoring could lead to suggestions to simplify and improve the quality of the regulations and to the introduction of a systematic approach for that purpose.[26]

Administrative simplification and electronic administration at regional and local levels

Veneto has not drafted any horizontal simplification rules (as in the case of the annual law on simplification adopted at the national level and by the Region of Campania). Accordingly, regulation proceedings form the context in which the choice is made between the various available options attributable to instruments identified at the national level under the rules of administrative procedure (there has been no substantial innovation at the regional level from this standpoint). For example, it is up to the various regional laws on the sector to introduce simplification instruments, such as tacit consent, start-up reporting (for openings and transfers of neighbourhood businesses), self certification, services conference (as provided for the issue of authorisations to major commercial distributors) and programme agreements (provided, for example, under Article 32 of Law No. 35 of 2001 in the area of programming, for organic, co-ordinated implementation of plans and projects requiring joint exercise of authority by regional governments and other units of general government).

Although not constituting a routine method of administrative action,[27] such instruments would appear to be sufficiently widespread, although they could be considered more effectively in the context of a regulatory impact assessment that quantifies their advantages and disadvantages to the targeted parties, general government, and the community. It would also be useful to combine different areas of authority for simplification in an appropriate office to handle such matters in general, and to complete the current phase in which each administrative unit attends to its own projects and initiatives.

Some simplification instruments are, however, introduced with national legislation requiring implementation and application of the rules in the regions, as in the case of one-stop shops. Specifically, the *one-stop shop for productive activities* was conceptualised under Legislative Decree No. 112 of 1998 and designed to operate at the communal level as a single contact for enterprises, using one procedure to cover all authorisations required for location, realisation, expansion, relocation, conversion, cessation, and reactivation of productive facilities (Regional Law No. 11 of 2001). In practice, the one stop shop model was based on a simplified interpretation limited to a front office for a number of public parties involved, maintaining their authority and responsibility (while back office activities remain separate).[28] The most serious limits, however, affect the implementation of one-stop shops for 57% of the communes in Veneto 2006. In the 581 communes, 331 one-stop shops were in fact established, while only 152, or 26.2%, of those instituted became operational.[29] The *Regional one-stop shop for internationalisation of enterprises* (*www.sprintveneto.it*), provided under Legislative Decree No. 143 of 1998 was instituted in 2003 in connection with an agreement with the Ministry of Economic Development. The one-stop shop represents a point of contact and information to provide assistance to small and medium-scale enterprises on how to access and use advertising and insurance instruments, as well as financing facilities available at the regional, national, community, and international levels. The one-stop shop, which is part of the advisory service for small and medium-scale enterprises, operates in Venice (in the offices of Unioncamere Veneto) and in Padua, affiliated with a network of provincial offices established with each chamber of commerce in the region.

In terms of the promotion and use of e-government mechanisms, Regional Law No. 54 of 1988 (Initiative to support computerisation of local units of government) launched the allocation of taxes to local units of government to purchase computer tools or to adapt existing computer systems, based on specific projects, combined with the free provision of software (for example, for management of territorial databases; State registers; civil accounting; financial accounting; economic; tax and personal wealth; public works accounting; management of building practices; management of trade licenses; and management of one-stop shops).[30] This initiative, which is still in progress, has made administrations more aware of the use of advanced technologies and has made it possible to create homogeneous information systems in the areas of competence of the local authorities. In 2002, the Regional Giunta also approved the Computer Services and Telematic Development Plan for the Region of Veneto (published at *www.regione.veneto.it/Temi+Istituzionali/e-government*) aimed at establishing a telematic infrastructure (Net-Sirv) designed to provide the hardware to underpin the development of all initiatives for e-government and telematic links between Veneto agencies and institutions.

The region's website offers clear pathways and a wealth of useful information content.

Sectoral analysis case study: Retail trade

Basic structure of the sector and its regulation in a multi-level context

The reform of the trade rules outlined in Legislative Decree No. 114 of 1998 entailed a profound innovation in the basic philosophy of sector regulation, traditionally reflecting structural programming and discretionary control of accesses to the markets, making it possible to protect existing operators, and establishing substantial obstacles to the development of innovative distribution mechanisms. Structural programming instruments (outlined in Law No. 426 of 1971, now abrogated) were comprised of issues of authorisations to engage in activities only to operators included on the register of active operators (classified by type of activity in reference to 14 classification sectors defined at the ministerial level), in compliance with the four-year communal plan (adopted subject to the opinion, on a non binding basis, of representatives from existing operators), that established maximum overall surface limits, for each individual market sector, to achieve a balance among distribution mechanisms.

Reform in the traditional system occurs when contrasts have been evident for some time between national protectionist rules and the community principles of freedom of establishment, unrestricted provision of services, and competition, that while not relating to community liberalisation efforts under the principle of subsidiarity,[31] have been brought forth repeatedly by the authority responsible for guaranteeing competition and the market based on its institution in 1990.[32]

The national reform of 1998 represented clear progress toward *liberalisation and simplification* of access through elimination of the register of active operators (now linked only to entry into the national enterprise register, based on the national system), merging of commercial classification tables into only two sectors (food and non-food), maintenance of professional requirements for operators only for the food sector; and abolition of the authorisation system to open, transfer, or expand neighbourhood businesses[33] (activities are reported with a simple notice to the Commune) and simplification of communal authorisations for medium[34] and large-scale sales structures based on tacit consent within 90 and 120 days, respectively (consumer organisations and trade employers

participate in the process, and examination in services conferences between regions, provinces, and communes is applied to large-scale operations). The data on the number of retail trade operations show a trend that began with the liberalisation of neighbourhood businesses, which increased from 713 726 in 2000 to 758 192 during the first half of 2005 (and from 49 643 to 51 005 in Veneto).[35] In Italy, small-scale distribution is clearly prevalent over medium and large-scale operations, with 47% of the sale area concentrated in categories up to 150 square metres.[36]

The new rules also introduce the principle of *free determination of public opening hours*, enabling operators to establish their own daily hours within the limits provided in the national legislation related to Sunday and holiday closings,[37] maximum daily opening limits of 13 hours (7:00-22:00) and any communal closure rules for midday during the week (the communes will enforce requirements and apply administrative fines and suspensions in more serious cases, revoke permits, or close the businesses, if required). Flexibility may ultimately be allowed under Regional Law No. 62 of 1999 that introduced waivers for communes identified as cities of art or prevalently tourist economies (the antitrust authority demonstrated that ultimately the acknowledgement of such powers to the communes may constitute a mechanism to introduce new ties to freedom of enterprise typical under the previous existing rules).[38]

Although programming requirements will remain in the new system, the instruments will be transformed (the Region adopted guidelines for the establishment of commercial activities and urban planning criteria for the commercial sector, implemented through communal trade plans and/or urban programming) and objectives (no longer aimed at imposing a specific supply structure, but only at preventing bankruptcy in the market). More generally, based on the national reform, structural market programming would be replaced with urban programming and commercial urban planning justified on the basis of the requirements to protect the general interests of preventing negative externalities such as traffic and parking problems, as well as protection of historical centres.[39]

These projections constitute essential references for the regional legislatures, even in the framework of new divisions of authority defined in the 2001 reform. Regional legislative authority in this connection coexists in fact with the exclusive authority of the State in the area of competition (and concurrently with it in connection with oversight of health, food, and territorial government).

Box 1.2. **Principles of comparative regulations**

In the absence of community guidelines to harmonise national legislation, EC countries are characterised by a differentiated approach to trade regulation. In **France**, for example, pervasive regulations have reduced from 1 000 square metres to 300 square metres the area above which administrative authorisation to open is required, and, for areas exceeding 6 000 square metres, requiring an impact study, *inter alia*, on existing activities and employment levels. Access control is limited to urban planning in **Germany** and the **United Kingdom**. In a number of different situations (such as the *United Kingdom, Germany, France*, and *Sweden*), town centre management is used to promote more attractive and upgraded urban areas, to improve overall supply, with the participation of the municipalities, economic players, and the local community.*

* L. Zanderighi, Town Centre Management, 2001, *www.economia.unimi.it/pubb/wp70.pdf*.

Changes in regional regulations

Regional application of the principles outlined in the 1998 reform have covered a number of different contexts and the use of programming as an instrument to reintroduce quantitative and qualitative limits to market access[40] that, as evidenced repeatedly by the authority responsible for overseeing competition,[41] curtail entrepreneurial activity and innovation, and in the long term, cause much greater damage than would be generated by growth and immediate flexibility, promoting collusion and co-operation among already established competitors.[42]

This resistance to the opening of new markets in Veneto has led to increased complexity of access regulation measures and structural programming of the markets through, for example, the increase from two to four market classification sectors (as occurred also in Friuli Venezia Giulia, for example), assignment to the Regional Giunta of the task of defining the maximum ratio between the density of medium and large-scale sales and neighbourhood businesses (such as in Latium, Sicily, and Campania), and the imposition of minimum distances between some types of businesses.

The reference guidelines are defined by Regional Law No. 15 of 2004, that substantially reproduces the model defined in Law No. 37 of 1999 (for example, it only introduces the categories of business parks and outlets, and provides more severe penalties for violation of hours and required closures). Establishment is based on public programming and access regulation that severely limits freedom of enterprise, particularly for large-scale distribution activity.

Specifically, commercial programming has been kept separate from urban programming and both contribute to the structural system of supply. For each *commercial programming* framework (super communal or provincial areas that can be classified as service areas and identified in the territorial plans for provincial co-ordination, historical centres, sparsely populated centres, and designated tourism areas), the Region in fact quantifies the development objectives for the food, combined, and non-food sectors (Article 7 [4], Law 15). This approach entails the possibility of introducing, through programming, a maximum quota system that can lead to a substantial restriction of new openings exceeding that quantification. Concurrently, Law No. 15, which identifies the areas where medium and large-scale distribution businesses and parks could be established (Articles 17 and 18, Law 15), ultimately allows *urban programming* to produce an effect of blocking access, for example, by providing no specifically designated Zone D for commercial purposes or identifying it only in zones that are already saturated. In addition, a subsequent form of programming is derived from the use of communal criteria to authorise medium-scale distribution mechanisms. This approach relies on structural market programming, as in the case of equilibrium among various forms of distribution, oversight of small and medium-scale commercial enterprises, and the density ratio between medium and large-scale sales operations and neighbourhood businesses not exceeding the guidelines established by the Regional Giunta (Article 14 [1], Law 15).

Access to the markets is subject to public control, which escapes the indications of regional programming only for neighbourhood businesses,[43] which are not subject to any location requirements save for compliance with urban programming, and are subject to a start-up declaration (which, based on the national rules, provide that they can only open 30 days after filing) filed with the commune in respect of openings, transfers, expansions, and substitutions.

Medium-scale sales structures[44] (opening, transfer, expansion, and change of market classification sectors) require authorisation from the commune (based on the tacit approval mechanism established 90 days from the filing of the request).[45] Against this backdrop, compliance with the criteria defined by the same commune is verified (subject to the obligatory but nonbonding opinion of the associations of the category of operators, consumers, and trade workers). Authorisation is issued contingent on verification of compliance with area limits, location only in areas provided by the general urban planning instrument (Article 17, Law 15) and possession of the appropriate building title.

Large-scale structures are those that exceed the limits provided for medium-scale operations but for which the regional law has also established a ceiling not identified in the national law.[46] Openings, transfers, expansions, and changes of classification sectors are regulated by communal authorisation,[47] subject to a binding and obligatory opinion of the services conference (*Conferenza di servizi*) indicating the location and sales area distributed by market classification sector. Participants include representatives of the commune, province, region, and on a consultative basis, representatives from neighbouring communes, confirmed consumer organisations, and organisations of most representative trade enterprises in the provincial framework. The authorisation is issued subject to compliance with rule on location in uniform type D territorial zones with specific commercial designations provided in the general urban planning instruments (or Type A zones subject to certain conditions); maximum limits of sales surface areas defined in the regional programming; possession of the appropriate building certificates, environmental impact assessment for structures exceeding 8 000 square metres in area, and impact on the road system.

The same access conditions are provided for *commercial parks* (aggregate figures for at least three fiscal years, for which the total sales area exceeds the maximum limit provided for medium-scale structures located in a unitary, homogeneous space, even if each has parking separate from public roadways). Establishment of new parks is subject to the identification of existing ones by the communes and the commensurate change in urban planning instruments by April 2006, freezing the issue of new commercial authorisations for medium and large-scale operations until this procedure is completed.[48] For parks, we move from the communes in favour of the regional level of control, intervention in connection with medium-scale groups, whenever there are at least three autonomous but close structures whose combined area exceeds the ceiling agreed for a medium-scale structure (in this connection, in communes where the population exceeds 10 000 it is not possible to activate three units totalling more than 2 500 square metres of sale area outside of special Zone D and subject to the regional quota).

Last, minimum distances are imposed on aggregations that cannot be classified as parks, not including neighbourhood businesses, exceeding the maximum size limits provided for medium-scale structures (400 m for similar aggregations) and for outlets[49] (minimum distance between them of 100 kilometres, and subject to the quota provided for large-scale structures). The minimum distance requirement and opening time limits may affect operability, especially where outlets are concerned, as they constitute one of the most modern forms of high end distribution to optimise presence on buoyant markets, eliminating discontinued items with substantial price reductions and the corresponding advantages to consumers.

Under the regional rules, a suitable trade observatory established in the offices of the regional units, possessing the relevant competence, is responsible for monitoring the status of programming activities (in collaboration with the communes, provinces, and chambers of commerce) and for verifying the scope and efficiency of the distribution system. The relevant consultative committee is comprised, *inter alia*, of representatives from consumer associations, labour confederations, and business organisations.

The impact of the regulatory framework

Effects of an externally imposed balance of distribution mechanisms. In Italy, growth ambitions in commercial distribution have been curtailed through legislative conditions that, until the 1998 reform, have protected small-scale businesses, an objective often pursued in a subsequent phase at the regional level.[50] Community institutions have also provided repeated evidence that both forms of distribution have their strengths and weaknesses: large business offers a wide selection of goods at attractive prices, while small ones are close to customers' homes and offer personalised service.[51]

Those who oppose large-scale distribution generally base their arguments on the presumed reduction of jobs expected to derive from liberalisation of access. Large-scale commercial distribution, in fact, from one standpoint contributes to overall growth in employment, while not leading to a reduction in the number of persons employed in retail distribution (which increased by 1% in Italy during the period 1996-2003).[52] While more widespread large-scale distribution has a negative impact on family run businesses, it also encourages more efficient organisation in small-scale distribution units (such as small business chains in connection with the same ownership, distribution co-operatives, and franchising), that can compete with large-scale distribution through economies of scale (the 5% reduction in small-scale business owners during the period 1996-2003 was in fact offset by the increase in workers employed in those companies); small-scale firms located near major distribution areas therefore benefited from positive externalities related to those business, such as the attraction of customers.

In general, the need to upgrade small-scale businesses does not necessarily call for structural interventions in connection with large-scale distribution, and should entail effective use of alternative instruments such as incentives to reclassify urban and peripheral areas (as provided at the national level by inter-ministerial committee for economic programming – CIPE to prevent commercial impoverishment of those areas)[53] or private financing mechanisms (such as those implemented in connection with Town Centre Management activities).

In the analysis of market trends, we also observe that administrative limits to increases in the number of medium and large-scale distribution operators and the preference for expansion of existing structures encourage the acquisition of small-scale businesses by modern distributors already present on the market, with the risk that they will establish or strengthen dominant positions at the local and national levels.[54] With specific reference to Veneto, the unjustified high costs of entry ultimately led to the selection of large-scale distributors, in which those that were already large or very large had the advantage.[55]

Reforms required as the result of the recent national liberalisation

Structural programming instruments for access to the markets are now in open and direct contrast with the recent national liberalisation defined in Article 3 of Law No. 248

of 2006 ("Bersani Law"), requiring regional regulators to eliminate provisions on inclusion in authorisation registers or possession of professional requirements other than those provided for the food sector; compliance with minimum distances between commercial activities; quantitative limits to the market classification mix offered in businesses other than the distinction between food and non-food sectors; and compliance with limits involving market shares predefined or calculated on the volume of sales at the subregional territorial level. The rules outlined in Law No. 248 are immediately binding for the Regions in spite of their existing legislation, expressly defined by themselves as rules aiming to protect competition. They reflect the exclusive legislative power of the State in the matter "protection of competition", according to Article 117 of the Constitution. Italy is not alone in recognising the importance of competition principles as a national or federal issue. This goes beyond the definition of powers of local communities.

This involves arrangements that do not require acceptance or specification at the regional level and that call for an immediate review of the existing regulations and structural programming provisions. Veneto's response to these measures was twofold, and in any case contradictory: on the one hand, appeals were filed with the Constitutional Court for presumed violation of regional authority in the area of trade; and on the other hand, a technical commission was established to review the rules aimed at enhancing the impact of the Bersani Law.[56]

Notes

1. Articles 5 and 35 of the Statute.
2. Article 8 of the Statute and Article 121 of the Constitution.
3. There are more laws on the initiative of such institutions than issued by the Council, respectively 98 and 72 under the seventh legislature. (Annual report on the regional legislation [Rapporto annuale sulla legislazione regionale], 2005, Section II, p. 28.)
4. Article 32, Statute.
5. The Constitutional Court (Ruling 313 of 2003) in fact clarified that Constitutional Law No. 1 of 1999 only eliminated the reserve applicable to the Council's regulatory powers, though without attempting their implicit transfer.
6. The Statute adopted in 1971 was only partially amended in the wake of the constitutional reforms of 1999 and 2001. During the sixth legislature, a revision process was undertaken that involved preparation of a draft that has now lapsed, while a commission was assigned the task of revising it during the seventh legislature.
7. Article 44, Statute.
8. Article 35 of the Statute acknowledges to the Provinces, Communes, regional management of unions and social, economic, and occupational organisations, a right to be heard on request by the Giunta and the Council Commissions. When the regulatory process has been completed, citizens may contribute to the total or partial abrogation of administrative measures and laws (not involving the budget or taxes) through the referendum instrument (Article 45 of the Statute) and may impede by referendum (when requested by 1/50 of the electors in the region) the promulgation of the Statute within three months after publication (Article 123 of the Constitution as amended in 1999).
9. Article 36 of the Statute and Article 15 quater of the Council Regulation of 1987. The rules on participation in general administrative acts are also provided in a number of sector laws (for example, consultation in the framework of commercial distribution programming), while participation in administrative acts having specific content now relates to the general rules of administrative procedure defined under State Law No. 241 of 1990 (which refer only to the national authorities).
10. Data from the Annual report of the board on regional legislation [Rapporto annuale del Consiglio della legislazione regionale], 2005, Section IV, p. 50.
11. Article 44, Statute.

12. In this connection, see the comments on the trade law for the region of Veneto [Commento alla legge sul commercio della regione Veneto], R. del Giudice and I. Cacciavillani, appended to the Corriere del Veneto, p. 71 et seq.

13. Data from the Annual Report of the Council on Regional Legislation [Rapporto annuale del Consiglio sulla legislazione regionale], 2005, Section II, p. 32.

14. Article 14 of the Law on Trade of 2004 provides that the communes shall approve criteria for the issue of authorisations to medium-scale structures within 180 days from the effective date of the balancing index defined at the regional level (published on 15 March 2005). At the end of this period (on 11 September 2005, *i.e.*, 13 months after the law entered into force) there were few complying communes, and the region was required to undertake the substitution procedure provided in Article 36 of Law No. 15. On 27 March 2006, the regional Giunta observed that 21% of all communes had made the relevant arrangements (DGR 1046).

15. See in this connection comments on the law on trade of the Region of Veneto [Commento alla legge sul commercio della regione Veneto], R. del Giudice and I. Cacciavillani, *op. cit.*, p. 143 et seq.

16. In the regions, the RIA is difficult to affirm, and is provided only in Tuscany, Emilia Romagna, Basilicata, and Piedmont.

17. Where testing involving an approved law (in 1987) is concerned, in the area of crafts and a draft law on price controls for essential goods, see publication at the Regional Council's website; for a detailed analysis, see also the report published in the Materiali Formez series on regional experiences in regulatory impact analysis [L'analisi di impatto della regolamentazione: le esperienze regionali]. Testing is also reflected in the project undertaken in 2001 by the Regional Council to assess regional policies, with a view to improving activities in support of decision making processes in the permanent council commissions (*www.consiglioveneto.it*, "Banche Dati" [databases], "Valutazione leggi e politiche regionali" [assessment of regional policies and laws]).

18. This form of reporting was implemented in the framework of the project on assessment of regional policies and laws ["Valutazione delle leggi e delle politiche regionali"] and continues in the current legislature (for references, see the Regional Council's website).

19. Based on the government programme of the eighth legislature 2005-10, the Region intends to establish instruments to avoid regulatory "inflation", through the drafting of clear, comprehensible regulatory texts formulated organically and therefore easily comprehensible, even by the parties targeted by the regulations, and by taking steps to reduce the number of laws in force, including through the drafting of single texts (…), or by abrogating laws that are no longer operable (p. 147).

20. Premise to the Annual Report of the Council on regional legislation, 2005.

21. Chamber of Deputies, Legislation Observatory, Report on the Status of legislation, 2004-05 [Rapporto 2004-05 sullo stato della legislazione], Section II, Trends and problems in regional legislation [Tendenze e problemi della legislazione regionale], p. 124.

22. Annual report of the Board on regional legislation, [Rapporto annuale del Consiglio sulla legislazione regionale] *op. cit.*, Section I, pp. 4 and 10.

23. Chamber of Deputies, Legislation Observatory, Rapporto 2004-05 sullo stato della legislazione, Section II, *op. cit.*, p. 112.

24. Between the constitutional reform of 1999 and the decision of the Constitutional Court of 2003, in reference, regulations from the executive increased in general, amounting to 101 in 2001, 107 in 2002, and 152 in 2003, to become virtually blocked in 2004 (Chamber of Deputies, Legislation Observatory, Rapporto 2004-05 sullo stato della legislazione, Section II, *op. cit.*, p. 116).

25. Annual report of the Board on regional legislation, *op. cit.*, Section IV, p. 56.

26. This assertion seemed to derive also from the most recent report, expressing the conviction that the provision of quantitative data on the legislative activity of the Regional Council may be proposed as an expression of a strategic choice of systems that may be open to future expansion and development to reflect shared experiences and contributions that the readers are certain to make.

27. The limit established in Article 53 of the Statute also remains, base on which, for assumptions where the there are no appropriate sector rules, silence on the part of the administration shall be considered equivalent to the rejection of the request, which is inconsistent with the provisions at the national level.

28. This simplified reading at the regional level is broadly attributable to that of the Constitutional Court (Decision 376 of 2002). See V. F. Bassanini, S. Paparo, and G. Tiberi, Competitiveness and regulations – impediment or resource? Methodology, techniques, and instruments for red-tape simplification and

quality of regulations [Competitività e regolazione: un intralcio o una risorsa? Metodologie, tecniche e strumenti per la semplificazione burocratica e la qualità della regolazione], in Development or decline, The role of institutions in the country's competitiveness [Sviluppo o declino. Il ruolo delle istituzioni per la competitività del Paese], L. Torchia, F. Bassanini and Florence Passigli (2005), p. 152 et. seq.

29. Data from Formez.

30. Establishment of the telematic one stop shop was initiated with the support of Formez during the period 2003-05, to allow citizens and enterprises to use telemetric mechanisms to submit start-up requests and all relevant documentation; to use telematics to receive authorisations, instruments, and digitally signed documents from the government, to use telematics to process all traffic transiting between the one stop shop and other agencies and administrations involved in the process; on-line consultation of the Status of operations; possibility of module uploads; and access to information on rules and procedures (*www.regione.veneto.it/Temi+Istituzionali/e-government/Progetti/SUAPED.htm*).

31. See Communication of 1991, "Verso un mercato unico della distribuzione" (Towards a single market for distribution) and the Green Paper on trade of 1996. The need strongly emerged to reduce the administrative burden for business.

32. Report to the President of the Council of Ministers of 1993 on regulation of trade distribution and competition ("Regolamentazione della distribuzione commerciale e concorrenza") evidencing the need for reform of the 1971 legislation, designation AS124 on the 1998 draft legislative decree, various designations on regional regulations (for example, AS165 and AS170 of 1999, both on regional measures to implement Legislative Decree 114/98 in the area of trade distribution ("Misure regionali attuative del Decreto Legislativo No. 114/98 in materia di distribuzione commercial").

33. Up to 150 square metres in communes having populations under 10 000 and 250 square metres in those having larger populations.

34. Up to 1 500 square metres in communes with populations under 10 000 and 2 500 square metres if greater.

35. Data collected from the National Trade Observatory established within the Ministry of Economic Development.

36. National retail co-operative association, report on trade federalism, competition, and liberalisation of the distribution market ["Federalismo commercial, concorrenza e liberalizzazione del mercato distributivo"], 2006, p. 94.

37. The EC Court of Justice (Decision 169 of 16 December 1992) ruled that the Sunday closure requirement did not constitute a restriction to free circulation of goods, as it primarily reflected a national cultural tradition (rather than an objective of limiting enterprise activity). In general, community jurisprudence has traditionally maintained that the modalities, including the hours, of commercial distribution should not constitute measures having effects equivalent to quantitative restrictions, such as those prohibited by the EC Treaty, when neutral in terms of the origin of goods distributed, and therefore are unlikely to impede the free circulation of goods. Recent guidelines from the Court of Justice also affirm the compatibility of State regulations on trade distribution with the principle of free circulation of goods, provided that they do not create distortions or adversely affect freely circulating products based on an examination of the specific case (Decision C-441/04 of 23 February 2006 and Ruling C-20/03 of 26 May 2005).

38. Autorità garante della concorrenza e del mercato (antitrust authority), 1997 Annual activity report.

39. Autorità garante della concorrenza e del mercato, Regulation on trade distribution and competition ("Regolamentazione della distribuzione commerciale e concorrenza"), 1993.

40. For a detailed analysis of all regional issues, see the report "Federalismo commerciale, concorrenza e liberalizzazione del mercato distributivo", 2006, *op. cit*.

41. Issuing its opinion in connection with a preliminary version of the Legislative Decree of 1998, the oversight authority evidenced the requirement for the regions to interpret the national provisions consistently with the objectives of liberalisation, for example, upgrading the role of small and medium-scale enterprises without introducing structural regulations for the market and limiting opening restrictions to medium and large-scale distribution only when they adversely affect specific general public interests.

42. Authority responsible for oversight of competition and the market, annual report on activities in 1999. The same considerations will be addressed by the annual report on activities in 2000 and 2001.

43. Article 7, Law 15 provides the following size limits: surface not exceeding 250 square metres in communes with population exceeding 10 000; and not exceeding 150 square metres in communes where the population is less than 10 000.

44. Article 7, Law 15 provides the following size limits: surface of 250 square metres to 2 500 square metres in communes having populations exceeding 10 000; surface of 150 square metres to 1 500 square metres in communes whose population is less than 10 000.

45. A start-up notice is provided only in cases of substitution of management or ownership (such as leasing, transfers, mergers, or splits).

46. Article 7, Law 15 provides the following size limits: area of 2 500 square metres to 15 000 square metres in communes where the population exceeds 10 000; and areas from 1 500 square metres to 15 000 square metres in communes where the population is less than 10 000. The maximum limit is 25 000 square metres for mergers of medium and large-scale structures in operation for at least three years.

47. A start-up notice is provided only in the cases of substitution in management or ownership (such as leasing, transfers, mergers, or splits).

48. Article 37 (3), Article 10 (6-8), Law 15, and for all variants, Article 48, Law 11. The paralysis effect now applies to almost half of the communes.

49. A form of sales for non-food products by producers limited to unsold items and surplus output at end of series.

50. Autorità Garante della Concorrenza e del Mercato (Antitrust Authority), Annual report on activities, 2004. The number of retail trade employees amounts to 172 074 (2003), with a population per commercial centre equal to 57 316 (2004).

51. The great challenge of trade in Europe is to gain strength to offer high quality at attractive prices, while remaining a large employer of labour (EC Commission, White Book on Trade, 1999).

52. E. Viviano (2005), *Entry regulations and labour market outcomes: Evidence from the Italian retail trade sector*.

53. Specifically, a 1997 State law assigned CIPE the task of defining strategic projects to be carried out with co-financing from an appropriate national fund and the regions; In Decision 100 of 1998, CIPE set the objective of reclassifying urban centres, peripheries, rural areas, and mountains, and the regional implementation plan (approved by the Giunta of the Region of Veneto with Deliberation No. 2328 of 2006) provides financing for neighbourhood businesses (for example, for lighting or establishment of new payment mechanisms) aimed to contrast with commercial impoverishment, to increase employment in these areas, and to stimulate activation of "natural commercial centres" (predominantly established by neighbourhood businesses and characterised by unitary management to engage in promotional activities).

54. For example, in 2000, the French group Carrefour acquired controlling interest in Gruppo GS S.p.A., which is active in Italy through a broad network of sales outlets of different sizes (EC Commission, Decision of 6 April 2000) and the German group Rewe strengthened its position in Italy through the acquisition of approximately 100 supermarkets and the sale of hypermarkets owned by Standa (EC Commission, Decision of 8 February 2001).

55. B. Barel, Federalism in Veneto: more European or less Europe? (Federalismo Veneto: più Europea o meno Europa?), in Comments on the trade laws in the Region of Veneto (Commento alla legge sul commercio della regione Veneto), *op. cit.*, p. 14.

56. During this preliminary phase, the commission intends to conduct a fact finding study on the status of medium and large-scale commercial distribution in the region; to interview the main regional, State, and European operators in accordance with their requirements and future scenarios; and to monitor the real status and techniques of regulation in neighbouring regions.

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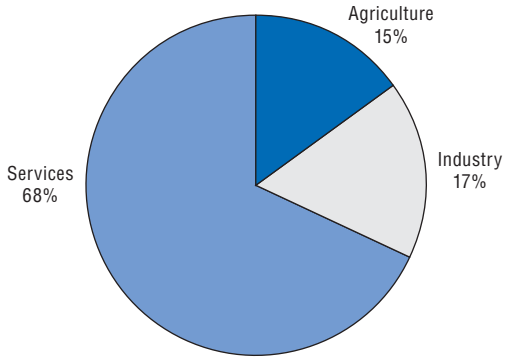
PART II

Chapter 2

Calabria

Calabria occupies the territory of the narrow peninsula extending into the heart of the Mediterranean in the south of Italy. Divided into five provinces, Cosenza, Crotone, Catanzaro, Vibo Valentia and Reggio di Calabria, the region covers 15 080 km^2 and has a population of more than 2 million inhabitants. The population density is 163 inhabitants per km^2, representing 0.69% of the national average, *i.e.*, 193 people per km^2.

Figure 2.1. **Employment by sector in Calabria, 2003**



Source: OECD (2007), *OECD Regions at a Glance*, Paris.

Making use of regulatory tools

Regulatory transparency

Transparency of procedures: making new regulations

Legislative power is exercised by the Regional Council (based in Reggio Calabria), which also sets policy orientations and may propose laws and regulations to the national Parliament.[1] Regional laws may be proposed by the Regional Executive (*Giunta*) and by all members of the Regional Council.[2] They may also be proposed by the Communal Councils of provincial capitals, by at least three Communal Councils having a combined population greater than 10 000, by at least 5 000 voters of the Region[3] or by the recently established Council of Local Autonomies (*Consiglio delle Autonomie locali*). Proposed laws are examined by the competent Commission and presented to the Regional Council for approval and are promulgated by the President of the Giunta within ten days and published in the Official Gazette within ten days, entering into force fifteen days after publication unless a different time period is specified by law.[4]

The Giunta, based in Catanzaro, is the regional executive body. In addition to having the power of legislative initiative, it participates in formulating and implementing regional policies, prepares and manages the budget, implements the regional economic and social development plan, supervises companies owned or co-owned by the region, sets the objectives of regional offices and monitors the results achieved.[5] Since 2001, on the basis of a single interpretation applying nationwide of the new provision introduced by

Constitutional Law No. 1/99 into Article 121 of the Constitution, regional regulations, traditionally issued by the Regional Council, have been adopted by the Giunta through legislative delegation of power. Some 37 regulations have thus far been published, including those approved by the Bureau of the President of the Regional Council. The new Statute of 2004 has divided powers between the two institutions, following up the reform of Article 121 of the Constitution, which lays down that the Council shall adopt regulations implementing Community laws and regulations or concerning exclusive legislation delegated by the State (at the initiative of individual Council members or of the Giunta) and that the Giunta shall be responsible for executive regulations, implementing and integrating regulations, delegated regulations and regulations on the organisation of the regional administration according to the general provisions and principles laid down by regional law.[6] In 2004, two regulations were approved and seven were adopted by the Giunta after the entry into force of the new Statute. All regulations are then promulgated by the President of the Giunta within ten days and published in the Official Gazette within ten days, entering into force fifteen days after publication. The regulatory framework also includes "disguised regulations", *i.e.*, general provisions that are formally of an administrative nature, but which have an external legislative value (see, for example, the various orders to the Giunta contained in the two annexes to the financial measures of 2005, No. 8 and No. 13). These measures – variously known as guidelines, policy decisions, plans or agreements – adopted by bodies belonging to the executive, can save a great deal of time but also can fail to provide the necessary guarantees since they are not governed by the general rules of procedure and do not have to be published.[7] There is reason to be wary of these alternative kinds of regulation, and guarantees might be provided by ensuring adequate provisions for their publication.

As is also the case in other regions such as Veneto, in Calabria the technical bodies responsible for the quality of regulations in the Giunta and the Council use different procedures; this is probably due to the difficulties of co-operation caused by the fact that these bodies are based in different cities (Catanzaro and Reggio Calabria). The laws proposed by the Giunta, which are drafted by the department competent in each field, are accompanied by a descriptive report and a technical-financial report prepared by the regional body competent in the field if they entail budgetary expenditures and must be endorsed by the General Director of the Budget Department before being approved by the Giunta. Draft laws and regulations are also subject to the technical/legal opinion of the Legislative Unit of the Giunta on the basis of criteria defined by the Manual "Rules and Suggestions for the Drafting of Regulatory Texts" prepared by the Inter-Regional Legislative Monitoring Unit. Once draft laws have been approved by the Executive, they are forwarded to the President of the Regional Council, who refers them to the competent commission of the Council.

The activities in support of the regulation process suffer not only from the fact that they are non-mandatory and non-binding, but also from the lack of staff and information-gathering structures in this unit. Recently, the regional administration has proposed rationalising the Legislative Unit's responsibilities by assigning "Legislative Affairs" to the "Secretariat of the Regional Giunta" and by assigning presidential decrees to the "General Affairs" Unit of the Department of the Presidency. This arrangement was dictated by a reorganisation of the regional structure that led to the establishment of a new General Secretariat Department to which the Legislative Affairs Unit has been assigned. The Department in fact has responsibility for all of the acts of the Giunta, including draft

deliberations on draft laws introduced at the initiative of the Giunta. As regards the acts of the President, as was said above, these remain the responsibility of the General Affairs Unit of the Department of the Presidency, which has been asked to monitor presidential decrees that are not of a legislative nature. A specific service for administrative innovation has been assigned to the Regional Giunta, but it is not yet operational pending the assignment of staff.

The proposed laws of the Council are formally drafted by the Regional Council's Legislative Office and are accompanied by a descriptive report and a technical-financial report when they provide for expenditures from the regional budget. Within the Regional Council, there is a special Committee for the Quality and Feasibility of Laws established by the new Statute as a support structure for the Council's Commissions.[8] This committee is composed of five members of the Regional Council and a technical unit of eight external consultants and gives an opinion at the request "of at least one-third of the members of the Commissions".[9] Last year, this non-mandatory and non-binding opinion was given for a single "provision-law" ("*legge-provvedimento*"), which was later incorporated into a budget bill. The Committee produced two Reports on the Quality of Leglislation, the first of which concerns the period extending from the first legislature of 1971 to the seventh legislature of April 2005 and the second of which covers 2005. The reports – which it is hoped will be disseminated outside the administration – are very well organised and well argued and provide interesting ideas and suggestions for improving the quality of regulatory processes.

Transparency as dialogue: public consultation

Article 4 of the Statute confirms the participation of "individuals, social and political organisations and all components of the Calabrian Community" in "the life of regional institutions", although the procedures and criteria for consultation with representative bodies have still not been established through an appropriate regional law. Even if there is no specific rule of law, the Council Commissions frequently consult with relevant groups either at the request of Council members or of the concerned parties. Realising that public participation cannot be promoted without effective communication, the Regional Council has reviewed its organisational model and established the Communications Department, which together with the Internet website, the Office for the Relations with the Public (URP), the Office for Relations with Institutional Users (URUI) and the Call Centre, enables citizens to have easy access to information and documentation on legislative sessions before the fifth legislature. The fact that consultations are not mandatory, are conducted informally, and are not based on a predefined model[10] sometimes leads to a lack of participation. A consultative referendum has not yet been used in the Region, but there have been popular legislative initiatives.[11] Two laws have in fact been introduced through popular initiatives: Regional Law No. 20/03 deriving from "Popular Draft Law No. 134/01" for the "Establishment of a Regional Agency for the Stable Employment of 'LSU/LPU' workers (socially useful and community service workers) and long-term unemployed"; and Regional Law No. 21/04 deriving from "Popular Draft Law No. 427" for the "Establishment of quality rural and agro-food districts – Establishment of the quality agro-food district of Sibari".

The *Region-Local Autonomies Conference* (established by Regional Law No. 34 of 2002) is theoretically convened at least once every three months or whenever requested by at least one-fifth of its members, three Presidents of Provinces or three mayors of provincial capitals (within a period of twenty days). The Conference expresses a mandatory opinion on finance acts, budget acts and budget adjustment acts; on the organisation and rules governing the functions of local governments; on the organisation of local governments;

and on planning acts. The Regional Giunta may also ask the Conference for an opinion on proposals or initiatives regarding the performance of management and monitoring functions. In practice, however, the Conference remains a marginal instrument given that it has thus far only been convened twice. The Conference mechanism is intended to be replaced by the Council of Local Autonomies (as provided for by the Constitution and the Regional Statute, and the law establishing this Council is currently in the process of being approved), which will – unlike the Conference – have the power of legislative initiative.[12]

Transparency in the implementation: communication

The Statute allows the publication of all acts of the regional administration and regional bodies and agencies.[13] The following are published on the Region's website (*www.regione.calabria.it*, which provides links to the website *www.abramo.it/service/abramo/leggi/lex_indi.htm*): laws since 1971 and regulations since 2002; the laws of other Italian Regions (through links to the website of the Chamber of Deputies, *www.camera.mac.ancitel.it/lrec/*), national laws (through links to the website of the Chamber of Deputies, *www.parlamento.it/leggi/home.htm*), the Official Gazette of the Region since 2002 (which publishes laws, regulations, the Statute, acts of the President of the Giunta, decisions of the Council and of the Giunta, circulars, announcements of competitive examinations, and rulings and orders of the Constitutional Court relevant to the Region).[14] The following are also published on the Region's website: calls for bids, notifications of expropriation procedures, announcements of competitive examinations (for the current year) and the agendas of the Regional Giunta's meetings, listing all measures approved at meetings since 1998.

The Regional Council has its own website (*www.consiglioregionale.calabria.it*) that publishes not only regional laws (both in the original text and the version currently in force), but also regulations, the Official Gazette of the Region, draft laws and provisions introduced at the initiative of the Council, with information on the progress of the initiative and the possibility of requesting information on-line regarding its status; the Council's decisions (since 2001), questions, motions, appointments of representatives of the Region in regional and sub-regional bodies and minutes of meetings. The Regional Council's website enables citizens to express their opinions on a measure and to propose legislative initiatives (in a completely informal way).[15]

Both websites seem to be well organised, even though they do not always enable users to locate all the reference regulations in a specific field, for example regarding the Regional Giunta's Deliberations No. 57/2001, No. 307/2000 and No. 238/2000, which are fundamental in the field of commercial distribution. Aware of these limitations and in order to improve transparency, the Council's Computer Unit, through the complex integrated management of the flows of documents generated by all Council structures directly concerned by the legislative process, has developed a procedure that has been presented at COMPA (the European Exhibition of Public Communication and Services to Citizen and Business) and at the advanced training seminar of the Conference of Presidents of Regional Councils. Some of the advantages of this procedure are that it is possible to generate automatically the text currently in force; to visualise all amendments made to the text; to identify any financial coverage, the targets of the measure, any action required by the Giunta – and whether or not it has been taken – and any evaluation clauses and whether or not these evaluation requirements have been met.

The rules governing the *Office for the Relations with the Public of the Region* were laid down by Giunta's Deliberation No. 300 of 3 May 2004, even though it has been established since 2002 (*www.regione.calabria.it/urp*). The Office ensures and facilitates access to information and the use of services for citizens, directs users to the offices that can provide information on specific questions, enables citizens to express their views about the quality of the services provided and handles complaint procedures. The public has responded positively as is shown by the 67 000 000 contacts during the period of January-September 2006, as compared with 14 000 000 in the same period of the previous year. In addition, the same regional offices say that they will be able to expand the number of users further by providing more accurate and detailed information on the status of administrative procedures.

The *Office for the Relations with the Public of the Regional Council* (*www.consiglioregionale.calabria.it/URP/CONTATTI.ASP*), based in Reggio Calabria, has only been operational since March of 2004. It is responsible for the following: relations with citizens, groups and other government bodies and the related information activities aimed at making known the Regional Council's institutional activity, and also liaises with the offices of the Giunta; the Council's initiatives of a cultural and social nature as well as initiatives targeting a specific category of the public; and relations with social organisations and opinion and cultural movements. This office's effectiveness could be improved by enabling users to have a right of access to the acts of the Council.

The Regional Council also has a special *Office for Relations with Institutional Users* (*www.consiglioregionale.calabria.it/URP/urui.asp*), which is responsible for the following: relations with Parliament, the central government, the Regional Giunta, the other Regions, Provinces and Communes; liaison with local bodies to facilitate the preparation of legislative initiatives; reception of comments from local authorities on the effectiveness of the Council's legislative action and comments on the status of implementation of the system of delegation of powers. The Office is also studying the creation of a network of relations with Communes aimed at facilitating citizens' access to information of interest to them.

Last, the role of the newly established Communications Department of the Regional Council is being strengthened (as has already been discussed in the preceding paragraph).

With respect to the contents of acts to be communicated, various examples have come to light in which the drafting needs to be improved, both in term of their form (an example is the failed express repeal of regional regulations on opening times in commercial distribution prior to the passage of Legislative Decree No. 114/1998 and Regional Law No. 17/1999) and in terms of their substance. To give an example of the latter, some laws cannot be implemented due to the lack of implementing regulations and/or administrative acts, as in the case of the urban planning law of 2003, the law on the delegation of administrative functions in areas of the maritime domain No. 17 of 2005 or the framework law on social services.

Compliance, enforcement and appeals

Dispute mechanisms

The *Regional Ombudsman*, a function established by Regional Law No. 4 of 1985 and was referred to in the Statute of 2004, has never been appointed by the Regional Council; some twenty years later, however, a draft law reforming this institution was introduced (No. 120 of 15 June 2006). With regard to the institution of ombudsmen at the local level, such as the one operating in the Province of Reggio Calabria, on which the Region has no specific data, it is hoped that there will be greater co-ordination between the Region and local bodies.[16]

Other alternative dispute resolution instruments are provided by associations for the protection for consumers and users, such as the conciliation board set up by the regional consumer protection association Adiconsum with the telephony operator Telecom Italia S.p.A., which handled 32 cases in 2005, a number which at least doubled in 2006.

Appeals

Constitutional Court. As established by the amendment of Article 126 of the Constitution, the government could appeal the Constitutional Court about a regional law that exceeds the regional competence. In this way, even if the reform does not foresee a preventive constitutional control, the government monitors the regional legislation in order to challenge regional laws before the Constitutional Court. Between 2002 and 2006, the Constitutional Court ruled four times on cases brought against laws of the Calabria Region (in the fields of hospital employment, the interim functioning (*prorogation*) of regional bodies, pollution prevention and phytosanitary products). During this period, the Region brought two cases against the Prime Minister's Office asking the court to rule on the constitutionality of national laws (in the fields of the environment and landscape), which are still pending. The Constitutional Court even handed down a ruling on the new Statute of 2004 concerning the labour relation of regional managers, the rules governing the Region's financial autonomy, the mechanisms for electing the President of the Giunta and Vice-President and for their subsequent designation by the Regional Council (which was the only element found unconstitutional).

Regional Administrative Tribunal. As in all the Regions, administrative disputes primarily concern urban planning, public works, staff, health care and social services. In the field of commercial distribution, the number of administrative disputes is not enormous, given that since 1998 (when the new regional rules entered into force) 219 complaints have been filed, of which 76 have resulted in decisions (18 favourable and 29 unfavourable), the remainder being set aside for procedural reasons (as being either inadmissible or lapsed); however, it does not seem that these data can be interpreted unambiguously, as they could either be the outcome of clear and adequate sectoral regulation or be a sign of a distribution system that is not particularly advanced. Of these disputes, 157 concerned small businesses, 41 large retailers, while 21 concerned all businesses horizontally (such as the case challenging the regional guidelines for the preparation of regulating plans). The aspects that most often gave rise to disputes involved authorisations granted to large retailers (for example, authorisations for activities subject to a quota system in specific areas are challenged by competitors) and opening hours (in various cases large retailers contested the refusal to allow Sunday openings in communes that do not attract large numbers of tourists).

The use of Regulatory Impact Analysis at regional levels

The Region does not provide for a systematic use of *ex ante* and *ex post* analysis. However, the region is currently taking steps in this direction by developing a training programme in the framework of a joint project of the *Department of Public Administration* (*Dipartimento della Funzione Pubblica*, DFP) and FORMEZ (*Centro di Formazione Studi*) that has involved civil servants and senior officials of the Giunta which will be followed up by an experimental on-the-job activity devoted to techniques of Regulatory Impact Analysis (RIA).

On the other hand, there is a well-established practice of using budget laws (which accounted for approximately 20% of all legislation in the seven legislatures and 61% in 2005) and "provision-laws" (roughly 25% in the legislatures and 11% in 2005)[17] instead of sectoral reform laws; these preferences that are explained by "organisational" reasons since sectoral legislation increases technical and political difficulties at a time when it is necessary to promote legislation that concerns matters of greater complexity and broader scope, and by "consensual" reasons since sectoral legislation affects various group interests that are not always easily incorporated into legislative texts.[18]

In line with the general trend in Regions, the Calabria Region does not have forms of successive evaluation of the results of regulation, such as evaluation clauses that require the authorities responsible for implementation to provide the regulatory authorities with the information necessary for them to know the actual implementation times and procedures and evaluate the impact on the groups targeted. However, an analysis of the output of regional legislation does show that some laws contain reporting requirements, even though they only account for 4% of the total laws and regulations approved since 1971 and still in force. The limitation of such laws is that the reporting requirement that they contain leaves those responsible great freedom with regard to implementation methods and times. As a result, the use of genuine evaluation clauses would be advisable.

However, one approach characteristic of the laws and regulations produced in Calabria is what is known as participatory legislation, which refers to provisions for the establishment of commissions, observatories, consultations and committees. This is a widespread method (used for 10% of the legislation in force) that, although it does not compensate for the lack of consultation, given that the aim and composition of the bodies and the time frame and purpose of the provisions are sometimes vague,[19] nevertheless does show that the regional administration is making an effort in this direction.

Keeping regulations up-to-date at regional and local levels

Updating and reviewing regulations

Article 156 of Regional Law No. 34 of 2002 laid down detailed provisions regarding the regulatory reorganisation instrument constituted by Consolidated Texts, just as the Statute of 2004 also introduced the instrument enabling the Council to mandate the Giunta to prepare single texts for adoption by the Council.[20] However, this instrument has not been used, leaving it to several laws to repeal other legislative provisions, such as Article 37*bis* of Regional Finance Law No. 14 of 2000, which repealed 26 laws in fields ranging from appropriations for agriculture to measures promoting young people's access to work.

Annexes to finance laws are sometimes used improperly to reform sectoral regulations (as in the case of Article 29 of Law No. 1 of 2006 on large-scale commercial distribution) or to intervene in fields that are the responsibility of administrative bodies (as in the case of the law that defines in the field of commerce the conditions for the management of the ROP, *i.e.*, the Regional Operational Programme approved within the Community Support Framework)

The Region complains about the lack of a system of annual monitoring of legislative output providing quantitative and qualitative data,[21] even though it manages to produce and send in a timely fashion the information required for drafting the Report on the Status of Legislation adopted at the national level. Furthermore, it is advisable to limit the widespread use of implicit repeals (clauses such as "all previous previsions that are

incompatible shall be repealed") and repeals of articles or portions of articles (as in the case of Article 7 of Law No. 2/2005 in the health field that repeals articles no longer in force since 2004)[22] and to increase the use of final, closing legislation (which defines the interim regime and the regime of repeals) in order to overcome the difficulties sometimes encountered in identifying the legislation in force, which is currently estimated at 778 of the 950 laws adopted since 1971. According to the regional databank, this includes laws that have expired or that have been rendered ineffective through amendment or repeal.

However, this situation is primarily the result of long-standing staff shortages and the inability to hire the additional professionals who, in addition to performing the day-to-day work of legislative Commissions and investigations, could also carry out the more advanced tasks of substantive drafting and impact assessment.

Efforts to continue with the review of regulations are currently underway. The Council, and in particular the Committee for the Quality and Feasibility of Laws has put forward two law proposals on "Simplifying the regional legal system". The first one would consist on abrogating legislation between 1971 and 1985 (first, second and third legislatures). The second one would envisage the abrogation of regional legislation between 1985 and 2000 (fourth, fifth and sixth legislatures). These proposals are based on a review of legislation that is old or limited over time and whose efficiency does no longer correspond to the current regional economic and social needs. The review also tends to eliminate the use of implicit repeal, which had contributed to arbitrary interpretations of legal texts. The approval of these laws would imply the abrogation of 217 regional laws, being 35% of the 774 laws currently in force (see Table 2.1).

Table 2.1. **Overall results of the two simplification laws**

Legislature	Total of laws	Laws currently in force	Laws to be abrogated	% of the total laws in force
1	80	52	40	77
2	136	103	54	52
3	133	97	32	33
4	180	142	44	31
5	128	114	25	22
6	117	108	21	29
Total	**774**	**616**	**216**	**35**

Source: Committee for the Quality and Feasibility of Laws, Calabria Region, 2007.

Administrative simplification and electronic administration at regional and local levels

In 2001, the Region adopted a law on administrative procedure based on the principles defined at the national level by Law No. 241 of 1990 that, like the latter, does not apply to procedures aimed at the adoption of general regulations (legislative, general administrative, planning and programming acts) or tax procedures, which are governed by their own specific legislation.[23] Although they have not yet been adopted, the regional law provides for the adoption of a series of regulations for the simplification of procedures in order to reduce the number of steps and administrations involved, completion times and the procedures that are most costly for government and citizens.[24] Regulations defining cases where tacit approval is allowed are also provided for, but have not yet been adopted.

As is often the case in various regions of Southern Italy, in Calabria 318 *one-stop shops for production activities* have been established in 77.8% of the Region's 409 communes, of which 123 are operational (*i.e.*, in 30.1% of all communes).[25] These one-stop shops sometimes complain of a low level of computerisation, although it is not much below the Italian average.[26] However, this limits the possibility of addressing a single government office, with resulting negative effects for those concerned, as often occurs for instance in the commercial distribution sector, where instead of a single authorisation to exercise activities it is still necessary to obtain authorisations in the fields of health, public safety, safety of facilities, construction and urban planning as well as a commercial authorisation.

Since 2000, the Region has launched initiatives to promote the information society, in most cases funded through ROP Calabria 2000-06, which complement the initiatives taken to implement the National E-government Plan.[27] Since 2005, the information society is the responsibility of the budget unit of the Giunta's Department for the Economy. In the same year, by a decision of the Giunta, the Regional Council for the Information Society was established (as provided for by the ROP mentioned above), in which the main local public and private stakeholders participate and which is aimed at promoting the development of the information society. With regard to the use of information technologies in Calabria, the Istat survey updated in 2005 shows that the percentages regarding the availability of personal computers are relatively high (44.4% of households, compared to an average of 45% for Southern Italy), although only one out of three households is connected to Internet and only 5.1% use broadband connections. In firms with at least ten employees, 89.76% of operators in Calabria are connected to the Internet (a uniform percentage throughout Italy), but only 45.2% use broadband connections (which is two percentage points lower than the average for Southern Italy and ten points lower than the national average).[28]

Sectoral analysis case study: Retail trade

Trends of regional legislation

Regional provisions governing commercial distribution are based on a series of legislative acts (Regional Law No. 17 of 1999, "Regional directives on commerce from a fixed place of business";[29] Regional Law No. 5 of 1985, "Regional directives on the opening hours of retail stores", amended by Law No. 9 of 1986; Regional Law No. 34 of 2002, "Reorganisation of regional and local administrative functions") and administrative measures (Regional Council's Deliberation No. 57 of 2001 and Deliberation No. 409 of 2000, "Guidelines and criteria for the planning of medium-sized and large sales facilities"; Regional Giunta's Deliberation No. 307/2000, "Rules for the establishment and functioning of multipurpose centres"; Regional Giunta's Deliberation No. 546 of 2001 and Deliberation No. 220 del 2002, "Opening hours in communes with a predominantly tourism-based economy and art cities"). However, these provisions of various kinds have sometimes been superimposed in a disorganised way, as is the case for the classification of the different types of sales facilities and the rules on opening hours. It would therefore be advisable to use them more appropriately so as not to make the framework of reference legislation even more confused, as happened, for example, with regard to the conditions laid down for the recognition of incentives by the Operational Programmes presented by Calabria for the recognition of Structural Funds, which often became a later source of reference outside the framework laid down by Regional Law No. 17 and the implementing deliberations.

The sectoral legislation that derives from the sources mentioned above is based on planning (commercial and urban) and regulation of market access, which contribute to a structural regulation of supply.

Commercial planning is defined at the regional and communal levels. The Region sets the maximum number of *large sales facilities* (even if they are located in shopping centres) for each commercial area (the boundaries of which are generally set on the basis of whether the facilities can be reached in an average time of no more than 15 minutes), with the objective of defining in regulatory terms the "balanced distribution of the different types of sales facilities throughout the area".[30] This structural planning is adopted at four-year intervals and is currently defined by Regional Council's Deliberation No. 409/2000, which is automatically extended until new provisions are determined by the Council. However, this quota system is a source of disputes among competitors, even though there have only been 8 such cases since 2001, 4 of which have been accepted and 4 rejected. In fact, the limitation of this type of planning is that when an authorisation is granted to one business, others may lose the possibility of gaining access to a specific geographical market for their products for a period of at least four years.

The rigidity found in this type of zoning has been partially overcome through provisions included in an annex to a finance law. In particular, the regional legislation has allowed communes with a population over 50 000 (Cosenza, Crotone, Lamezia Terme, Catanzaro, Reggio Calabria) to grant administrative authorisations for larger-sized large sales facilities in the food and non-food sector,[31] with the possibility of increasing the planned surface area available by up to 20%. However, broader consultation with stakeholders would probably have made it possible to increase further the benefits of this measure.

In compliance with the norms set at the regional level, the communes adopt plans or provisions that define the planning criteria for granting authorisations with regard to the opening hours, changes of location and augmentation of the surface area of *medium-sized sales facilities*[32] so as to ensure "the balanced development of the various types of distribution"[33] (consequently, these instruments can result in structural regulation of the market). These provisions, some 120 of which appear to have been adopted within the regional programme, were not formulated opportunely by various communes, and in 2002 Region implemented substitute powers and appointed *ad acta commissioners* (appeals against this action are still pending).

Next, the communes proceed to classify the 17 supra-communal planning areas within the Region (defined by Regional Council's Deliberation No. 409) "as subject to priority, secondary or residual intervention for the food and non-food sector in relation to the respective criteria for planning the development of medium-sized sales facilities over the four-year period". This classification is as follows (see Table 2.3).

However, this division of the territory into commercial areas, which is aimed at defining locations at the administrative level, has not always been able to determine the location of stores, which have in fact been established near the major commercial centres. Similarly, the defining of development objectives in terms of product sectors has sometimes proved to be a substantial obstacle preventing new openings that exceed the allowed limits.

Urban planning determines the areas intended for commercial development.[34] Primarily in the case of large sales facilities subject to numerical quotas for each commercial area, this urban planning can contribute to creating an effect of blocking

Table 2.2. **Number of large sales facilities in Calabria**

Supra-communal area	Large food or mixed retailers G1/A and G2/A		Large non-food retailers G1/B and G2/B 2	
	First year	Following three years	First year	Following three years
1. Praia a Mare	0	1	0	0
2. Castrovillari	0	1	0	0
3. Trebisacce	0	0	0	0
4. Diamante	0	1	0	0
5. Corigliano Calabro	1	1	0	1
6. Paola	0	1	1	0
7. Cosenza	0	0	1	2
8. Crotone 8a. San Giovanni in Fiore 8b. Taverna	0	1	0	1
9. Amantea	0	0	0	0
10. Lamezia Terme	1	0	0	1
11. Catanzaro	0	0	0	
12. Vibo Valentia 12a. Ricadi 12b. Serra San Bruno	0	1	0	1
13. Soverato	0	0	0	0
14. Gioia Tauro 14a. Taurianova	1	0	0	1
15. Locri	1	0	0	1
16. Reggio Calabria	1	1	0	1
17. Melito di Porto Salvo	0	0	0	0

1. This reflects the commercial planning at regional level currently defined by regional Council's deliberation No. 409/2000.

Table 2.3. **Classification of supra-communal planning areas**

Supra-communal areas	Food	Non-food
1. Praia a Mare	Residual	Residual
2. Castrovillari	Residual	Secondary
3. Castrovillari	Secondary	Secondary
4. Diamante	Residual	Residual
5. Corigliano Calabro	Secondary	Residual
6. Paola	Secondary	Residual
7. Cosenza	Primary	Primary
8. Crotone 8a. San Giovanni in Fiore 8b. Taverna	Secondary	Secondary
9. Amantea	Residual	Secondary
10. Lamezia Terme	Residua	Residual
11. Catanzaro	Secondary	Secondary
12. Vibo Valentia 12a. Ricadi 12b. Serra San Bruno	Primary	Primary
13. Soverato	Residual	Secondary
14. Gioia Tauro 14a. Taurianova	Secondary	Primary
15. Locri	Secondary	Secondary
16. Reggio Calabria	Primary	Primary
17. Melito di Porto Salvo	Secondary	Residual

access, which could be avoided for example by providing for several areas specifically devoted to commercial activities, being careful not to locate them in areas that are not already saturated, as has been done in the Veneto Region.

Market access is subject to public control, with only *neighbourhood stores*[35] being exempt from the strictures of regional planning, as they are only required to file a declaration when they open for business, transfer, expand or change ownership (under national legislation, this only requires a period of thirty days after the declaration is filed). Communes may suspend or block the opening of neighbourhood stores for a maximum period of two years in urban areas experiencing problems of safeguarding the traditional commercial network and developing commercial and urban activity. These problems are identified by the communes themselves on the basis of the following considerations: the existence of urban areas unsuitable for commercial development due to constraints or limitations specified in legislative provisions; the implementation of communal programmes for developing the commercial network aimed at creating infrastructure and services able to meet consumers' needs; and the need to protect specific areas located in historic city centres or buildings of historical, archaeological or environmental interest.[36] These provisions make it possible to block access to liberalised markets, and it would be useful to monitor their use so as to have more accurate knowledge of the actual density of the distribution network.

Multipurpose centres may be developed in communes with a population under 3 000 and in mountain areas in order to revitalise centres with low demographic density. These centres, no more than two of which may be developed in a single commune, may allow the sale of food products within a maximum surface area of 150 m^2 and other activities such as the sale of newspapers and State monopoly goods, a post office counter and other administrative services. These sales entities may be recognised by the communes as being exempt from constraints on opening hours and Sunday and holiday closing requirements and from local and regional taxes.[37]

Medium-sized sales facilities are defined by regional legislation (in compliance with national legislation) as businesses having a maximum surface area of 2 500 m^2 in communes with a population above 10 000 and no greater than 1 500 m^2 in communes with a smaller population. By Regional Council's Deliberation No. 409, this classification was later subdivided as follows:

- smaller medium-sized sales facilities, *i.e.*, stores with a sales area ranging between 251 and 900 m^2 in Class I communes (population above 50 000) and Class II communes (population between 10 000 and 50 000) and between 151 and 600 m^2 in Class III (population between 3 000 and 10 000) and Class IV communes (population of 3 000 and less);
- larger medium-sized commercial facilities, comprising stores with a surface area between 901 and 2 500 m^2 in Class I and II communes and between 601 m^2 and 1 500 m^2 in Class III and IV communes.

This regulation, aimed at ensuring location on the basis of size, does not appear to be in line with national provisions and leaves regulatory gaps; for example, stores with an area of 2 400 m^2 in Class III communes, which national legislation considers to be medium-sized, are not classified either as medium-sized or large sales facilities under regional regulations.

Authorisations to medium-sized facilities (to open, move or expand) are issued by the reference commune using the tacit approval mechanism[38] on the basis of regional planning policies and criteria[39] and communal criteria.

Administrative authorisation to open, move or expand medium-sized and large sales facilities may also be granted by communes after prior verification of compliance with *territorial, landscape and urban planning* instruments. However, the possession of a *building licence* is not a sufficient condition for obtaining a commercial authorisation for medium-sized and large sales facilities, as applications must include a simple attestation issued by the competent communal offices showing that the areas and premises indicated comply with urban planning norms, or a substitute declaration to that effect; the building licence must be obtained within 60 days, but no mechanisms for monitoring this are specified.[40] This is a typical case in which it would seem more appropriate to have a provision linking issuance to the application for commercial authorisation, as is done for example in the Veneto Region.

Large sales facilities are those that exceed the limits specified for medium-sized facilities; in this regard, regional legislation has introduced a maximum limit of 18 000 m^2, which is not specified at the national level,[41] and has subdivided this category into the following further types on the basis of the demographic size of communes:

- "smaller-sized" large facilities, *i.e.*, stores with a surface area between 2 501 and 6 000 m^2 in Class I and II communes and between 1 501 and 4 500 m^2 in Class III and IV communes;
- "larger-sized" large facilities, comprising stores with a surface area greater than 6 000 m^2 in Class I and II communes and greater than 4 500 m^2 in Class III and IV communes.

Last, large sales facilities may only open in or move into communes whose demographic size is compatible with the size classification and product category of the store or commercial centre as indicated in the following table (with the sole exception of large sales facilities located near a motorway exit-entrance or other high-speed roadway).

Table 2.4. **Sales facilities and demographic classification of commune**

Demographic classification of commune	Incompatible facilities
Communes with a population above 50 000	None
Communes with a population between 10 000 and 50 000	Larger-sized large sales facilities – food and non-food
Communes with a population between 3 000 and 10 000	Larger-sized large sales facilities /food and non-food Larger-sized large facilities/non-food and smaller-sized large facilities/food and non-food
Communes with a population under 3 000	Large sales facilities of any kind

These provisions are expressly aimed at determining through regulation the appropriate user area for the various sales facilities, resulting in a structural regulation of markets aimed at defining in legislative terms "the balanced development of the various types of distribution".[42] The issuing of authorisations is the responsibility of communes, after obtaining the opinion of the Services Conference (in which representatives of the region, provinces and communes participate). The Conference, which is convened by the commune in which the store intends to operate, applies the constraints mentioned above according to the following method: a positive opinion for the opening of a smaller-sized large sales facility uses up one "point" in terms of availability in the sector concerned, as does the enlargement of a smaller-sized large facility into a larger-sized one; a positive opinion for the opening of a larger-sized large facility uses up two points in terms of availability in the sector concerned if it is built as an isolated structure, but only one point

if it will be part of shopping centre; a positive opinion for the transformation of a large facility selling food or mixed goods into a non-food facility uses up one point in terms of availability in the non-food sector.[43]

However, regional regulation was partly responsible for an effect of blocking access over a two-year period from June 1999 (publication of Regional Law No. 17) to March 2000 (publication of Deliberation No. 409). In fact, the latter specified that "new applications for the opening of large sales facilities may be filed 60 days after the entry into force of the present provision",[44] although Article 6, Para. 2, of Deliberation No. 409/2000 correctly specified that applications filed prior to January 1998 were to be given priority. Last, regional law specifies that the establishment of a *shopping centre* (*i.e.*, a medium-sized or large sales facility incorporating several stores in a dedicated facility with common infrastructure and service areas managed as a unit)[45] through an operation of concentration or consolidation not only requires that an authorisation be granted for the centre, but also for each retail store located within it.[46]

Opening hours

New national legislation has introduced the principle of the free determination of opening hours within the limitations regarding Sunday and holiday closings, the maximum of 13 daily opening hours (between 7 a.m. and 10 p.m.) and any communal provisions on a midweek half-day closing. There are exemptions from these provisions for art cities and cities with a predominantly tourism-based economy,[47] which in Calabria concern virtually all communes. Regional legislation allows communes to introduce further exceptions to constraints on opening hours or Sunday and holiday closing for the purpose of "revitalising and developing the sales network in the outlying administrative areas of the commune and in other areas with a population under 3 000 and in mountainous areas".[48] In this case, it would be advisable to verify the consistency between the legislation of 1985-86 and this Regional Law No. 17, which refers exclusively to Legislative Decree No. 114/1998.

Impact of regional regulations on the various forms of distribution

Data on the number of retail stores confirm the overall trend of quantitative growth initiated by the liberalisation of neighbourhood stores. In the Calabria Region, which has a population of approximately 2 009 000 (as compared to approximately 4 699 000 in the Veneto Region), the number of retail businesses rose from 29 888 in 2000 to 33 803 in the first quarter of 2005.[49] With regard to large-scale distribution, currently 11 authorisations have been granted for stores with a surface area between 10 000 and 18 000 m^2 and 19 for stores with a maximum area of 10 000 m^2 (but no data are available on the actual activities initiated). Regional offices give a positive assessment of the structural impact of the opening of medium-sized and large sales facilities; in fact, although these led to an immediate reduction in the number of neighbourhood stores, in a later phase, the opening of these stores has led to qualitative and quantitative improvement in the entire existing distribution network; the exceptions are neighbourhood stores in the food sector, which have on the whole decreased or become gourmet food shops or neighbourhood supermarkets. However, there is currently no system for monitoring businesses, nor is there a mechanism to ensure a constant flow of information between communes and the Region in this field.[50] To ensure greater effectiveness of the many responsibilities and functions assigned by the Region to other territorial levels – communes and provinces – there would have to be greater co-ordination between these various levels of governance

with respect to effective monitoring of businesses. That said, the Region already has bodies that are able to ensure both co-ordination and monitoring or that will soon become operational. We are referring to the Regional Observatory for Commerce, provided for by Legislative Decree No. 114 and formally established by Regional Law No. 17 of 1999,[51] to the *Regional Consumers' Conference*, composed of representatives of the Region, provinces and several communes and consumers' and users' associations, which among its various tasks is responsible for expressing an opinion on planning and proposed laws of concern to consumers and users; and to the *Observatory for Prices and Productive Activities*, which, in addition to examining price trends, is also responsible for preparing a quarterly report on the trend of the economy in various sectors, including commerce, and which was formally established by Regional Regulation No. 4 of 2005.

In conclusion, the rules governing commercial distribution can be described as a series of interventions (legislative and administrative) that have taken place over time, and if they had been adopted in the framework of a more consistent plan they would certainly have been more effective. The result is a complex and sometimes relatively muddled regulatory framework that must be made more transparent in order to facilitate the free exercise of activities such as those in question. The legislative framework also has some problematic aspects from a substantive viewpoint, since it ultimately imposes a series of constraints upon operators that are not justified by the public interest and that fuller compliance with the recent liberalisation introduced at the national level by Article 3 of Law No. 248 of 2006 would have avoided. The Region's response seems to be an awareness of the limitations and a desire to overcome them. In fact, it is currently studying the adoption of an innovative single text that would govern all productive activities, going beyond the current provisions for commerce, industry and craft trades and also bringing them in line with the national provisions referred to above. These developments are exemplified concretely by the meetings that the Productive Activities Council (*Assessorato alle attività produttive*) and the competent department have already held in December 2006 with the business associations *Confcommercio* and *Confesercenti* in order to prepare an organised, strategic plan in the field of commercial distribution. At present, the discussions are focused on the agreement to prepare a legislative and planning programme for the sector aimed at eliminating the inefficiencies and delays that have been observed thus far.

Notes

1. Article 16 of the Statute and Article 121 of the Constitution.
2. Some 139 laws were proposed at the initiative of the Giunta during the sixth and seventh legislatures (47.44% of the total number of laws approved), accounting for 66.6% of the legislative initiatives in 2005, while 135 laws were proposed by Council members (46.07%) (Committee for the Quality and Feasibility of Legislation, *Primo rapporto sulla qualità della legislazione calabrese* [First Report on the Quality of Calabrian Legislation], 2005, p. 26, and *Secondo rapporto sulla qualità della legislazione calabrese* [Second Report on the Quality of Calabrian Legislation], 2006, p. 14).
3. Democratic participation as the inspiring principle of the regulatory function is expressly confirmed by the new Statute of 2004 (Article 2, Para. 2, Letter *m*), Statute.
4. Articles 39 to 41, Statute.
5. Article 39 and 36, Statute.
6. Article 43, Statute.
7. Committee for the Quality and Feasibility of Legislation, First Report on the Quality of Calabrian Legislation, 2005, p. 25, and Second Report on the Quality of Calabrian Legislation, *op. cit.*, p. 10.

8. Article 26, Statute.
9. Article 36, Internal regulation of the Council.
10. Solely for bills introduced by popular initiative, the internal regulation specifies that there be a hearing of the first three signatories, while for bills introduced at the initiative of local governments there is a hearing of five members of the Communal and Provincial Councils making the proposal.
11. Both instruments are provided for by Article 12 of the Statute.
12. Articles 39 and 43, Statute.
13. Articles 5 and 9, Statute.
14. The Gazette is not only on sale to the public, but is also distributed free of charge to a range of regional, national and Community institutions listed in Article 56, Law No. 19 of 2001.
15. The procedure "I would like to express an opinion" not only enables individuals and groups to express their views on draft general regulations by clicking a button visible in the appropriate section of the website (*www.consiglioregionale.calabria.it/URP/parere_vis.asp*), but also to contact via e-mail the individuals sponsoring the draft, the members of the commission responsible for examining its merits or for giving an opinion and the secretaries of these commissions. It is also possible to propose legislation by sending a draft of a law. The procedure asks the user to choose a subject area so as to identify the officials most directly concerned, to whom the proposal will be forwarded by e-mail (Giunta members, Presidents, administrative secretaries and members of the relevant Commission).
16. Ombudsmen intervene at the request (written or verbal) of interested citizens or on their own initiatives in order to eliminate irregularities, negligence, dysfunctions, delays, inefficiency, omissions or unlawful action by the provincial administration. The ombudsman may be consulted free of charge and can be contacted by e-mail (difensore@provincia.rc.it).
17. Data prepared by the Committee for the Quality and Feasibility of Legislation and published in the First Report on the Quality of Calabrian Legislation, *op. cit.*, p. 29, and in the Second Report on the Quality of Calabrian Legislation, *op. cit.*, p. 18.
18. Committee for the Quality and Feasibility of Legislation, First Report on the Quality of Calabrian Legislation, *op. cit.*, p. 33.
19. Committee for the Quality and Feasibility of Laws, First Report on the Quality of Calabrian Legislation, *op. cit.*, pp. 48-57.
20. Article 44 of the Statute.
21. In this regard, basic instruments also consist of the Reports of the Regional Monitoring Units of the Audit Court [Corte dei Conti], which concern specific aspects of the management of regional expenditures, such as the 2006 reports on "Health Care Building Programmes" and "Functioning of Regional Monitoring of Community Funds (ROP Calabria)"; these reports, which are sent to the Council President and the Giunta's President, might be used to bring forward legislative reform initiatives.
22. Committee for the Quality and Feasibility of Laws, First Report on the Quality of Calabrian Legislation, *op. cit.*, p. 35 et seq. and Second Report on the Quality of Calabrian Legislation, *op. cit.*, pp. 31-32.
23. Article 18, Law No. 19 of 2001.
24. Article 2, Law No. 19 of 2001.
25. Formez data. However, the Region did not initiate the Regional one-stop shop for the internationalisation of firms.
26. Calabria Region and National Centre for Informatics in Government, Fourth Report on Innovation in the Calabria Region, 2006, p. 84.
27. For an analysis of completed and ongoing projects, see *Fourth Report on Innovation in the Calabria Region*, 2006.
28. *Fourth Report on Innovation in the Calabria Region*, 2006, p. 64.
29. Specific laws and regulations govern commerce in public areas (Regional Law No. 18 of 1999).
30. Article 5, Regional Council's Deliberation No. 409/2000.
31. Article 29, Law No. 1 of 2006.
32. Article 11, Para. 1, Letter *a)*, Regional Law No. 17 and Article 9, Deliberation No. 409.

33. Article 9, Para. 4, Deliberation No. 409.
34. Article 22, Para. 3, Regional Law No. 17. "In defining urban planning choices in the commercial sector, the communes shall pursue objectives of improving urban quality and commercial service and shall develop policies aimed at achieving a rational and balanced distribution network" (Article 10, Deliberation No. 409).
35. Neighbourhood stores (esercizi di vicinato) are defined as having a maximum surface area of 250 m^2 in communes with a population over 10 000, and a maximum surface area of 150 m^2 in communes with a population under 10 000.
36. Article 11, Para. 3, and 12, Para. 8, Law No. 17.
37. Article 14, Regional Law No. 17/1999 and Regional Giunta's Deliberation No. 307/2000.
38. Law 17 (Annex C) specifies that communes shall define a period for tacit approval no longer than 90 days.
39. Defined by Council's Deliberation No. 409/2000.
40. Article 10, Law No. 17/1999.
41. Regional Council's Deliberation No. 57 of 2001.
42. Article 4, Regional Council's Deliberation No. 409/2000.
43. Article 4, Para. 3, Deliberation No. 409/2000.
44. Article 6, Para. 3, Deliberation No. 409/2000.
45. Article 4, of Legislative Decree No. 114.
46. Article 6, Para. 5, Law No. 17/1999.
47. Determined on the basis of criteria defined in Article 15 of Regional Law No. 17.
48. Article 14, Law No. 17.
49. Data compiled by the National Observatory for Commerce established within the Ministry for Economic Development.
50. It would also be necessary to evaluate the impact of financing to small and medium-sized commercial enterprises provided by Community Structural Funds – Objective 1 (aimed at promoting the development and structural adjustment of Regions whose development is lagging behind).
51. By Regional Giunta's Deliberation No. 3418 of 1999, which defined its composition and established its headquarters in the Regional Council for Commerce (*Assessorato regionale al commercio*).

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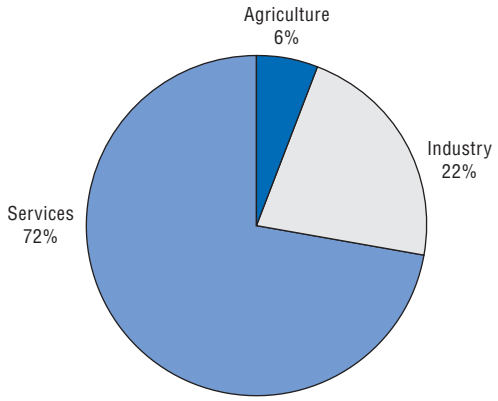
PART II

Chapter 3

Campania

Campania is a region of Southern of Italy comprised of five provinces: Avellino, Benevento, Caserta, Naples and Salerno. The region covers 13 595 km^2 and has a population of 5.8 million inhabitants, which makes it the largest of the three regions in the study. Thus, Campania has the highest population density of the whole country: 425 inhabitants per km^2, twice the national average.

Figure 3.1. **Employment by sector in Campania, 2003**



Source: OECD (2007), *OECD Regions at a Glance*, Paris.

Making use of regulatory tools

Regulatory transparency

Transparency of procedures: making new regulations

The right of citizens to participate effectively in political, economic and social activities is enshrined in the Statute as an essential aspect of regional autonomy.[1] In this perspective, citizens and local authorities are able to participate in the legislative and regulatory process[2] and are consulted by the Region, which also promotes surveys and meetings on specific problems in the sectors under its responsibility.[3]

Regional regulatory power (to adopt laws and regulations) is vested in the Regional Council, which is also responsible for policy-making and may propose laws to the national Parliament. The Council and its Commissions carry out their work on the basis of a quarterly programme in public sessions, and the results of their work are made known through the publication of minutes in the Official Gazette.[4]

The Regional Executive (*Giunta*) is the Region's executive body. However, the Statute also gives it the power of legislative initiative, which the Council often asks it to exercise by submitting draft laws and regulations. Following the 1999 constitutional reform concerning the direct election of the President of the Regional Executive (*Giunta regionale*) and the Regional Statutory Autonomy, and in light of the new formulation of Article 121 of the Constitution and the form of government deriving from the reform, Campania was one of

the Regions that promoted the issuing of regulations by the Giunta, which passed some 82 regulations between 2000 and 2004, while the Council issued none at all. Following several judgements by the Constitutional Court striking down regional laws entrusting regulatory power to the Giunta unless this was explicitly provided for by the Statute, regulatory power was returned to the Council, which with a single regulation (No. 3 of 2005) approved all the regulations that had been issued by the Giunta. Regulations are currently adopted by the Council. A new draft Statute (in the version approved by the Regional Council at first reading on 18 September 2004, but which did not reach final approval and has not come into force) attributed regulatory responsibility to both institutions, thereby creating a situation that would not be clearly defined due to the coexistence of the current model with a parliamentary model. On the one hand, the Council would approve the regulations implementing Community laws and regulation and exclusive State legislation, while on the other the Giunta would not only adopt regulations implementing regional laws and governing its own organisation, but also those implementing laws that are the exclusive competence of the State, Community laws and international agreements. Now the Council is working on a new text of the Statute.

The procedure to produce new laws and regulations (as defined by the Statute currently in force) consists in presenting proposals either by the Giunta, by individual Regional Council members, by a Provincial Council or by a Communal Council of a city with a population of at least 20 000 voters or a group of Communal Councils of cities with a combined population of at least 50 000 voters. The proposed draft regulations and draft laws are then assigned by the Regional Council President to one of the Council Commissions competent in the field and are voted upon by the Council, promulgated by the President of the Giunta within ten days and published in the Region's Official Gazette.

Draft laws and regulations introduced at the initiative of the Giunta are subject to a prior opinion on financial feasibility from the unit responsible for the multiannual and annual budget and a prior opinion from the Legislative Office, a body that works directly with the President of the Giunta that was established by Decree No. 490/2002 by the President of the Regional Giunta and verifies whether these draft laws and regulations are compatible with the Constitution, Community Law and national and regional legislation. In order to improve the quality of regulation, this Office also proposes ways of simplifying texts and administrative procedures and is responsible for formal and substantive aspects of drafting. The Council's draft laws and regulations are analysed by its own legislative unit, which confines itself to providing legal, technical and documentary assistance regarding proposals. The Council's Legislative Office is supported by the recently established Technical Legislative Committee, composed of experts who give opinions at the request of the Council President.

The line offices attached to the Giunta and Council (both known as Legislative Units) in order to provide support to the general regulatory functions were created prior to the constitutional reform and the resulting broadening of regional legislative responsibilities. Their work is limited to conducting traditional surveys, primarily of a legal and formal nature. The Giunta's Legislative Office has been given special powers in the regulatory field and, as provided for in Para. 3 of Article 3 of Decree No. 490/2002 by the President of the Regional Giunta, it "processes the Region's legislative and regulatory initiatives, ensuring the quality of the legal language and the feasibility and impact analysis of the norms introduced and regulatory streamlining and simplification". A specific provision was introduced into the 2004 Statute aimed at ensuring the clarity and simplicity of texts (Article 30).

Transparency as dialogue: public consultation

Consultation with local authorities takes place through the Region-Local Autonomies Conference established by Regional Law No. 26 of 1996, and will be conducted in the future through the Council of Local Autonomies, which is to be established in all Regions under the Constitution. In the specific field of transport, the Council of Local Autonomies consulted under Regional Law No. 3 of 2002 with regard to regional investment planning, the definition of regional guidelines and the programming of minimum services.

Under the general provisions, the consultation of third parties is only mandatory for draft laws that are analysed by the competent Council Commissions.[5] The Giunta, on the other hand, is not required to hold consultations, although these are frequently organised by members of the Giunta in their respective fields of competence. Much sector-specific legislation and many laws in the field of immigration, social policies, environment and health also provide for standing consultation bodies.

In the transport sector, the participation of users, social partners and trade associations in the planning of services is ensured through a specific body of the Regional Agency for Sustainable Mobility, the Regional Conference for Mobility, which was first convened in June 2006 (until this date consultations were held through informal technical roundtables). At the local level, the provinces and communes are also required to draft a "programme for participation" in the planning of services (which has yet to be adopted) so as to ensure the involvement of citizens, trade union organisations, business associations and everyone interested in the transport system.[6]

Transparency in implementation: communication

Draft general regulations, circulars, Giunta and Council decisions, announcements of competitive recruitment examinations and calls for tenders, judgements and orders may be consulted in the Official Gazette of the Region, which has been published on the Internet site since 2000. Regional laws adopted between 2000 and 2006 can currently be consulted on the site, in the text currently in force, updated with any amendments introduced subsequently. A further "maintenance" project is under way for updating all regional legislation. General regulations are publicised adequately in the Official Gazette, which, as was mentioned above, is also available on-line on the Region's Internet site (*www.sito.regione.campania.it/leggi_regionali/index_leggi.htm*). For laws and regulations prior to 2001, the site provides a link to the on-line network of Italian communes Ancitel. Regulations currently in force (organised by subject heading) and the current version of the Statute may also be consulted on the site.

Campania also has offices for the relations with the public, as provided for by national legislation in 2000, located in Naples, Avellino, Benevento and Caserta. These offices make available information on competitive recruitment examinations, financing and calls for tenders and provide access to regional regulations both through direct contact with staff and through traditional and on-line information and communication tools.

Thus far, Campania has not issued an annual report on legislation (as Lombardy, Piedmont and Tuscany have done since 2001, Marche, Emilia Romagna, Abruzzo and Veneto since 2002 and Basilicata since 2003).[7] An initial report on regional legislation completed in 2006 is about to be published. Like all regions, Campania forwards to the Legislative Observatory of the Chamber of Deputies the information on legislative activity required to draft Part II of the "Annual Report on the Status of Legislation", devoted to "Trends and issues of regional legislation".

The attention being given to the content of legislation and regulations is evidenced by the formal drafting efforts being made using the guidelines provided by the technical and legislative manual of the Inter-regional Legislative Observatory ("Rules and Suggestions for the Drafting of Regulatory Texts") and the Prime Minister's circular of 2001 ("Guide to the Drafting of Regulatory Texts"). The Giunta's Legislative Office and the Council's Technical-Legislative Committee have jointly drafted a manual of rules for the drafting of texts (which includes the technical and normative analysis) in order to ensure uniformity of drafting techniques in the Council and the Giunta. The draft of the new Statute lays down that a Council Regulation shall define procedures for ensuring the "clarity and simplicity of texts".[8]

Compliance, enforcement and appeals

Inspections

The implementation and enforcement of laws and regulations are monitored by the offices of the Region and of local authorities on the basis of their specific areas of competence. In some cases, this monitoring is document-based (requesting documentation, verifying requirements, obtaining certifications and information from other public administrations, etc.). In other cases, the offices have specific inspection powers to verify compliance on site. Failure to comply with laws or regulations is punishable by administrative and monetary penalties specified by law. The procedures for enforcing penalties are governed by Regional Law No. 13 of 10 January 1983.

Dispute mechanisms

The office of the *ombudsman* of Campania was established by Regional Law No. 23 of 1978 (amended in 1985), but its activity was interrupted between 1983 and 1999. The ombudsman is elected by the local Regional Council and appointed by the President of the Regional Giunta for a five-year term that is renewable once. The ombudsman's office currently has a staff of nine civil servants, one of whom has legal qualifications. The ombudsman's office ensures that users' rights are respected in their dealings with regional administrations and health care agencies. If it ascertains that the public administration illegally failed to act as it should, it asks the President of the Giunta to appoint a special commissioner. In 2005, some 388 cases were brought to the ombudsman (no data is available on results). Of these cases, 20 concerned the right of access to administrative acts, 23 the environment, 154 the activities of the public administration, 114 social security, 36 health care, 18 services and users, 10 education, 6 construction and urban planning, and the remaining concerned elections, transport, immigration, public works, agriculture and hunting and social assistance. The activities of the ombudsman's office are the subject of an annual report to the Council (available to the public in paper form only, since its site *www.difensorecivicoregionecampania.it* is inactive). The ombudsman may also send at any time reports on specific issues to the Council and the Giunta and inform the Council of any problems that affect the quality and integrity of administrative activities. The regional ombudsman has signed a protocol with the ombudsman of the Province of Naples, the ombudsmen of the communes of the Province of Naples, the Region and the Prefecture of Naples aimed at ensuring the "ongoing co-ordination of the activities of ombudsmen and the Prefecture". One of the results of this co-operation has been the publication of a brochure (translated into five languages) aimed at making the ombudsmen's office better known to the public.

Interest in preventive dispute avoidance instruments is increasing throughout the Region. For example, the Chamber of Commerce of Naples has introduced on its Internet site (*www.na.camcom.it*), under the heading "Conciliation and arbitration", an on-line conciliation service for settling informally disputes between companies and consumers/users and disputes with the Commune of Naples. Site users can download the appropriate forms and consult the costs and fields of conciliation and obtain all useful information about the various alternatives to the ordinary justice system. On-line conciliation is conducted through an audio-video web conference system using a reserved area of the site to which only the parties, the conciliator and the service manager have access.

In the transport sector, preventive conciliation procedures are systematically included in service contracts for local public transport. As specified in the standard service contract for local public transport approved by the Regional Giunta, all service contracts contain an article requiring that, in the event of disputes over the interpretation or application of contractual clauses or disagreements about the estimated value of assets to be transferred to the incoming company, a mandatory attempt at conciliation can be made. If this mandatory conciliation procedure fails, an arbitration clause becomes effective so that the dispute can be addressed through an arbitration board representing all the interests at stake. For the parties involved, this contractual provision not only ensures the rapidity of the dispute resolution procedure, but also, as specified in the arbitration clause, the confidentiality and specific competence of the arbitrators (persons selected by the parties because they are considered to be experts in the field). This procedure has the undoubted advantage of making it possible to resolve all types of disputes effectively and out of court, thereby also ensuring that the contractual relationship and the services provided under the contract can be maintained over time in a more stable and balanced way.

Appeals

The level of "litigiousness" in the Campania Region is relatively high. The data for 2005 and 2006 show a slight decrease in the number of civil and administrative disputes, together with a sharp rise in the number of tax disputes.

Table 3.1. **Number of disputes**

No. of cases	2005	2006
Administrative disputes	1 710	1 071
Constitutional disputes	5	9
Civil disputes	5 620	3 437
Criminal disputes	235	276
Tax disputes	317	1 665
Total	**7 887**	**6 458**

The number of disputes in the field of transport, in proportion to the total number of disputes involving the Region, is relatively low. It seems likely that this is due to the positive influence of the preventive conciliation mechanisms that are contained in service contracts. In 2006, the following disputes were recorded in the transport sector.

With regard to constitutional disputes, following the Constitutional Court's judgements declaring unconstitutional legislative provisions that give regulatory power to the Regional Giunta, regulations introduced at the initiative of the Regional Giunta are now

Table 3.2. **Disputes recorded in the transport sector in 2006**

Administrative disputes	23
Civil disputes	46
Total	**69**

sent to the Regional Council for approval, which obviously lengthens the time required since the process for approving regulations is now exactly the same as that used for regional laws. The intensity of the constitutional dispute (between the State and the twenty regions) also makes careful monitoring of the judgements of the Constitutional Court necessary, since these in fact define the boundary between the respective legislative competencies of the Regions and the State. This monitoring, which is conducted informally by regional offices for their specific fields, is carried out systematically by the Legislative Office of the President for all fields.

The fact that the boundaries between the legislative competency of the State and the regions are not clearly defined in the new Article 117 of the Constitution is the reason why many cases are brought before the Constitutional Court. This is particularly true for laws and regulations in some fields that are exclusive competence of the State, but which are "cross-cutting" with respect to regional competencies (supervision of competition and basic levels of civil and social rights). Of the 104 laws passed by the Regional Council during the 2002-05 period, the Prime Minister's Office challenged provisions contained in 12 regional laws and lodged 12 appeals. Of these, 3 are still pending, 3 were partially upheld and 6 were upheld and the regional provisions that had been challenged were declared unconstitutional.

At the same time during this period the Campania Region deemed that regional competence was being infringed by State provisions contained in 20 laws that it then challenged; of these appeals, 11 are still pending, 5 were partially upheld, 1 was withdrawn, 2 were rejected and 1 was ruled to be no longer applicable.

The use of Regulatory Impact Analysis at regional level

The Region does not have a general requirement regarding the drafting of *ex ante* and *ex post* analyses of regulatory initiatives. In particular, there are no provisions for Regulatory Impact Analysis in the current Statute or its draft reform. The only regional experiences in this regard have been limited to the experimental programme conducted in 2002-03, with the support of FORMEZ, which only concerned draft laws and was not followed up by plans aimed at introducing this methodology on a lasting basis. A new experimental programme is under way which is aimed at developing regulations for the establishment of one-stop shops for energy. However, there is no specific provision requiring an evaluation of the regulatory alternatives.

Regarding *ex post* analysis, the only instrument consists of a measure currently being adopted that will introduce an evaluation clause into laws and regulations, *i.e.*, a specific article requiring the implementing authorities to provide regulators with the information necessary to know the time frame and procedures for the actual implementation and to assess the regulatory impact. The quality of the information to be gathered had a key influence on the choices made in drafting the clause, which should specify clear objectives, responsible authorities, time frames, procedures and resources to finance information gathering.[9] In Campania, this instrument is not used systematically, even though there are some examples of evaluation clauses, as in Article 8 of Law No. 2 of 2004 (on the

"citizenship income" introduced on an experimental basis to combat poverty), which is drafted so as to meet all the requirements mentioned above, except for the provision regarding resources for monitoring.

Keeping regulations up-to-date at regional and local levels

Updating and reviewing regulations

Campania is characterised by a relatively small amount of laws and regulations, given that between 1998 and March 2005 some 168 laws were approved, which is the lowest number in any of the Regions with ordinary status (which as a whole adopted 4 568 laws).[10] These data cannot be considered positive in and of themselves in the absence of qualitative monitoring that would make it possible to analyse them from a substantive point of view. Among the laws adopted, 11 can be described as reorganisation laws,[11] and procedural simplification was introduced only in specific cases (for example, Regional Law No. 20 of 3 December 2003 governing "Simplification of the administrative action in the communes of the Campania Region engaged in reconstruction work following the seismic events of November 1980 and February 1981"). In addition, Law No. 21 of 2005 abrogated one hundred regional laws (in the field of agriculture, forests, hunting, fishing, craft trades, tourism, commerce, transport and social assistance) and introduced an instrument for the systematic implementation of the requirements regarding the simplification and updating of regional regulations.

Administrative simplification and electronic administration at regional and local levels

In 2004, a working group on the quality of regulation was established by a decision of the Regional Giunta, with a membership composed of officials from the Legislative Office of the President, the Giunta's legislative unit and FORMEZ, co-ordinated by a State councillor. Its work focused on identifying the expenditure procedures used for regional, State and European funds (including the establishment of a databank aimed at orienting future sectoral reforms) and the laws and regulations governing these procedures in order to identify norms that are no longer enforced and regulations that need to be reorganised. The results of this survey were the basis for the adoption of the aforementioned Regional Law No. 21 of 2005, which (in addition to abrogating a series of laws) introduced a system of legislative reorganisation based on the yearly presentation by the Giunta to the Council of one or more draft reorganisation laws. These make it possible to use basic powers to reform regulations in order to improve their quality by: abrogating legislative and regulatory provisions that have already been repealed implicitly or are no longer effective; ensuring the co-ordination of legislation and simplifying the text of provisions; streamlining administrative and procedural organisation; and assigning to sources of regulations the task of integrating and updating legislation in areas not reserved to Parliament alone. The Regional Giunta met the requirement contained in Law No. 21 of 2005 by presenting two reorganisation laws: one in the field of tourism and another in the field of social policy that are currently being examined by the Council.

As provided for at the national level, the Region has established a series of *one-stop shops for productive activities* (*www.sportelloimpresa.it/servizi/suap*), of which there are now some 419 (out of a total of 551 communes), 237 of which are currently operational, or 43% of those established.[12] In order to promote the use of computers and on-line services in these one-stop shops, the Region introduced a measure in the 2000-06 Regional Operational

Programme establishing strategic guidelines for the use of EU structural funds. The *Regional One-stop Shop for the Internationalisation of Enterprises* (*www.sprintcampania.it*), also created under national provisions, was established in Campania in 2001 within the Regional Council for Agriculture and Productive Activities through institutional agreements signed between the Regions, the Ministry for Productive Activities, five chambers of commerce, the National Institute for Foreign Trade (a public agency that promotes trade abroad) and two publicly-owned companies (the *Società per i servizi associativi del commercio estero* and the *Società italiana per le imprese all'estero*). Through the five provincial one-stop shops established within the chambers of commerce and co-ordinated under regional management, this one-stop shop provides services of initial information on foreign markets and financing (41%), promotional services (such as assistance with trade fairs) (39%) and financial and insurance services (20%). The one-stop shop has also signed agreement protocols with several trade associations (such as Confindustria, Confai, Confcommercio and Cna) to monitor the needs of companies and promote exchange of information, and is planning to sign protocols with credit institutions (thus far, only one has been concluded with Banca Intesa).[13] Two institutions that also provide support for the internationalisation of companies at the provincial level are *Eurosportello*, a specialised branch of the Chamber of Commerce of Naples[14] and *Intertrade*, a specialised branch for international activities of the Chamber of Commerce of Salerno.[15] Regional regulations in the field of territorial governance have also provided for the establishment of *communal one-stop shops for urban planning* so that building permits can be issued as a single document that includes all the approval procedures required by communes.[16]

In order to promote wider use of new information and communication technologies, the Campania Region has appointed a special technical committee composed of a co-ordinator, 6 senior experts, 8 junior experts and a regional official who acts as secretary. This committee has prepared a Strategic Plan for the Information Society and sets strategic objectives for the development of the information society based on the generalised use of information and communication technologies in public services, in small and medium-sized companies and households (*www.regione.campania.it/portal/media-type/html/*). This plan is not only aimed at promoting the "electronic governance" of administrative activities (to provide citizens, institutions and companies with opportunities for direct access to information and services and to enable services and public administrations to co-operate in a "network" at the national, regional and local levels), but also e-business (to use the web for business purposes in order to expand supply and retail markets, foster partnerships and promote participation in production and service provision processes) and e-learning (to promote knowledge transfer and sharing by using the web and also "remote training" tools).[17] In 2004, the Region also signed a framework programme agreement with the government in the field of e-government and the information society (a supplementary act for this programme was signed in 2005). This made it possible to appropriate approximately 158 million euros to be invested in the information and communication technology sector. The agreement, in line with the "National Plans for E-Government and the Information Society" and with the guidelines of the Strategic Plan mentioned above, develops a series of projects in three broad areas: "The South but not only",[18] "Development of Broadband in the Regions of the *Mezzogiorno*"[19] and "ICT for the Excellence of Territories"[20] (*www.regione.campania.it/portal/media-type/html/*). Last, the *Regional Centre for Competence in Information and Communication Technologies* is organised as a network with more than 220 resources ranging from researchers to specialised technicians

that orients the research results obtained in an academic setting towards application projects conducted jointly with companies (*www.crdc-ict.unisannio.it/index.htm*). The Net Learning and Knowledge Management Project (financed by the National Operational Programme-Objective 1 concerning the use of Community Structural Funds and carried out during the 2003-05 period) is aimed at improving government communication and the web services for citizens by developing and experimenting with methodologies and technologies for integrating information, training and knowledge and improving and updating knowledge in the field of Internet information and communication and knowledge management.[21]

Sectoral analysis case study: local public transport

Basic structure of the sector and its regulation in a multi-level context

The recent crisis in local public transport is due to the presence of monopolistic operators that are subsidised and largely publicly-owned and are less interested in making profits than in maximising transfer payments and maintaining employment. The inefficiencies of the sector not only have a direct impact on citizens' well-being, but also block any policy aimed at containing private traffic and thus make it impossible to address the problems of congestion and air pollution that primarily affect major cities. This maintains a vicious circle in which private traffic grows because public transport does provide valid alternatives, which only increases congestion and causes public transport to move more slowly, which in turn increases the number of public transport vehicles needed to maintain sufficiently regular service on lines and the number of staff needed to serve more passengers. This also partly explains the lack of investments for metropolitan trains and tramways, since public resources must be used for day-to-day management.[22]

National and regional regulations have tried to address these problems, with results that are still unsatisfactory. The relationship between the State and the Regions with respect to the regulation of local public transport started to change profoundly in 1997. Law No. 59 redefined the mechanisms for the sharing of powers between central and local governments and introduced instruments for revising monopolistic systems substantially (through "rules for competition in the periodic awarding of service contracts" and "replacing the concessionary regime with the authorised regime"),[23] while Legislative Decree No. 422 of 1997 (adopted to implement norms for attributing functions and duties to local authorities and amended by Legislative Decree No. 400 of 1999) conferred upon the Regions and local authorities the functions and duties of administering rail, maritime and air services of local scope. In particular, the reform introduced: *i)* the separation of planning and financing functions (assigned to the Region) from management functions; *ii)* competition "for" the market by 31 December 2006; *iii)* the contractual definition of relations between managers and public authorities and the elimination of unnecessary requirements for guaranteeing the provision of "minimum services";[24] *iv)* the compulsory transformation of operators into joint-stock companies (which only creates a potential separation between the public entity's role as owner and the regulator); and *v)* triennial planning of minimum services (defined by the Region in agreement with local authorities after consulting with trade union associations and consumer organisations),[25] which was added to the Regional Transport Plan, the Catchment Plans adopted by the Provinces (which define the traffic catchment areas for the transport network), the Urban Traffic Plans and the Mobility Plans (which define the necessary infrastructures and investments).[26]

With the reform of Title V of the second part of the Constitution, regional competence in the field of local public transport was transformed from "concurring" into "residual exclusive" competence,[27] with the central government retaining its powers in the field of safety, while a concurring competence of the State and Regions was introduced regarding the regulation of "major transport and navigation networks".[28] This transformation of the division of powers has not invalidated the principles defined by the national legislation on reform of the local public transport (Legislative Decree No. 422), which remain the reference criteria for regional legislation as they reflect the State's exclusive legislative competence regarding the supervision of competition.[29] On this basis, the Constitutional Court ruled invalid those parts of the regional laws of Liguria, Veneto and Calabria in which they set a time limit for initiating competitive bidding procedures for awarding service contracts that were later than the deadline defined at the national level by Legislative Decree No. 422.[30]

The liberalisation process initiated at the regional level was interrupted in 2001, when national legislators changed the general rules governing local public services by allowing the contracts to be awarded without bidding procedures to companies that are entirely publicly-owned (which are quite common at the local level).[31] The uncertainty over the regime applicable to local public transport created by this action at the national level was only resolved in 2004 through further legislation (Law No. 308), which clarified how the special rules defined by Legislative Decree No. 422 applied to local public transport (as the Constitutional Court also did through Judgement No. 80 of 2006). The inadequacy of national regulation has increased the resistance to liberalisation already existing at the local level, which is generally motivated by the increase in the cost of public transport and the insufficiency of the financial resources available, thus delaying the opportunity to lower the costs of services through properly conducted competition for the market.

The Regional Operational Programme (POR) 2007-13 of the Campania region contains remarkable financings in favour of the start up of new services of local public transportation.

Trends of regional legislation

Campania only began to define the sectoral framework in 2002, and in May 2000 it was the only Region that had not yet issued even a single regulation implementing the reform. However, the work initiated in June 2000, which led to the adoption of Regional Law No. 3 of 2002 (amended and integrated by Law No. 5 of 2004), was characterised by broad consultation with institutional actors, social stakeholders and business, trade union and consumers' associations. The framework that emerged from this process is based on the planning of investments and services for all forms of transport horizontally and regulation of access based on competition for the market. It also involves the establishment of an organisational structure to provide support to the Region and local authorities (Campanian Agency for Sustainable Mobility, Territorial Agencies for Mobility, Regional Conference for Mobility) and the trial introduction of a new integrated fare system.[32] The regional legal framework is thus based on two fundamental pillars: the agreements with operators and local authorities and the extended use of the "silent is consent" rule, which helps avoiding administrative and operational blockages.

Planning

Regional and local planning concerns investments and services, two aspects that are implemented independently even though they have common objectives.

The *planning of investments* concerns the choices regarding the acquisition of infrastructure, facilities and vehicles for the transport of people and goods[33] and is conducted through three categories of instruments adopted at various levels of government:[34]

1. *General transport planning* is conducted through Regional, Provincial and Urban Mobility Plans. The first regional infrastructure programme of 2000-02 consists of a general document (which outlines mobility needs, initiatives and objectives for each modal sector) and of three sectoral plans (the regional metropolitan train project, the programme of regional sustainability initiatives and the guidelines for the port, airport, logistics and intermodality systems).

Box 3.1. **Compensation for public service obligations and awarding of contracts in EU law**

Community intervention in the field of transport, which is an activity strongly characterised by extensive public involvement in the form of financing and management, has focused on two aspects: the definition of liberalisation instruments and the modernisation-standardisation of relations with public authorities.

Community liberalisation rules have not traditionally been applied to local public transport since it has a limited impact on cross-border trade. However, Community institutions seem to have realised recently that the situation has changed (since various countries have opened local and long-distance transport to competition for the market), but they have not followed up this development since they are allowing the member States to decide whether or not competitive bidding procedures should be used for regional and long-distance rail transport services when the contract involves small amounts (1 million Euros) or small distances (300 000 km per year).[1]

The EU's efforts regarding standardisation have mainly addressed the critical issue of the coverage of public service obligations by governments, endeavouring to find a criterion for distinguishing between justified forms of assistance and those that should be considered as State aid. The most recent case law has ruled that compensation for public service obligations does not qualify as State aid when it is granted in compliance with a series of criteria primarily aimed at evaluating the competitive impact, but which fail to satisfy the requirements of predictability and legal certainty.[2] In cases in which the contributions are to be considered as State aid (since they do not meet the criteria mentioned above), Community law considers that public service compensation is exempt from the prior notification when it concerns air or maritime links to islands with traffic that does not exceed 300 000 passengers/year[3] and aids recognised for local land transport services that are self-provided or entrusted directly to public operators.[4]

1. Proposal for a Regulation of the European Parliament and of the Council on public passenger transport services by rail and by road, Com/2005/319 def. In addition, it allows existing contracts to continue until their normal expiration and allows the rights of staff to be maintained (social clause protecting the rights of workers employed in each individual company).
2. The company receiving the aid must have been specifically entrusted with a public service; the compensation must only cover the costs incurred by discharging the obligations, taking into account the relevant receipts and a reasonable profit; the parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner. In addition, when the public service operator has not been chosen through a public tender procedure, the level of the compensation must be determined on the basis of the costs which a comparable company, well run and adequately provided with means of transport, would have incurred (EU Court of Justice, 2003 Judgement, *Altmark Trans GmbH*).
3. EC Commission Decision No. 842/2005 on State aid to services of general economic interest.
4. Proposal for a Regulation on public passenger transport services by rail and by road.

2. *Sectoral planning* consists of modal plans adopted at the regional, provincial and communal level, which are either integrated into or independent from the general planning, but which are consistent with it and with any national sectoral planning.
3. *Feasibility studies* contain the "functional, technical, administrative, economic, commercial, financial and environmental assessments" required for individual and co-ordinated initiatives.

Investment planning is conducted through negotiated planning instruments, such as institutional planning agreements (for example, the agreement signed in 2001 between the Campania Region and the Ministry for Infrastructure and Transport aimed at setting priorities for infrastructure initiatives and for the relevant expenditure commitments) and the framework programme agreements (for example, the agreement signed in 2002 between the Region, the Ministry for Economic and Financial Affairs, the National Agency for Roads and the Ministry for Infrastructure and Transport, which defines the implementing programme for sustainability initiatives of regional interest and the relevant resource sharing). The lack of adequate infrastructure planning in the past did not allow an integrated rail transport network to develop, with the result that, even though Campania is one of the Regions most richly endowed with rail lines (approximately 1 200 km), the system suffers from a number of critical problems, such as low commercial speed, poor quality, insufficient integration of networks and the lack of interchange hubs and less-than-optimal use of the different transport modes.[35] The realisation of the regional metropolitan train network is a step towards overcoming these critical problems by organising an integrated system in which all branches of existing rail lines are rationally interconnected (3.8 million euros of investment in the regional metropolitan train system, of which 2.5 million euros have already been financed, have made it possible to build 25 km of new lines and to open 18 stations during the 2001-03 period).[36]

The *planning of services* concerns the management of the transport system and the optimum use of the infrastructure, human and organisational resources available in order to meet the demand for mobility.[37] These objectives are realised through the definition of *public transport guidelines* (by the Regional Giunta with the support of the Agency for Mobility) aimed at laying down the key points of the three-year plans for minimum services, *i.e.*, the principles, resource-sharing criteria and minimum threshold to be awarded through competitive bidding. The *three-year plans for minimum services* adopted by the region, provinces, provincial capitals, metropolitan cities and communes define the organisation of the minimum services under their respective competence, the resources for services and infrastructure, the procedures for setting fares and awarding service contracts and the monitoring of the quality and quantity of services.

Last, since 2005, Campania has chaired the Infrastructure, Mobility and Territorial Governance Commission established in the framework of the State-Regions and Autonomous Provinces Conference in order to ensure interregional co-operation in the field of transport and infrastructure.[38]

The delay in competition for the market

The tradition of protecting existing local operators and the aversion for competitive selection with regard to access have not been completely abandoned, due to the fact that the EU gives only general directions about liberalisation and that national regulation has been evolving step by step. Nevertheless, this approach was freely chosen by regional

regulators, given that the direct awarding of contracts (even when it was allowed by the law of 2001) was only one of the options available (and which is now clearly excluded), and the deadline of 31 December 2006 set for initiating competitive procedures by national legislation[39] was viewed as the expiration date of directly awarded contracts that regional provisions could no longer allow, although competitive bidding procedures might have been introduced at an earlier date. In addition, if services continue to be provided by the previous concession holders, new minimum services could not be awarded to companies that did not previously provide them (as was pointed out by the Italian Competition Authority with regard to maritime transport to the islands near Naples).[40]

However, an extremely diversified situation has emerged in the various local contexts. Competitive bidding procedures have only been held in a few regions: Friuli Venezia Giulia, Lombardy with the exception of the city of Milan, Valle d'Aosta, some cities and provinces of Liguria, certain segments of additional services in Rome and some communes in Basilicata. They are currently under way in others or have been ready to be initiated for several years (as in Emilia Romagna and Tuscany). Other regions have continued to award contracts directly. In some cases where competitive tendering was used, no bids were submitted or the only bidders were the former monopolistic companies.[41]

In Campania (as in various other regions, such as Lazio), the directly awarded concessions held at the date of entry into force of the regional framework have remained in effect (through bridging service contracts). This is despite the requirements of Article 46 of Regional Law No. 3 of 2002 which specified that competitive tendering should be introduced by 31 December 2003, later postponed until 31 December 2005 by Regional Law No. 5 of 2004. Consequently, the Region has gone from a system based on administrative concessions for minimum services ensured by the over seventy bus lines managed by 130 operators and five concession holders for rail transport, to a system of public service contracts signed with the previous concession holders without prior competitive bidding.

Only a few minimum services intended to be financed through operating revenue have been awarded using Community tendering procedures: the maritime passenger transport services between Naples and Capri, awarded in 2004 to the Neapolis consortium only following a decision by the EU Commission that prohibited the granting of public contributions on this profitable line traditionally served by the publicly-owned company Caremar of the Tirrenia group;[42] the newly established road service in the province of Naples (awarded in 2001 to the company *Società trasporti vesuviani* S.r.l.), while the tendering procedure initiated in 2006 for the Castellammare-Sorrento-Capri segment, following Caremar's refusal to ensure service without State contributions, was suspended pending a ministerial decision on refinancing (the call for tenders in fact specified that if Caremar proposed to continue ensuring the service, the award would be revoked without indemnity to the highest bidder). In 2002, a European tendering procedure was used to award the maritime minimum service called the "Metrò del Mare" (Metro of the Sea), which operates six co-ordinated intercoastal lines (with routes from Monte di Procida to Capri) that ensure mobility on the coastal areas of the Gulfs of Naples and Salerno and of the Cilento region by providing an alternative to land transport on arteries with heavy traffic (the State highway to Sorrento, the provincial highway to Amalfi, State highway 18 and the A3 Motorway connecting Naples, Salerno and Reggio Calabria). However, the competitive tendering did not provide the benefits of competition, since the contract was awarded, for an amount that was virtually the same as the amount of compensation indicated in the

call for tenders, to a single participant (the company Metrò del Mare S.C. a r.l.) that through a temporary grouping of firms brought together the four main operators in the Gulf of Naples, which could have participated individually in the competitive bidding.[43]

Among the obstacles to the proper functioning of tendering procedures and to the greater efficiency of operators, mention should also be made of the inclusion of "*social clauses*", which require the incoming firm to employ all the workers employed by the outgoing firm.[44] In Campania, this provision requires the firm to keep the employees (who must be given the same contractual and wage conditions),[45] and similar provisions are used in Lazio, Tuscany and Puglia.[46] The elimination of the "social clause", which is allowed but not required by national legislation[47] and Community law, is one of the measures requested by the transport operators association Asstra in the 2006 "*Carta di Venezia*" (Venice Charter).[48] The general interest requirement of protecting employment cannot easily be met without distorting the market, but other options might be considered, such as transparent financing of social support schemes protecting workers from the unemployment risk (such as a fund).

For competitive bidding procedures to be successful, it is also important to correctly define the *traffic catchment areas* under contract and to avoid adopting automatically the territorial boundaries of the contracting local authority (as was done in Lazio, for example).[49] The costs of service can be minimised by defining the optimal size of the area to be served, as is specified by Campania's legislation, which states that tendering procedures should cover "a service area at least large enough to achieve economies of scale and improve efficiency" defined by the three-year plan for minimum services.[50] In addition, in light of the real situation in regions in which publicly-owned companies are operating, the organisation of competitive bidding should be entrusted entirely to *independent agencies*, as is specified in Campania (where the Regional Agency for Sustainable Mobility has been operational since 2004)[51] and Emilia Romagna. This agency's independence in fact makes it possible to minimise the potential conflicts of interest that may arise in cases in which the entity issuing the call for tenders and selecting the winning bidder is also a shareholder in one of the firms participating.[52] Last, many of the calls for tenders for road services have provisions requiring that the outgoing firm or the administration make available the *transport vehicles*. This is the case in Campania, where a company wholly owned by the Region – the *Ente Autonomo Volturno* – has been given a concession to purchase and manage railway rolling stock and road transport vehicles for local public transport and then make them available to the company awarded the service contract for a corresponding amount. These are choices that should not be of an exclusive nature and if new entrants are allowed to use their own transport vehicles, it would be useful to issue the call for tenders far enough in advance so that successful bidders would have time to purchase or lease the necessary equipment.

The failure to privatise operators

The delay of privatisation, combined with the lack of competitive bidding procedures, reduces the incentive power of service contracts between firms and local authorities, which continue to be not only the contractor-regulators but also the owners of the operators. The substantial privatisation of operators is not imposed by national legislation, which only requires that they be transformed into joint-stock companies.[53] However, it can be deduced that the legislation favours gradual privatisation in light of the provision that allows regional legislators to introduce a further extension of directly awarded contracts to 31 December 2008 if the publicly-owned companies relinquish (through a competitive

procedure) 20% of their capital (or 20% of services) to companies in which the public authorities have no shareholding interest.[54] Consequently, the requirement for service providers to become joint-stock companies imposed at the national level is a minimum objective that regions could certainly go beyond by making choices in favour of substantial privatisation. However, regional practice tends towards the establishment of operators that are private only in a formal sense. In Campania, all rail transport companies are wholly government-owned (Circumvesuviana, S.r.l., Metrocampania S.r.l. and Sepsa S.p.A., owned by the Region through *Ente Autonomo Volturno* S.r.l.), as are all companies providing metropolitan train services (*Metronapoli* S.p.A., *Anm* S.p.A. and *Trenitalia* S.p.A.) and twelve of the 132 bus transport operators (Anm S.p.A., Ctp S.p.A., Acms S.p.A., Cstp S.p.A., Ati S.p.A., Air S.p.A., Amu S.p.A., Asm S.p.A., Amts S.p.A., Circumvesuviana S.r.l., Metrocampania Nord est S.r.l., Sepsa S.p.A., Vesuviana mobilità S.r.l., while Sita S.p.A. is majority State-owned) and in the field of maritime transport only the company Caremar S.p.A. of the group Tirrenia S.p.A. is State-owned (85% public shareholding).

Financing of services

The lack of competitive selection of operators is making it difficult to contain the high management costs, which are only partially borne by users since fares are lower and public subsidies are higher than the European average. In Italy, the operating cost of local public transport is 3.5 € per vehicle-km (*i.e.*, the highest in Europe after Germany), but the revenues generated on average cover 31% of costs (60.5% in Germany).[55] In most cases, in fact, fares are periodically but inadequately raised to keep up with inflation trends (between 1996 and 2005, the average fare appears to have increased by 10.3% as compared with a 34% increase in costs.[56] In addition, with regard to regional railways, funding has remained constant since 2001 and has therefore fallen by approximately 10% in real terms.)[57]

In Campania, the ratio of road transport revenues to operating costs was 42% in 2001 and 40% in 2002-03. For rail transport, the ratio of revenues to operating costs, not including infrastructure management costs, was 20.3% in 2001.[58] Under the sectoral legislation, the Campania Region sets the *maximum fares* for transport services (in agreement with the Council of Local Autonomies), with which the local authorities comply when they draw up service contracts.[59] The only criteria for raising fares are inflation rates (for example, with Managerial Degree No. 528 of 2005 the maximum limit of 13.9% was set for the increase in the maximum fares for one-way tickets, which would correspond to the inflation rate in 2000). This results in the setting of inadequate fares, as there is no requirement to take into account the costs sustained or any mechanisms to promote efficiency, as there would be if the price-cap method recommended at the national level (by Legislative Decree No. 422)[60] were used and as has been requested by the sectoral operators themselves represented by *Federtrasporti*.[61] Consequently, one does not find in the legislation of Campania any effort to quantify the costs of public services or any attempt to bring the compensation paid in line with the costs actually borne.[62] The standard bridging service contract in fact only provides for "a gradual increase in the ratio of revenues to operating costs, not including infrastructure costs"[63] and the public authorities grant managers contributions that are calculated on the basis of the estimated difference between standardised unit costs and expected revenues, *i.e.*, on the basis of standard cost parameters that generally prove to underestimate the actual costs.[64] In addition, over the past ten years, the regional resources appropriated have not been able to keep up with inflation trends (according to the estimates of operators in the sector, even if resources had been increased by 6% in nominal terms, they

would have lost 28% of their real value).[65] In light of all these factors, it is not possible to evaluate the costs actually sustained or to provide incentives for the efficiency of operators, which risks compromising the attractiveness of services that in the near future will be open to competitive bidding from all companies that are qualified to participate (which will not necessarily be local). This situation has resulted in an accumulation of deficits that can only weigh on future budgets, requiring exceptional government financial intervention through individual financing acts.[66] However, public intervention should be limited only to those cases in which private economic initiative is ineffective. In other words, a portion of collective mobility needs could be met without granting subsidies to large numbers of operators, even for minimum services.[67]

Notes

1. Article 3, Statute of 1971.
2. Articles 42 and 50, Statute.
3. Article 49, Statute.
4. Articles 24 and 52, Council Regulations.
5. Under Article 55 of the Internal Rules of the Regional Council, consultation with all interested bodies and organisations should be initiated no later than one month after the draft law has been assigned to a Commission.
6. Article 19, Law No. 3 of 2002.
7. Chamber of Deputies, Legislative Monitoring Unit, 2004-2005 Report on the Status of Legislation (*Rapporto 2004-2005 sullo stato della legislazione*), part II, *op. cit.*, p. 133.
8. Article 30 of the draft Statute approved at first reading by the Council in 2004.
9. Interregional Legislative Observatory, Working Group on the Feasibility and Implementation of the Law, *Clausole valutative: un nuovo modo di rendicontare sull'attuazione e sui risultati delle politiche regionali* (*Evaluation Clauses: A New Way of Assessing the Implementation and Results of Regional Policies*), 2006.
10. Chamber of Deputies, Legislative Observatory, 2004-2005 Report on the Status of Legislation (*Rapporto 2004-2005 sullo stato della legislazione*), Part II, *op. cit.*, pp. 112 and 116.
11. Law No. 17/2001 on the regulation of accommodation facilities other than hotels; Law No. 12/2001 on the regulation and standardisation of funeral activities; Law No. 5/2002 on the promotion of scientific research in Campania; Law No. 7/2002 amending the rules governing the organisation of accounting in the Campania region; Law No. 9/2002 regarding communications and radio and television broadcasting; Law No. 17/2003 on the establishment of urban parks of regional interest; Law No. 12/2003 laying down norms regarding regional and local security police and security policies; Law No. 7/2003 containing the organisational rules for regional cultural promotion initiatives; Law No. 4/2003 on new norms for comprehensive land improvement; Law No. 10/2004 on norms for the amnesty on illegal building; Law No. 12/2005 on norms regarding museums and collections of local authorities that are of local interest; Law No. 3 of 2002 on the reform of local public transport, amended in 2004, and Law No. 16 of 2004 on territorial governance).
12. Formez data, updated in 2004.
13. The one-stop shop for the Internationalisation of Enterprises (*Sportello per l'internazionalizzazione delle imprese*) also provides assistance to the regional body responsible for co-ordinating the internationalisation programmes of Campania's economic system. This body was established in 2005 through a protocol between the Region, several provinces and various chambers of commerce, industry, agriculture and craft trades.
14. *Eurosportello* is one of the 257 Euro Info Centres in Europe and is aimed at promoting the internationalisation of local firms by providing business assistance and specialised training and by launching promotional initiatives to provide support for the international contacts of small and medium-sized companies.
15. The main activities of this branch are: communication and promotional activities, export credit insurance, financing of projects outside the EU, training and technical assistance and special projects.

16. Article 41, Regional Law No. 16 of 2004.

17. Some of the main projects are: the computerisation and cabling of regional buildings; the completion of a single network for the public administration; the launching of an information technology protocol; the creation of a regional portal; the creation of thematic portals for fields ranging from tourism to cultural assets; the telemedicine project; the establishment of single centres for health care appointments [implementation status?].

18. Centres for public access to advanced digital services (CAPSDA); network of general practitioners (MMG) and independent paediatricians (PLS); digital districts for textiles and clothing (DDTA); territorial service centres (CST).

19. The extension of the regional broadband services of the public connectivity system; integrated information systems for territorial management (SIT); initiatives for the digitisation of firms in the agri-food sector; specialised telemedicine projects; SAX project – for social connectivity; SPC-Campania – Realisation of the SPC-RC; CAI-Campania – Realisation of the system for interoperability and applied co-operation; ICAR-Campania – Realisation of the system for interoperability and applied co-operation among regions.

20. Development of an enterprise incubator for the ICT sector; promotion of innovation in SMEs and the completion of studies to improve the knowledge of the sector; realisation of industrial and pre-competitive research projects in the ICT sector; laboratories for pre-competitive development and technology transfer in ICT for aerospace; implementation of the broadband network infrastructure of CRdC.

21. The project is organised into four parts: "Evaluation of government sites"; "Observing demand for on-line services", "Integration of information and knowledge", "Analysis of requirements and delivery of e-learning programmes".

22. A. Boitani and W. Tocci, *Mobilità sostenibile e liberalizzazione del trasporto locale* (Sustainable Mobility and Liberalisation of Local Transport), in *www.governareper.it*, 2005.

23. Article 4, Para. 4, Letter *b)* and Article 20, Para. 5, Letter g-quater, Law No. 59 of 1997, as amended by Law No. 191 of 1998.

24. *I.e.*, "activities qualitatively and quantitatively sufficient to meet citizens' demand for mobility, the costs of which are met by the budgets of the regions" (Article 16, Legislative Decree No. 422).

25. Article 14, Legislative Decree No. 422.

26. Legislative Decree No. 422 on reform of the sector completed the decentralisation process based on the constitutional system that prevailed prior to the reform of 2001, under which ordinary Regions had the power to issue legislative norms in the field of "tramways and bus lines of regional interest (…) navigation and lake ports" (Article 117), while Article 118 of the Constitution delegated State administrative functions to the Regions for railways under concession or managed by government trustees and secondary State railway lines that the State administration no longer considered to be useful for the integration of the primary national network.

27. "The Regions have legislative powers in all subject matters that are not expressly covered by State legislation" (Article 117, Para. 4, Constitution).

28. Article 117, Para. 3, Constitution.

29. Article 117, Para. 2, Letter *e)*, Constitution. In the same way, the regions must comply with the provisions at the national level concerning the "basic level of benefits relating to civil and social entitlements" that are the exclusive competence of the State (Article 117, Para. 2, Letter *m)*, Constitution).

30. Constitutional Court, Judgement No. 80 of 2006.

31. Article 35, Law No. 448 of 2001.

32. The innovative *integrated fare* system (launched in 2002), which concerns the price of minimum service tickets of the thirteen operators in the consortium Unicocampania (*www.unicocampania.it*), covers land transport in the area of Naples and fourteen neighbouring communes. Since 2004, the price of one euro has been charged for a one-hour ticket (valid for 90 minutes), three euros for a one-day ticket, 30 euros for a monthly ticket and 240 for an annual ticket, while free passes are provided for certain groups (such as disabled veterans, occupationally disabled, civilian disabled, the visually impaired and deaf-mutes). These integrated fares have led to an increase in the use of public transport and an increase in the number of monthly and annual ticket holders (which rose from zero in 2002 to 50 325 in 2005) and in the number of users (between 2000 and 2003, the number of passengers transported by Anm rose by 29%, Circumvesuviana +22%, Metronapoli

+57%, Trenitalia +20%; during 2001-03: Ctp +46%, Sita +11% [B. Montella, *La qualità del servizio: azioni e risultati*, *op. cit.*], as was also pointed out by the EU Commission [the EU White Paper of 2001, "European transport policy for 2010: time to decide"]). The distribution of proceeds is based on a prior estimate of the income from annual ticket sales for the entire trial period (and also on data obtained from transport use surveys) and on distribution among consortium members as determined by the Programme Agreement between the Region, the Province of Naples, the Unicocampania consortium and the participating communes and operators (Audit Court, Regional Section for the Supervision of Campania, *Il trasporto pubblico locale in Campania*, financial years 2002-03, p. 28).

33. Article 13, Para. 2, Regional Law No. 3 of 2002.

34. The investment planning process may be defined in a service conference (Article 15, Para. 10, Regional Law No. 3 of 2002).

35. Audit Court, *Il trasporto pubblico locale in Campania* (Local Public Transport in Campania), *op. cit.*, p. 65.

36. B. Montella, *La qualità del servizio: azioni e risultati* (The Quality of Service: Actions and Results), in E. Cascetta, editor, *La sfida dei trasporti in Campania* (The Challenge of Transport in Campania), Electa, 2005, p. 287.

37. Article 13, Para. 3, Law No. 3 of 2002.

38. In 2006, the Presidents of the *Mezzogiorno* Regions prepared a document containing proposals for the integration of networks and services in this area, which have traditionally been lacking.

39. Recently specified by Law No. 266 of 2005, which amended Legislative Decree No. 422 in this regard. This is a transitional period that has already been amply criticised by the Italian Competition Authority, which demonstrated how "in numerous cases there are no stranded costs and in others the time period is considerably longer than what is necessary to recover the excess costs and risks giving a lasting and unjustified competitive advantage to operators already present on the market, especially if experience in the sector were to become a preferential criterion in tendering procedures, irrespective of the economic and qualitative content of the tender" (AS125 of 27 February 1998, *Trasporto pubblico locale*).

40. Report AS269, sent on 11 November 2003 to the President of the Campania Region and the Transport Minister, *Servizi pubblici di trasporto marittimo nel Golfo di Napoli* (Public Maritime Transport Services in the Gulf of Naples).

41. A. Boitani, *Riforma e controriforma dei servizi pubblici locali*, in *Modernizzazione del Paese*, edited by M.A. Cabiddu, Franco Angeli, 2005, p. 203.

42. Commission Decision No. 163/2005, *op. cit.*

43. The contract, which was later extended, currently provides for annual compensation of EUR 5 499 450 (minus any penalties and deductions levied for failure to provide service or for irregular service as specified in the service contract).

44. Such restrictive social clauses ultimately have the effect of transforming "competitive bidding for the management of the service into competitive bidding for the management of the existing company" thereby losing the benefits of competition (A. Boitani, *Riforma e controriforma dei servizi pubblici locali*, in *Modernizzazione del Paese*, *op. cit.*, p. 204).

45. Articles 37 and 48 of Regional Law No. 3.

46. These distortions of competition have been clearly pointed out by the Italian Antitrust Authority, which has emphasised the need for call for tenders to forbid the participation of *temporary groupings* of firms that meet the requirements for bidding individually in order to prevent this instrument from being used, not to increase the number of participants, but to allow uncompetitive collusion between participants (Report AS269, *op. cit.*).

47. Legislative Decree No. 422 refers to Decree No. 148 of 1931 and provides for the continuation of the former conditions "inasmuch as possible".

48. Asstra is the association of local public transport operators owned by local authorities, the Regions and private companies to which all urban transport companies belong, as well as 70% of non-urban transport companies and all local railways (that do not belong to the State Railways) and navigation companies operating on lakes and lagoons.

49. C. Cambini, *La situazione delle gare per l'affidamento del servizio di trasporto urbano in Italia* (The situation of tendering for urban transport services in Italy), in *www.hermesricerche.it*.

50. Article 31, Regional Law No. 3 of 2002.

51. The Regional Agency (*www.acam-campania.it*), which is also used by local authorities that have not set up their own agency, performs support functions for the planning of investments and services, the management of competitive bidding procedures, the signing of programme agreements and service contracts, the monitoring of service provision and the definition of fare-setting policies (although local authorities have prime authority in the latter regard). The Agency has a legal personality and independent management and accounting, but it operates under the supervision of the Regional Giunta, which appoints its general director and exercises prior monitoring of its most important documents (such as its budget, statement of accounts and programme of activities) and approves its annual reports (which are then published in the Official Gazette of the Region).

52. These conflicts can be reflected in calls for tenders formulated with tendering criteria tailored to publicly-owned companies and/or subsidy amounts so low that they can only be accepted by long-standing incumbents with the support of the public shareholder (A. Boitani e W. Tocci, *Mobilità sostenibile e liberalizzazione del trasporto locale* (Sustainable mobility and the liberalisation of local transport), in *www.governareper.*it, 2005).

53. Article 18, Legislative Decree No. 422.

54. Law No. 266 of 2005 and Law No. 51 of 2006. In addition, in such cases, during the period of extension of direct contracts, the companies in question may not participate in competitive tendering for services elsewhere in the country (Law No. 266 of 2005). The same legislative provisions tend to promote the merging of transport operators by extending the transitional period if these mergers involve companies operating in the same region or in contiguous traffic catchment basins; in fact, Italian transport companies are extremely small in comparison with those operating in other European countries (a factor that the representatives of Asstra consider to be a barrier to liberalisation, cfr. *Carta di Venezia*, cit., p. 27).

55. A. Boitani and W. Tocci, *Mobilità sostenibile e liberalizzazione del trasporto locale*, in *www.governareper.*it, 2005.

56. Asstra, *op. cit.*, p. 34.

57. A. Boitani and W. Tocci, *Mobilità sostenibile e liberalizzazione del trasporto locale*, *op. cit.*

58. *Source:* Acam 2004; the data on railway transport refer exclusively to the companies Circumvesuviana, Sepsa and Alifana.

59. Article 7, Regional Law No. 3 of 2002.

60. Fares are set "in line, whenever possible" with the provisions of the law establishing the authorities for the regulation of public services, *i.e.*, the price-cap method (Article 18, Legislative Decree No. 422 of 1997).

61. Asstra, *op. cit.*, p. 35.

62. With regard to the financing of *minimum services*, under Legislative Decree No. 422 and in line with Community principles, public service contracts must, *inter alia*, specify the costs generated by public service obligations for the minimum services necessary to meet users' mobility needs, which should correspond to the available resources (not including fare revenues), and contracts that fail to do so are void (Article 19, Legislative Decree No. 422 of 1997 and Article 30, Campania Regional Law No. 3 of 2002).

63. Article 46, Campania Regional Law No. 3 of 2002.

64. Audit Court, *Il trasporto pubblico locale in Campania* (Local Public Transport in Campania), *op. cit.*, p. 42.

65. Asstra, *op. cit.*, pp. 31-32.

66. Audit Court, *Il trasporto pubblico locale in Campania* (Local Public Transport in Campania), *op. cit.*, p. 42.

67. Italian Competition Authority, Report AS208, sent on 5 February 2001 to the Presidents of Regions and Provinces and to Mayors, *Sussidi incrociati nel trasporto pubblico locale* (Cross-subsidies in local public transport).

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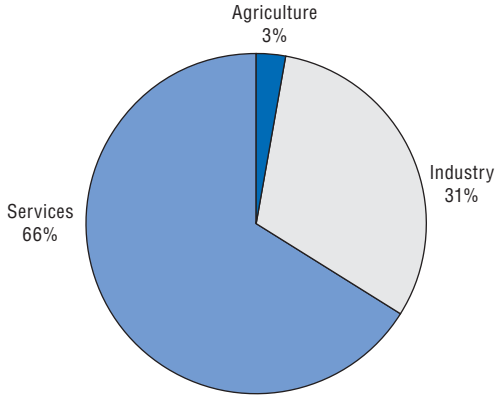
PART II

Chapter 4

Tuscany

Tuscany is a region of central Italy composed by ten provinces: Arezzo, Firenze, Grosseto, Livorno, Lucca, Massa-Carrara, Pisa, Pistoia, Prato and Siena. The region covers 22 290 km^2 and has a population of 3.6 million inhabitants. Tuscany has been one of the leading regions in Italy in terms of regional capacities and activities promoting regulatory quality. The analysis below is presented to provide a comparative point of reference for the previous regions examined in the study, with information supplied by the regional authorities. It does not include any analysis of an economic sector.[1]

Figure 4.1. **Employment by main economic sector in Tuscany, 2003**



Source: OECD (2007), *OECD Regions at a Glance*, Paris.

Making use of regulatory tools

Regulatory transparency

Transparency of procedures: making new regulations

Enabling citizens to participate in regional policy choices, recognising the autonomy of local communities, promoting simpler relations between citizens and government institutions and ensuring the principle of good governance in accordance with the criteria of transparency and impartiality – these are all priority objectives of the Region of Tuscany, as expressly confirmed by Articles 3 and 4 of the new Statute. These objectives are not only enshrined in this Statute, but are also implemented concretely through the ordinary legislative activity of Tuscany's lawmakers.

With regard to the procedure for producing new laws and regulations, under the new Statute promulgated and published in issue No. 12 of the Official Gazette of the Tuscany Region of 11 February 2005,[2] legislative power is vested in the Regional Council which is elected by universal suffrage. The Council has the power of legislative initiative and approves laws, but it also has the power of oversight of the implementation of the Region's policy and planning orientations. It is also responsible for promoting the principles and rights enshrined in the Statute and for ensuring citizens' participation in its activities. The

Statute also grants the power of legislative initiative to individual Council members and to the Regional Executive or *Giunta* (Article 23 of the Statute), which alone has the right of legislative initiative with regard to regional budgets and statements of accounts.

Draft laws presented by a member of the Giunta or the Council are submitted to the President of the Regional Council, who ensures that they are distributed to the Council members and assigned to the competent commissions. The internal rules of the Council lay down, *inter alia*, the procedures and time frames for examining draft laws in commissions and provide for shorter procedures in urgent cases.[3]

In the legislative process as described by the new Statute, great importance is given to supervision of the quality of laws and regulations by regional lawmakers, and various provisions of the Statute specify that the quality of proposed laws and regulations should already be verified during the legislative process. Article 44 of the Statute specifies that draft laws that "*do not comply with the provisions laid down to ensure the quality of laws and regulations shall be declared inadmissible by the President of the Council, in agreement with the Bureau of the Presidency*".[4] Thus far, no draft has been declared inadmissible. Article 57 of the Statute provides for the establishment of a legislative monitoring committee (*Collegio di Garanzia statutaria*) responsible for verifying that the sources of regional legislation are consistent with the Statute when so requested by the President of the Giunta or of the Regional Council or by one fifth of Council members or by three chairs of Council groups or by the Council of Local Autonomies (Consiglio delle Autonomie locali). If the *Collegio di Garanzia statutaria* decides that the legislative source is not consistent with the Statute, then this source must then be re-examined.

Under the Statute, this monitoring committee is to be established by a decision of a Council and a law is to be passed to define its functioning. However, this has still not been done, although some preparatory technical work has been completed, but which has not resulted in the preparation of a draft law to establish the committee. Laws are promulgated by the President of the Giunta within ten days after they have been forwarded to him by the Council President. They are then published in the Official Gazette of the Tuscany Region no later than 20 days after the date of promulgation of the laws or regulations and they enter into force fifteen days after their publication.

With regard to regulations, the Statute gives the Regional Executive the authority to approve regulations implementing regional laws and Community acts and rules, subject to a mandatory opinion from the competent Council commission (to be provided within 30 days), while the Council is vested with the authority to approve regulations delegated by the State.[5]

Draft laws and regulations submitted by the Giunta are accompanied by an explanatory report, drafted by the submitting General Directorate, providing a technical-regulatory analysis of the text, by the text currently in force and the updated text[6] (*i.e.*, co-ordinated for draft amendments to a text) and by a financial report (for draft laws only).

In addition, for each draft law or regulation, an opinion is requested from the legislative office of the Bureau of the Presidency (known as the Unit for the Co-ordination of Legislative and Legal Activities). This office gives its views on whether there are any legal defects, assessing whether the prospective measure is consistent with the Constitution, Community law, the Statute and regional rules and whether it meets the criteria and standards of quality for laws and regulations.[7]

Draft laws and regulations submitted by the Council are accompanied by a technical note on their legality prepared by the competent legislative unit, as specified in 1994 by a decision of the Bureau of the Presidency. This note contains comments on whether the provisions of the draft law are constitutional and are consistent with the laws and regulations in force and follow the appropriate drafting procedures.

In some cases the legislative units prepare, at the request of Council members, a "provision file" (*dossier-provvedimento*), introduced in 1999, which contains further information on the subject matter of the draft law.

This file is prepared for the most important legislative initiatives when this is considered to be appropriate by the official in charge of the relevant legislative assistance unit, and seven such files have been prepared thus far.

The file consists of four parts: the first points out the underlying principles and main content of the draft law; the second indicates the reference sources (regional and State laws) and the general regulatory framework (the laws of the other Regions and Community legislation); the third part gives an opinion on the measure's legality (with references to case law and legal doctrine if appropriate) and on whether it is consistent with the principles of deregulation, simplification and the unity of laws and regulations (single texts) and the safeguarding of local autonomy; the fourth and last part deals with legislative procedures and addresses whether the draft law is necessary, well-organised and clear and complies with the rules of the Drafting Manual.

With regard to legislative output, and in particular the percentage of laws enacted per legislature, this remained at relatively high levels (over 70%) until the sixth legislature. However, in the seventh legislature, out of 453 draft laws submitted, only 253 were enacted, or 58%,[8] and in the eighth legislature (for which data are only available through June 2006), the percentage dropped to 39%, with a percentage of 67% for draft laws submitted at the initiative of the Giunta, while the percentage for those introduced at the Council's initiative was 17%.

The distribution of legislative initiatives between the Giunta and the Regional Council remained stable from the first regional legislature to the seventh legislature, with the Giunta predominating by a ratio of roughly 3 to 1. This trend has been reversed since the seventh legislature, since the number of draft laws submitted at the initiative of the Regional Council has been slightly higher than the number submitted at the initiative of the Giunta. This trend in favour of the Council has continued to grow during the current eighth legislature, for which figures were only available through June 2006, when 56.25% of draft laws had been submitted at the initiative of the Council.

Transparency as dialogue: public consultation.

The participation of citizens and social actors in regional policy choices is one of the general principles enshrined in the Statute of the Tuscany Region.[9]

To ensure the participation of social partners in regional regulatory policy, the Statutory Charter (*Carta Statutoria*) provides for the establishment of a standing Conference of Autonomous Social Organisations in order to enable social partners to participate in the preparation of economic, social and territorial planning activities by giving their opinions and making proposals to the Council. This conference will also make it possible to verify whether regional policies are successful.[10] The Conference has not yet been established and at present no draft laws have been submitted and no technical studies have been conducted in this regard.

With respect to individual citizens' participation in regional regulatory policy, Title VIII of the Statute lays down the fundamental principle of the participation of citizens, residents and organised social entities in policy choices. This is to be achieved by having the Region implement active policies aimed at procedural simplification, administrative transparency and effective information tools. The Region also has a duty to provide full and impartial information on regional activities to individual citizens and groups.[11] In order to make this statutory provision effective, the Regional Executive has prepared a draft law on the participation of citizens in regional activities which should be presented to the Council in the early months of 2007.

Pending the establishment of the consultation bodies provided for by the Statute, the Executive is not required by law to consult with those affected by draft laws and regulations or with the representatives of interest groups, but such consultation is regularly conducted by the general directorates of the Giunta that submit draft laws and regulations using informal consultation tools.

Consultation is not mandatory for the Regional Council either, but in practice the competent Council commissions frequently carry out consultations, as specified by the Statute[12] and by the internal rules of the Council.[13] With regard to local authorities, their ability to participate in the regional legislative process is fully ensured by the Council of Local Autonomies (*Consiglio delle autonomie locali*, C.A.L.),[14] a single body that has represented provinces, communes and mountain communities *vis-à-vis* the Regional Council of Tuscany since 1998 for the purpose of "*promoting participation in the Region's decision-making processes and implementing the principle of co-operation and consultation between the Region and the local authorities*".[15]

The Council of Local Autonomies[16] gives a mandatory opinion on draft laws and other acts examined by the Regional Council in the following fields: the definition or modification of the competencies of local authorities, the apportionment of powers between the Region and local authorities, the draft regional budget and draft general planning provisions.

In exercising its power, the Council may also consult with all local authorities. The opinions of the Council of Local Autonomies are not binding, and in fact the Regional Council is free to decide whether or not to take into account the views expressed by the Council of Local Autonomies, but if it chooses to disregard them it must explain its reasons for doing so.

With regard to the frequency with which the Council of Local Autonomies has been involved in legislative procedures and in procedures for adopting regulations and general administrative acts, during the 2004-05 period, the Council of Local Autonomies is recorded as having participated in 52 legislative procedures (39 in 2004 and 13 in 2005) and 40 regulations and general administrative acts (29 in 2004 and 11 in the initial months of 2005).[17]

The Council of Local Autonomies, which was established even before the constitutional reform of 2001,[18] has gradually become an important partner of the Region with regard to laws and regulations in all fields of local interest.

The only difficulty that has emerged is the problematic coexistence between the pre-Statute regional institutional framework, the provisions of the Statute and the measures contained in the internal rules of the Regional Council.[19] This is also due to the fact that the Statute did not require stronger procedures for enabling the Council to disregard the opinion of the Council of Local Autonomies, which has led to a disempowerment of this body.

Last, the Tuscany Region has introduced a new instrument for consulting with local authorities on regulatory policies, the Inter-institutional Consultation Board (*Tavolo interistituzionale di concertazione*), established under the Presidency of the Regional Executive through a memorandum of understanding signed in 2002 by the Regional Executive and the representatives of associations (URPT, regional ANCI and regional UNCEM) and institutions (Council of Local Autonomies).[20]

The Inter-institutional Consultation Board is the forum for prior consultation on all draft laws, regulations and decisions that concern the functions and resources of local authorities. It examines any draft laws, regulations and decisions introduced at the initiative of the Giunta that may interfere with the powers of the local authorities.

In light of these developments, it is clear that, except for a few cases that still fall into the category of *de iure condendo*, the Tuscany Region is fully developing the principle of subsidiarity, both vertically and horizontally, and in developing its policies it pays close attention to the local authorities represented in the Council of Local Autonomies, social partners and individual citizens.[21]

Transparency in the implementation: communication

Better "legibility" and dissemination of regional regulatory acts is an objective set expressly by Article 43, Paragraph 2, of the new regional Statute, which *provides for the preparation of a law specifying means of promoting the knowledge and enforcement of laws and regulations*.

The Tuscany Region uses all tools available to keep the public informed about regional institutional activities, not only through the Official Gazette, which is available both in a paper and an on-line version (since 1 January 2002), but also through various databanks that can be consulted on Internet at *www.consiglio.regione.toscana.it* and *www.regione.toscana.it*.

In particular, the following are published on the Regional Council's website: regional laws and regulations and the decisions of the Regional Council and the Regional Giunta, whether they are of a regulatory nature or not (from 1971 to present); draft laws examined by the Council (since 2005); historical texts of laws and regulations (since 1971 and 2001 respectively); and announcements of competitive examinations and tendering procedures.

The following are also available on the web: summary notes on the judgements of the Constitutional Court of regional interest since 2004, information notes on the laws of the Tuscany Region since 2004 and the Reports on Regional Legislation (since 2000).

There are a variety of communication tools available to citizens that are highly transparent and user friendly.

Offices for Relations with the Public (*Uffici per le Relazioni con il Pubblico*, URP), provided for by State Law No. 150/2000, have been established both within the Giunta and the Regional Council. The Executive's URP was set up as early as 1993 and later reformed in 1999. It provides a series of services for citizens, such as managing the right of access to administrative acts and documents and providing telephone information and guidance services and information about the civil service, car registration and about the announcements, activities and competitive examinations of the public administration.

In addition, the Executive's Office for Relations with the Public is responsible for the project "The Citizen's Information Window: Tuscany's network of URPs", which is part of the collective project "Administrative simplification for citizens" of the Area 1 initiative of

e.Toscana,[22] which is providing investments to support the implementation of strategic policies for technological and organisational innovation in the Tuscan public administration in order make the system of URPs as effective as possible.

Through the URP Network project, the regional administration has made available to local and outlying administrations in Tuscany a front-end service providing guidance for all activities in which citizens and/or companies interact with the public administration. Some 75 administrations have joined the project and are linked to the regional Network.

The Regional Council's Office for Relations with the Public (URP), which has been operating since 1995, is responsible for facilitating relations between the public (citizens, local authorities, associations, interest groups, etc.) and the Regional Assembly. It provides information on the Council's acts, its work, on initiatives promoted by Council bodies and on the offices of the Region. It assists with the editorial co-ordination of the Council's website.

Since 2000, the Council's Legislative Procedures Unit has prepared the Annual Report on Legislation, published in paper form and on the Regional Council's website (*www.consiglio.regione.toscana.it/Attivita-Consiliare/rapporti-sulla-legislazione/*).[23]

The Report is divided into several sections, the first of which analyses the legislative process by which laws are enacted (initiative, procedure and outcomes); the second deals with the technical quality of laws and their typology and any appeals lodged and their outcome. The Report also covers regulations (number and subject matter).[24] The other sections concern the contribution of the legislative units, the commissions and the Council of Local Autonomies.

Great attention is also given to making available via the web the *formal and substantive drafting* methodologies used by regional institutions.

Article 44 of the Statute specifies that the Region is responsible for ensuring the certainty of laws and regulations by monitoring the quality of regional regulatory sources to ensure that they are well organised and clear and also by preparing single legislative and regulatory texts by unified sectors.

The Tuscany Region has distinguished itself nationwide as being in the forefront in this field. Through the OLI (which brings together the legislative offices of all Regions and is headquartered at the Regional Council of Tuscany), it participated actively in drafting the manual "Rules and Suggestions for the Drafting of Regulatory Texts" (available at *www.consiglio.regione.toscana.it/leggi-e-banche-dati/Oli/Manuale/drafting.asp*), published in 1991 and updated in 2002 and adopted both by the Regional Council and the Giunta, which reapproved it through Deliberation No. 3 of 24 June 2006.

Through this same decision, the Giunta also approved the "*Operating Manual for the Strategic Legal-Legislative Process*", published in the Region's Official Gazette, use of which is mandatory for regional officials. This manual gives a detailed description of the procedural steps in the legislative process and also provides specific criteria for improving the quality of laws and regulations and reducing primary legislation, criteria for the drafting of single texts, standardised formats for typical legislative case studies (prepared by a working group which included staff of the Giunta's Unit for the Co-ordination of Legislative and Legal Activities and staff of the Regional Council), quality standards and guidelines for preparing regional laws and regulations.

The task of verifying compliance with the criteria for improving legislative quality and the drafting rules defined by the aforementioned Regional Executive Deliberation No. 3 of 2006 is the responsibility of the Unit for the Co-ordination of Legislative and Legal Activities.

In 2003, a working group that includes officials of the Giunta was set up within the Regional Council to prepare an index for verifying the formal quality of laws, working on two fronts: on the one hand, tables were prepared providing explanations and examples of the most difficult rules to apply, together with plans for a work to be disseminated more widely on "drafting culture"; on the other hand, a study was conducted that would "make possible a measurable qualitative assessment of the use of the manual". The group has produced two reports: the "Guide for the Use of the Manual: Rules and Suggestions for the Drafting of Regulatory Texts"; and the "Quality Index: the Experimental Programme of the Regional Council of Tuscany".

Compliance, enforcement and appeals

Dispute mechanisms

As has already been shown for the other regions being surveyed, *administrative appeals* of a hierarchical nature are falling into disuse.

In the Tuscany Region the position of *regional ombudsman* had already been provided for in the repealed Regional Statute of 1971 and was later established for the first time by Regional Law No. 8 of 21 January 1974, later amended by Regional Law No. 49 of 17 August 1977. It has been operational since 1975.

The law establishing the ombudsman's office initially gave it limited investigative powers, which were later extended over the years both in practice and through various special laws. It was only in the early 1990s *that Regional Law No. 4 of 1994* was passed, which reformed the role of the ombudsman's office, granting it full and clear-cut powers to investigate practices, thereby bringing it in line with the European Ombudsman.

The new Regional Statute includes the ombudsman among the protection and guarantee bodies listed in Title V, defining its powers and establishing specific guarantees of its institutional independence and autonomy.[25]

In order to bring the laws and regulations that established the Ombudsman in line with the new provisions of the Statute, a draft law to reform the Regional Ombudsman's office has been prepared and is currently being examined by the Council's First Commission.

The Ombudsman's office, as it has taken shape over the years, is an independent body designed to protect and defend the rights and interests of citizens in their relationships with government in accordance with the principles of impartiality, efficiency, equity and transparency.

Citizens may contact it through a toll-free number or through the request form provided on the Ombudsman's website (*www.consiglio.regione.toscana.it/difensore/default.asp*).

The Regional Ombudsman's office must also prepare an Annual Report on the activities that it has carried out and the action that it has taken with regard to all levels of government operating in the Tuscany-State, regional and local.

The Ombudsman presents the report to the Regional Council and Parliament and then, following discussion by the Regional Council, it is published in the Official Gazette of the Tuscany Region and on the Ombudsman's website (where annual reports from 1995 until the present are available).

The Regional Ombudsman is also the co-ordinator of the "Standing Conference of Tuscan Ombudsmen" established in 1998 (which is presided by the Regional Ombudsman and is composed of the ombudsmen of communes, individually or through an association, and of provinces and mountain communities). This Conference is the natural forum for consultation and co-ordination between ombudsmen at the regional level and is open to dialogue with local governments and social actors.

It should be pointed out that there is a dense network of ombudsmen in Tuscany. It covers 70% of the population: of the 287 communes in Tuscany, some 247 have provisions for an ombudsman in their Statute, either individually or in an associated form (appointing a common ombudsman) or through agreements signed with the provincial or regional ombudsman. Thus far, some 56 local civic ombudsmen have been appointed.[26]

Appeals

With regard to appeals to the Constitutional Court, the Tuscany Region was involved in various constitutional disputes with the government during the previous legislature.

It was only in 2004 that the national government filed 5 appeals regarding the constitutionality of Tuscan laws and regulations (in fields such as construction, mineral and thermal waters, professions and the adoption of the new Statute),[27] while the Region filed some 11 appeals challenging the constitutionality of State laws in fields such as public finance, finance acts, agriculture, fishing, cinema, energy, health and ports.[28] In nearly all these appeals the Region contested the violation of the principle of loyal co-operation.

With regard to administrative disputes brought before the Regional Administrative Tribunal, on the other hand, the quantitative data on appeals against regional activities show that the sector in which the most appeals have been lodged is economic development, particularly the issue of financing, including European financing. In the field of urban planning, however, the approval of Regional Law No. 5 of 16 January 1995 (Territorial Governance Norms), which laid down that all planning powers would be transferred to local governments except for the preparation of the Territorial Policy Plan[29] that would be the responsibility of the Region, led to a drastic reduction of the number of disputes in this field for the Region, except for the extremely rare cases of appeals against local planning measures that do not comply with the provisions of the Territorial Policy Plan.

The Giunta's legal advisory office (*Direzione Generale Avvocatura*) also provides legal advice to other directorates, sometimes preventing the disputes that might arise as a result of regional procedures.

The use of Regulatory Impact Analysis at regional level

The use of *ex ante* and *ex post* regulatory impact analysis tools is not compulsory in the Tuscany Region nor even provided for by the Statute or special laws.

Nevertheless, the Region stands out for having conducted many experimental initiatives with regard to past laws and regulations on the basis of the special project "A more efficient and less bureaucratic Tuscany" (Regional Executive Deliberation No. 1365 of 17/12/2001).

These initiatives, which concerned 15 case studies, were coupled with 4 training cycles on Regulatory Impact Analysis (RIA) for the staff involved, under the guidance of the Legislative Office of the Presidency and in consultation with the MIPA Consortium

(Consortium for the Development of Methodologies and Innovations in Government). At the end of the project, a Manual of RIA practices was drafted, which is updated annually on the basis of the results obtained.[30]

The systematic use of regulatory impact analysis in the regional law-making process is the objective of one of the projects of the "New pact for skill development and more and better jobs in Tuscany"[31] signed in March 2004 between the Tuscany Region, local institutions, social groups, representatives of workers and business and environmental associations.

During 2005, the Region completed a feasibility project for the introduction of RIA that includes the development of an information system to provide support for impact analysis and the creation of tools for strengthening the consultation process.

Regional Executive Deliberation No. 2 of 9 January 2006 was later approved, which defined the criteria for including and excluding the regulatory initiatives (laws and regulations) to undergo RIA and which determined economic assessment methods.

With regard to the use of *evaluation clauses*, these have become more frequently used in regional laws and regulations over the years even though these clauses have not been sufficiently tested, in some cases they have not proved to be effective at all.[32]

The new Statute specifies in Article 45, Paragraph 2, that the regional law on lawmaking governs the inclusion of evaluation clauses in laws and regulations in order to evaluate its effects by defining time frames and the means of gathering the necessary information.

Thus far, no regional laws have contained specific articles in which the implementing authorities commit themselves to providing reports aimed at making it possible to verify the effectiveness of laws and regulations in terms of the objectives defined. Such articles normally go under the heading of "evaluation clauses", even though they can sometimes have different names (such as reports to the Council or monitoring or evaluation reports), and contain questions aimed at evaluating the time frame and methods of implementation of the law and its impact on the public targeted and more generally on society as a whole.[33]

When a law contains an evaluation clause, the Regional Executive's office responsible for implementing the law is required to prepare within a given time a report explaining the elements and indicators required so that the law's effectiveness can be evaluated and to determine whether or not corrective measures are needed.

The Regional Council, on the basis of the reports that it receives, prepares specific information notes that are forwarded to the competent Council commissions.

With regard to *feasibility analysis*, its systematic use in the Council was established by Deliberation No. 23 of the Bureau of the Presidency of 20/2/1995, which provided for the adoption of feasibility reports. Decree No. 6 of the Secretary General of 6/2/2004, which established the "legislative procedures and statistical documentation" unit, provides for, *inter alia*, the "evaluation of the laws and regulations in force from the economic, financial, social, organisational and procedural standpoint" and "the analysis of the feasibility and possible effects of draft laws and decisions being examined by the Commissions from the economic, financial and social standpoint". The instrument used for these evaluations is the preliminary feasibility report, which is aimed at identifying any problems and focuses on organisational and procedural aspects.

Keeping regulations up-to-date at regional and local levels

Updating and reviewing regulations

With regard to the reorganisation and quality of regulations, the new Statute expressly lays down that the Region commits itself to ensuring the certainty of the law, including through the use of single legislative and regulatory texts for specific sectors.[34] This makes explicit a principle that regional lawmakers were already pursuing in the previous legislature, which introduced ordinary rather than annual use of simplification methodologies such as the so-called "abrogation laws", "reorganisation laws" and innovative single texts.[35]

With regard to abrogation laws, between 1999 and 2005 three such laws were adopted: with the first of these (Regional Law No. 12/1999), 358 laws were repealed; with the second (Regional Law No. 19/2000), 374 laws and 27 regulations were repealed; and with the third, Regional Law No. 11/2002, 583 laws and 11 regulations were repealed and steps were taken to repeal even individual articles of laws remaining in force. A new abrogation law is currently being prepared, which will be submitted to the Executive for approval in 2007.

Abrogation laws are usually accompanied by two annexes, one on laws classified by field and in chronological order, and the other on regulations.

With regard to reorganisation laws, during the 2000-05 legislature 14 general reorganisation laws were approved, the most general of which concerned the sectors of accounting (Regional Law No. 36/2001), territorial governance (Regional Law No. 1/2005), taxes that are the competence of regions (Regional Law No. 31/2005) and energy (Regional Law No. 39/2005).

Recently, innovative single texts have been used by regional lawmakers, particularly when laws and regulations are being consolidated in a sector for which provision has been made to introduce regulatory and administrative simplification wherever possible.[36]

In particular, with regard to consolidated laws, the following have been approved: the consolidated law (*Testo Unico*) in the field of tourism (Regional Law No. 42/2000), the single text in the field of education, instruction, guidance, vocational training and employment (Regional Law No. 32/2002), and the consolidated laws in the field of commerce (Regional Law No. 28/2005). In some cases, single texts have provided the opportunity to initiate processes of deregulation, and in others to implement administrative simplification, for example with regard to authorisation procedures.

With regard to single regulatory texts, during the 2000-05 legislative, consolidated laws were approved in the field of the management of fauna and hunting (Decree of the President of the Regional Giunta No. 34/R of 7 August 2002) and the implementing regulation of Regional Law No. 32/2002 mentioned above (Decree of the President of the Regional Giunta No. 47/R of 8 August 2003,).

Suggestions for the simplification and improvement of the quality of regulations are also provided through the annual monitoring of regional laws and regulations conducted by the Regional Council since 2001 through the preparation of the Annual Report on the Status of Legislation mentioned earlier.

This report shows that between 1970 and 2005 (monitored by individual legislatures), some 2 619 laws have been passed (containing 19 617 articles),[37] with a constant decrease in output (in 2004, 62 laws and 16 regulations were enacted, while 55 laws and 18 regulations were passed in 2005 and, thus far, 47 laws and 13 regulations have been adopted in 2006).[38]

However, this drop in legislative output over the years is not explained by difficulties faced by regional lawmakers, but rather by the increasingly frequent and constant use of sectoral and inter-sectoral reorganisation laws rather than the multiplicity of mini-laws that have always been enacted in some regional laws and regulations to govern a single subject.[39]

Administrative simplification and electronic administration at regional and local levels

The Tuscany Region has enacted various laws in the field of administrative simplification, for example in the following specific sectors:

- Regional Law No. 52/1999 which introduced business start-up declarations and self-certification forms as the main channels of relationships between citizens and government in the construction field. The process of simplification was later continued in the 2000-05 legislature with Regional Law No. 43/2003, amending Regional Law No. 52/1999;
- Regional Law No. 42/2000 (Consolidated Text of Regional Laws in the field of tourism), which refers to the One-stop Shop for Productive Activities (*Sportello Unico delle Attività Produttive*) as the primary point of contact for companies in the sector, which also activated means of simplification through self-certification forms and business start-up declarations; and
- Regional Law No. 28/2005 (Commercial Code, Consolidated Text in the field of commerce at a fixed place of business, in public areas, sale of food and beverages, sale of daily and periodical press items and distribution of motor vehicle fuel).

In order to promote the simplification and rationalisation of regional administrative procedures, an office responsible for the planning and comprehensive management of organisational initiatives in the field of simplification has been established within the Organisation and Information System General Directorate of the Regional Giunta.

Last, in the field of administrative simplification Regional Law No. 9/1995 is currently being updated with respect to "Provisions concerning administrative procedures and access to documents", also in light of the recent amendment of Law No. 241/1990.

With regard to the sector of productive activities, the Region has launched an initiative to promote the establishment and implementation of the *One-stop Shop for Productive Activities*, taking advantage of the experience gained in supra-communal co-ordination and especially provincial co-ordination.[40]

Concretely, out of 287 communes, 218 one-stop shops have been established although only 136 are operational (or 47.4% of those established).[41] These data confirm the difficulties encountered in launching these simplification instruments even in Tuscany.

With regard to the promotion and use of forms of e-government, the Region approved Law No. 1 of 26 January 2004 ("Promotion of E-government and the information society and knowledge of the regional system", Rules of the "Tuscan Regional Telematic Network"). This law governs the Tuscan Regional Telematic Network (RTRT), which is defined as an ongoing form of co-ordination of the regional system of local authorities and co-operation with other public and private actors to develop methods of e-government in the interest of simplification, transparency and integration of internal processes and more efficient services to citizens and businesses.[42]

The Tuscan Regional Telematic Network is both an infrastructure that extends throughout the territory of the Region, interconnected to Internet and other networks, and a community of members brought together by their common need for technological and organisational integration.

Law No. 1/2004 provides for the adoption by the Region of the initiative "Promotion of e-government and the information society and knowledge of the regional system", lasting three years, which has been approved by the Regional Council upon the proposal of the Giunta Regionale, and which is being implemented through the Network's annual activity plan.[43]

Thus far, the Programme has been presented as a proposal by the Giunta to the Regional Council, which should soon approve it.

Notes

1. This section was prepared by an expert and fact-checked by the regional authorities but did not involve any peer review process or any mission by the OECD Secretariat.
2. In accordance with Article 123 of the Constitution, the Regional Council first approved the Statute on 6 May 2004 (first deliberation) and 19 July 2004 (second deliberation). Following an appeal lodged by the Government asking that the Statute approved in this manner be declared unconstitutional, the Constitutional Court, in Judgement No. 372 of 29 November 2004, rejected this appeal.
3. Article 40, Statute.
4. Article 44, Statute.
5. Article 42, Statute.
6. The Directorate's report specifies: the field and subject of the draft law or regulation, the legal, economic or social needs that it is aimed at meeting, its objectives, the public or users targeted, the instruments used, the analysis of the legislative context, the instruments referred to by the law for its implementation, the organisational requirements and an economic and financial analysis.
7. Under Article 29 of Regional Law No. 44 of 5 August 2003.
8. Data drawn from the Annual Report of the Council on Regional Laws and regulations (*Rapporto annuale del Consiglio sulla legislazione regionale*), 2005, Summary note on laws and regulations from 1970 to 2005.
9. Article 3, Statute.
10. Article 61, Statute.
11. Article 72-73, Statute.
12. Article 19, Para. 3, of the Statute.
13. Article 35 (Consultation procedure) of the Internal Rules of the Council: "1) In connection with cases assigned to them, e commissions may conduct consultations with associations representing local authorities and several or single local authorities regarding acts of specific interest to them or to all local authorities on issues for which the mandatory opinion of the Council of Local Autonomies is not required. They may also consult with groups of citizens, private and public institutions and offices, representative associations, experts and staff of the regional administration and its offices. 2) The commission shall determine whether consultation is opportune in light of the case assigned to it. 3) The decision to conduct the consultation shall be communicated to the President of the Council, who may submit the decision, if appropriate, to the Bureau of the Presidency. 4) The commission shall decide regarding the parties to consult, the procedures used and the time frame of the consultation. 5) Invitations for consultations shall in all cases be communicated to the Presidency of the Council. 6) Expenses for consultations shall be charged to the Regional Council budget. 7) The holding of consultations shall not be a valid reason for failure to comply with the time frame set for the commission under Article 29 of the present rules".
14. The first law establishing the Council of Local Autonomies was Regional Law No. 22 of 21 April 1998, subsequently superseded by Regional Law No. 36 of 21 March 2000, which is still in force. The Council is also governed by Article 66 of the New Statute.
15. Regional Law No. 36 of 21 March 2000, Article 1.

16. The Council of Local Autonomies is composed of 50 members, consisting of the 10 presidents of provinces (*ex officio* members), 2 presidents of provincial councils; the 10 mayors of the provincial capitals (*ex officio* members), 23 mayors of other communes, 2 presidents of communal councils and 3 presidents of mountain communities. Members who are not *ex officio* members are elected by the relevant assemblies following administrative elections. The following have a standing invitation to attend meetings, with the right to speak: the presidents of the regional branch of the ANCI (National Association of Italian Communes), of the URPT (Union of Provinces of the Tuscany Region), of the regional branch of the UNCEM (National Union of Mountain Communities) and of the Regional League of Local Autonomies,. The President of the Giunta and members of the Giunta and the Regional Council may also participate in sessions, with the right to speak.

17. Chamber of Deputies, Legislative Observatory, *2004-2005 Report on the Status of Legislation (Rapporto 2004-2005 sullo stato della legislazione)*, Part II, p. 178.

18. Article 123 of the Constitution, as amended by Constitutional Law No. 3/2001.

19. As amended by the Council Deliberation of 17 February 2005, Article 6.

20. A new memorandum of understanding was signed on 6 February 2006.

21. Chamber of Deputies, Legislative Observatory, *2004-2005 Report on the Status of Legislation (Rapporto 2004-2005 sullo stato della legislazione)*, Part I, p. 98.

22. The **e.Toscana** project is part of the special multiyear programme of strategic investments of the Tuscany Region and collects investments for the development of e-government and the information society in Tuscany. The project is organised into three areas of intervention:
Area 1: e.Toscana for the public administration;
Area 2: e.Toscana for representative associations and liberal professions; and
Area 3: e.Toscana for families and citizens.

23. The first report, which analyses laws and regulations between May 2000 and November 2001, was published in January 2002; later volumes refer to the calendar year, except for the most recent report which analyses laws and regulations between January 2004 and March 2005.

24. This section is prepared by the Regional Giunta.

25. Article 56 of the Statute lays down the following provisions:
"1) The Ombudsman shall ensure non-jurisdictional protection for all in cases of bad government, also performing mediation activities.
2) The Ombudsman shall intervene either *ex officio* or at the request of the parties concerned.
3) The specific duties of the Ombudsman, the means of action and relative effects shall be governed by the law, with reference in particular to the right of access.
4) The Ombudsman shall be appointed by the qualified majority provided for by law and using procedures that ensure impartiality and independence. The term of office shall be six years and shall not be renewable.
5) The law shall promote the establishment of the network of local ombudsmen.
6) The Council shall ensure the independent functioning of the Ombudsman and shall provide him with dequate financial and human resources to perform his duties."

26. Data drawn from the 2005 Report of the Ombudsman of Tuscany.

27. Rejected by the Constitutional Court in Judgement No. 372 of 29 November 2004.

28. Data drawn from the Annual Report of the Council on Regional Laws and regulations, 2005, Part II.

29. The Territorial Policy Plan (*Piano di Indirizzo Territoriale*, PIT) is the planning document through which the Region establishes guidelines for the planning activities of local authorities and defines the operational objectives of its own territorial policy, in accordance with *Regional Law* No. 5 of 16 January 1995, "Territorial Governance Norms" and in compliance with the indications of the regional development programme.

30. From a methodological standpoint, each case study, on the basis of the analysis of a specific problem, identifies the objectives of the measure being considered and a variety of alternative options (including that of not introducing any measure at all) that are to undergo economic assessment, and also sets specific times for consultation with those directly and indirectly affected by the provision and with experts in the relevant regulatory field.

31. This pact includes Project Area No. 5 "Impact of regulations and the apportionment of administrative functions following the laws on administrative decentralisation and the recent constitutional reforms".

32. Chamber of Deputies, Legislative Observatory, *2004-2005 Report on the Status of Legislation (Rapporto 2004-2005 sullo stato della legislazione)*, Part I, p. 97

33. Examples of regional laws containing evaluation clauses are Regional Law No. 18 of 27 May 2002 (Norms for the introduction of organic, typical and traditional products in publicly-operated cafeterias and food education programmes in the Tuscany region), which requires the Giunta to forward to the competent Council commissions a report summarising the initiatives carried out and financed during the previous year; Regional Law No. 45 of 5 August 2003 (Laws and regulations governing wine roads and routes going through areas producing extra-virgin olive oil and high-quality agricultural and agri-food products), which require the Regional Executive to forward to the competent Council commission a report summarising the initiatives carried out and financed during the previous year; Regional Law No. 19 of 24 March 2004 (Norms for rationalising and modernising the fuel distribution system), Article 22 of which requires the Regional Executive to forward to the competent Council commission within three years of the law's entry into force a report on the implementation status of the law and the results obtained in terms of the improvement, rationalisation and modernisation of the distribution network. In particular, it is stipulated that this report must address the performance of the monitoring activity provided for by the law and the implementation status of the verification of existing distribution facilities; Regional Law No. 28 of 31 May 2004 (Laws and regulations governing aesthetic treatment, tattooing and piercing activities), which specifies that within three years of the law's entry into force the Regional Executive must report to the Regional Council on the status of implementation of the law; Regional Law No. 29 of 31 May 2004 (Transmission, conservation and scattering of ashes deriving from the cremation of deceased persons), which specifies that the Executive must report to the Council on the status of implementation of the law two years after its entry into force; Regional Law No. 78 of 27 December 2004 (Provisions regarding the authorisation to operate cinemas), Article 6 of which lays down the Regional Executive must provide the Council annually with the results of the information system on the distribution network and the monitoring system; Regional Law No. 7 of 3 January 2005 (Management of fishery resources and regulation of fishing in inland waters), which specifies that as from two years after entry into force of the law the Giunta must periodically report to the Regional Council regarding the implementation of the law and its results.

34. Article 44, Statute.

35. Between 1998 and 2003, the number of laws produced has been reduced by one-third and the enactment of organic laws has increased significantly.

36. These initiatives have always been carried out following the guidelines provided in Giunta's Deliberation No. 6 of 12/11/2001 (Official Gazette No. 49 of 5/12/2001, Part Two, Section II) regarding the "criteria for the reduction of primary legislation and the preparation of single texts. Guidelines for the departments of the Central Directorate".

37. Annual Report of the Council on Regional Laws and regulations (*Rapporto annuale del Consiglio sulla legislazione regionale*), *op. cit.*, Summary note on laws and regulations from 1970 to 2005.

38. Data drawn from the databank on regional laws and regulations of the Chamber of Deputies, link: *http://legxv.camera.it/docesta/306/1198/lista.as*.

39. Chamber of Deputies, Legislative Observatory, *2004-2005 Report on the Status of Legislation (Rapporto 2004-2005 sullo stato della legislazione)*, Part II.

40. In 2002, a specific memorandum of understanding was signed with the 5 provincial co-ordinating bodies active in the Region (Regional Executive Deliberation No. 956 of 9/9/2002 and later supplements).

41. Formez data, 2006.

42. Regional Law No. 1/2004, Article 2.

43. Regional Law No. 1/2004, Article 7.

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PART II

Conclusions and Policy Recommendations

Multi-level regulatory governance: key issues for Italy

Multi-level regulatory governance is faced by countries with a wide variety of institutional and political settings. The institutional model and the degree of decentralisation will of course depend on the political, historical and economic factors of each country. Italy has tried to deepen the devolution of powers to sub-national levels of government, without abandoning some of the methods and approaches of a unitary State. Italy is confronted by the need to find ways of harmonising policies and tools for regulatory quality at different levels of government, to encourage economic growth and competition in a sustained way all over the country and to develop new forms of co-ordination and co-operation among levels of government. Multi-level regulatory issues have become so important that they are an essential feature of the regulatory framework at the national level.

The success of such an undertaking will depend in part on the capacity of political leaders to promote high quality regulation at each level of government, and to enhance overall efficiency by instituting appropriate co-ordination mechanisms. This may require co-ordination tools both horizontally at the regional level, among the various institutions and stakeholders, and vertically between the national and local level. Another key element is the appropriation of regulatory quality tools at the local level, in partnership and agreement with the central level, as well as the deeper involvement of the local level in the development and use of these tools at the national level.

Decentralisation and federalism have been important drivers for innovation in Italy, together with membership to the European Union under the Lisbon Agenda. There is now a growing acceptance and continuous efforts at regional level to include principles of good regulation in policy making. A fundamental question that emerged from the previous sections refers to the way the Italian national authorities and the regions can optimise their relations in terms of the quality of regulations. This involves addressing a number of challenges discussed below. The first is to assign clear responsibilities to each player and to promote accountability at different levels of government. It is also essential to promote transparency as well as appropriate regulatory design, fostering the use of tools such as regulatory impact analysis or administrative simplification at the local level.

Empowering different players in increasingly complex processes is fundamental, as well as involving citizens in decision taking without making the process more cumbersome, and defining the role of each level in regulatory processes. This will lead to the management of networked competences and the encouragement of new forms of co-operation, while reducing recourse to appeals and increasing legal certainty.

Clear responsibilities and roles of each player in the regulatory process

As a general trend in OECD countries, devolution of powers to entities that have regulatory autonomy, such as elected regional or local governments, requires more co-ordination. Bringing decisions closer to beneficiaries while promoting horizontal coherence offers opportunities for managing the decision-making process and for

optimising the benefits of regulatory quality. In this context, co-ordination is indispensable, but involves significant costs. The need for co-ordination could be kept to a necessary minimum if questions of who regulates what, and why, can be answered as clearly as possible.

The overall objective of achieving regulation that is clear, coherent and stable or at least credible over time requires some specific adaptations in the case of multi-level government systems. Managing the regulatory decision-making process presupposes answers to these two questions: who are the decision makers, and what are they responsible for?

Before making changes to the decision-making process and to regulatory management, these mechanisms must be clearly identified, and the regulatory powers of the sub- and supranational levels established. The objective is to enhance the benefits of regulatory policy while minimising its costs.

This issue arises in Italy in the context of defining the respective responsibilities of the States and the region. While in theory the new constitutional order assigns limited powers and competencies to the national level, it leaves a number of grey areas, where shared responsibilities between the region and the centre offer possibilities for judicial conflict, thus reducing legal certainty for the players. At the local level, the lack of statutes in some cases reflects a complex understanding of the respective roles of the executive and the regional assembly, leading to relative uncertainty and to further co-ordination to resolve differences of approaches.

Roles and responsibilities for regulatory policy attributed to the regional Executive (*Giunta*) and the regional Parliament (*Consiglio*) have not always been clearly defined when regional statutes have been approved. In terms of law-making procedures, while the regional Council has been very active in proposing legislation in regions such as Tuscany or Campania, the Executive has generally proposed a more limited number of laws, but which were more likely to be approved. The decisions of the Constitutional Court No. 313 and 324 in 2003 have contributed to clarify the distribution of powers between the regional executives and parliaments. In this context, a clearer definition of these responsibilities as part of regional statutes and or administrative procedure laws established at regional level would serve to further clarify the situation and streamline co-ordination.

Accountability at different levels of government

Regulatory systems demand constant adaptation. Multi-level regulation often involves greater regulatory responsibilities for regions at the local level, with complex relationships between the regions and the centre. Optimising regulatory quality requires that the multi-level dimension be taken fully into account, given its significant impact in terms of economic, environmental and social consequences.

Consistent processes for making, implementing and revising regulations are fundamental to ensuring public confidence in the regulatory process and safeguarding opportunities to participate. Objective criteria for making administrative decisions, and procedures for when and how to document these decisions, provide necessary checks and balances around the exercise of regulatory discretion. Regulating the exercise of regulatory discretion helps assure greater consistency and fairness in managing regulations. In turn, a stable, fairly administered and non-partisan legal framework assures greater integrity in government actions, boosts market confidence and investment, and improves compliance.

The transfer of powers to local entities should not be seen as simply a convenient way of shifting responsibilities. Two issues that show the complexity of making levels of government accountable *vis-à-vis* citizens and businesses are:

- The relationship between the private and public sectors, in particular through public procurement and concessions of public services. In this field, regulatory quality is essential and involves clear and transparent procedures, possibly through open bidding. On one hand, there are significant risks that regulation will be harmful, or that it will be hijacked by interest groups, or that it will foster corruption; on the other hand, too much formality will undermine the quality of the purchase in economic terms.
- Compliance: mechanisms for prevention, control and sanctions must be appropriate to the multiplicity of stakeholders and must allow for their necessary interaction.

This report tends to highlight areas where open and transparent bidding processes have been slow to establish, in the context of an accommodating sectoral legislation at the national level in Italy, for example for transport in Campania. In other regions, the impact of regional trade laws has not been fully assessed and there is a lack of *ex post* reporting on the concrete implications and effects of the laws, which reduces accountability at regional level.

This situation would call for increased support to the local level in order to have sufficient capacity to grant concessions and conduct efficient public procurement. The national rules would also need to be aligned with these objectives. For example in Italy, while public procurement requires open bidding for transport services, a social clause limits the economic impact of the bid, requiring for any operator to maintain the same workforce under the same terms and conditions.

The work of the Interregional Legislative Observatory provides precious data on the regulatory activity of the region which improves transparency and accountability. Annual reports at the national level on the impact of devolution and the implementation of laws at regional level would also help.

Increasing transparency in the regulatory process

Transparency in regulatory processes facilitates efficiency, as it supports compliance as well as the design of practical policies, responding to user's needs. It should offer regulated entities the possibility to identify, understand and express views on their obligations under the rule of law. Transparency is an essential part of all phases of the regulatory process – from the initial formulation of regulatory proposals to the development of draft regulations, through to implementation, enforcement and review and reform, as well as the overall management of the regulatory system. Transparency is important because it increases confidence and trust. Transparency encourages the development of better policy options, and helps reduce the incidence and impact of arbitrary decisions in regulatory implementation.

Important efforts have been made in Italy to expand transparency in administrative procedures and the legislative process. While the different simplification programmes proposed by the government have been intended to make procedures more transparent, there are other efforts to include stakeholder's view on the regulatory process. The Department of Public Administration signed an understanding with Confindustria (leading business organisation) in March 2006 that contains joint efforts and the commitment to

undertake different activities to integrate the business perspective into the design of the regulatory policy, such as an on-line mechanism for consultation and the set up of an electronic register of procedures affecting enterprises.

In a multi-level framework, local governments tend to be closer to citizens and smaller businesses, reinforcing the need to include transparent mechanisms for policy making and decision. Decentralisation undoubtedly contributes to the democratic process if it serves to reinforce transparency and the consultation of stakeholders. Introducing a right of public intervention in the regulatory process can maximise the positive effects by ensuring that public services are adapted to local preferences. Better knowledge of users is essential in the process of optimising public governance. Italian regions are aware of the importance of these issues: there is an increased need to make available the information of the regulatory process and to integrate stakeholders' views through consultation mechanisms.

Co-ordination between different levels of government

Co-ordination between levels of government is key for regulatory quality. The "vertical" dimension of multi-level governance refers to the linkages between higher and lower levels of government, including their institutional, financial, and informational aspects. Local capacity building and incentives for effectiveness of sub-national levels of government are crucial issues for improving the quality and coherence of public policy. In Italy, the issue of co-ordination deserves special attention as the country has made important efforts to formalise co-ordination mechanisms and agreements, but important gaps to improve regulatory processes and coherence still remain.

Co-ordination mechanisms between national and local levels

There are some formal joint institutions or mechanisms for co-operation between the national and local level: Unified Conference, State-Regions Conference, Conference of State-Municipalities and other local authorities. These involve formal consultative fora or summit meetings between representatives of the different levels of government to discuss and deal with overall issues or emerging problems and challenges. Recently these have been used for the purpose of increasing regulatory quality (Agreement between the Government, Regions and Local Authorities on simplification and better regulatory quality), in co-operation with the Department of Public Administration.

These formal mechanisms also serve to integrate the regions' perspective and interests in the decision-making process. Regions have representative offices not only in Rome but also in Brussels to defend their points of view in terms of legislative proposals that affect them directly and are discussed at national and supranational level.

At the moment, the State does not monitor directly the implementation of national legislation in the regions, following the spirit of the law that gives distinct and separate regulatory powers to the regions. But it has a good overview of the legislative activity in the regions through the activities of the Inter-regional Legislative Observatory. Similarly, there is a comparative lack of regional benchmarking in a number of important areas, where regions have received responsibilities, such as retail trade, transport, land-use and planning, distribution of energy, etc.

Constitutional review

Regional laws can be challenged before the Constitutional Court for inconsistency with the Constitution and conflicts of authority between regions or between the State and regions. The matters falling in the legislative competences of State and Regions are regulated by the amended Article 117 of the Constitution. Some cross issues are not clearly referable to the respective competences, increasing in the last few years the constitutional litigation. Lately, the different levels of government are moving to find ways to co-operate in this issue and the level of conflicts has been reduced. The analysis at regional level shows that this plays an important role for policy making at regional level. The State has challenged provisions in several regional laws – 12 out of the 104 laws passed by Campania between 2002 and 2005 – and regions have challenged provisions in national laws: for example, Campania argued during the same period that 20 national laws infringed regional competence.

The number of cases before the Constitutional Court has increased between 1998 and 2003 (see Table II.1). In 2004, in absolute terms, decisions arising from appeals on unconstitutionality lodged by the State and the regions before the Court represented 21.75% of the total (6.83% more than in 2003 and 14.46% than in the last 20 years).[1] Ordinary constitutional review has even exceeded the incidental constitutional review.[2] The lack of clarity together with judicial delays has created unnecessary constraints and has reduced regulatory quality and certainty with implications for citizens and regional authorities alike. However, lately the number of conflicts has decreased.

Table II.1. **Cases brought before the Constitutional Court (1998-2003)**

	1998	1999	2000	2001	2002	2003
Incidental questions of constitutional legitimacy (ordinanze)	925	754	860	975	584	1 193
Questions of constitutional legitimacy in via principale (ricorsi)	48	38	25	43	96	145
Conflict of jurisdiction between the State, the Regions and the Autonomous Provinces	22	27	33	20	28	84
Conflicts of jurisdiction between the powers of the State	11	15	30	18	16	41
Judgements of admissibility of conflicts of jurisdiction between the powers of the State	20	34	35	32	27	22
Referenda	1	21	21	–	6	1
Total	**1 027**	**889**	**1 004**	**1 088**	**757**	**1 486**

Source: Constitutional Court (2007), *What is the Constitutional Court?*, Rome.

The increase in the caseload in the constitutional area has led to a climate of uncertainty and difficulty in projecting legislation among the broad range of political and technical matters involved in legislative planning of regions. In the last few months and without any change of constitutional legislation, a more effective use of co-ordination mechanisms and preventive consultation by the State and the Regions has led to a reduction of the litigation. There is evidence that a correct use of loyal co-operation is a fundamental tool of multi-level governance.

Promoting efficient regulatory design and tools at regional level

The promotion of efficient regulatory design and tools at regional level is important to contribute to better regulatory outcomes at the national level. This includes impact assessments and *ex post* evaluations, use information and communication technologies

(ICT) and e-government as well as standards of quality law-drafting. After more than 30 years of devolution to the regional level, administrative simplification cannot be delayed as there is a need to update the stock of laws and regulations by eliminating those which are obsolete, and to simplify administrative procedures. The process has been gradual: the first law on administrative procedures dates back from 1990 (Law No. 241), but administrative powers were transferred only in 1998-1999.

Although practices vary across regions just as they do across countries, a comparative synthesis of practices in Campania, Calabria, Veneto and Tuscany nonetheless is revealing of certain trends and gaps. In general, many of the basics are still "work in progress". Respect for meeting constitutional provisions is by itself not sufficient to put a good regulatory process in place. Even at the national level, this usually calls for a specific policy, supported by political leadership at a high level. The following section provides a thematic analysis of the regional efforts to address the challenges of regulatory policy, institutions and tools.

Regulatory design: policies and institutions

Principles of regulatory policy in the Italian regions can be found in the respective Statutes. While Veneto and Campania are still governed by regional Statutes prior to the constitutional amendments to the Title V, Calabria and Tuscany have new Statutes that provide a framework for policy and law making reflecting the new powers acquired by the regions.

All regions have legal and technical units supporting the legislative activity both in the Executive and the Legislative, but their procedures are different in each region. Their skills and resources are also uneven. Their tasks reflect the different regional interests and priorities: some regions have given sector priority to the quality of law proposals (Tuscany), and verifying the constitutionality of the law proposals (Veneto), while others have undertaken projects to simplify and codify the regional legislation (Campania). The regional Council in Calabria has an advisory body for the quality of legislation, the Committee for the Quality and Feasibility of the Laws.

The increasing devolution of powers in Italy has generated a gap between the institutional capacities and resources of some of the regions and their wide regulatory responsibilities. In some cases, laws in a given region have been quoted as being "copied" from other regions, given the lack of local resources. In order to strengthen capacity, the regions have a special institute to promote regional quality across regions: Interregional Legislative Observatory (ILO), whose Secretariat is based in Tuscany. This institution supports the efforts of the regions implementing high quality regulation at the regional level. FORMEZ also supports institutional capacity building in a number of regions.

Making use of regulatory tools at regional level

Quality law-drafting. Formal drafting receives special attention. Tuscany has given great importance to supervision of the quality of legislation by regional law-makers, and various provisions of the Statute specify that the quality of proposed legislation should already be verified during the legislative process. The new Statute has envisaged the establishment of a legislative monitoring committee, not yet in force, but which will be responsible for verifying that the sources of regional legislation are consistent with the Statute. If this is not the case, then they have to be re-examined.

Veneto adopted rules and guidelines for legislative drafting prepared in Tuscany in 1992, updated in 2002 by the Interregional Legislative Observatory (ILO). Campania also has drafted a manual of rules to assure "clarity and simplicity of texts" based on the same ILO. Consistent application of the rules and guidelines is always a challenge, and there are examples of unclear language, vague and confusing rules, and of the omission of implementing regulations or administrative acts. Shortcomings can usually be traced to staff shortages. The constant need for simplification may reflect insufficient attention paid to quality law-drafting *ex ante*.

Public consultation and communication. The public, local units and associations are all consulted in the legislative process at many stages. Strong democratic traditions in Italy have enshrined local participation and involvement in regulatory processes. However, these are not always mandatory, systematic or subject to specific rules. For example, Tuscany envisaged setting up a Conference of Social Organisations in order to enable social partners to participate in the preparation of economic, social and territorial planning activities by giving their opinions and making proposals to the Council, but it has not been formally established. The Regional Executive has prepared a draft law on the participation of citizens in regional activities which should be presented to the Council in the early months of 2007.

In the other regions, such as it is the case in Veneto, consultations are frequent, but not mandatory. Calabria practices "participatory legislation", which refers to provisions for the establishment of commissions, observatories, consultations and committees. Although the aim and composition of these bodies, and the time frame, are sometimes vague, this method, used for 10% of the legislation in force, is a step toward a more robust consultation process. The Regional Council of Calabria established the Communications Department, which together with the Public Relations Office, the Office for Relations with Institutional Users and the Call Centre, enable citizens to have access to information. But the multiplication of such efforts dos not take the place of a mandatory consultation process which generates transparent information on the advice that the government receives. Nor do they take account of those who are able to participate in consultation, but unwilling or reluctant to do so, a challenge for "open and inclusive government" in all countries.

The use of Regulatory Impact Analysis (RIA) and alternatives. None of the four regions has a full fledged RIA process in place, even if impacts, particularly budgetary and local environmental impacts, are often assessed. In a formal sense, efforts are made to provide some *ex ante* assessment of regulatory impacts. Support and training for regulatory impact assessment have been provided by FORMEZ. The region of Tuscany has conducted several experimental initiatives that have led to the drafting of a manual to undertake RIA, a feasibility study to introduce RIA at regional level and to a regional Executive Decision on which legal proposals should be included or excluded from RIA in economic terms. This region has made important progress in integrating *ex ante* assessments as a way to improve the economic performance of the region and establish better conditions for job creation.

In Veneto, all draft laws are generally supported by a report that outlines the content and objectives, and by an economic and financial sheet limited however to the public administration, in terms of budgetary impact, and without considering the costs to those who will have to meet the regulatory requirements. This process does not include an assessment of alternatives.

This situation, even if it falls short of a fully functioning regulatory impact assessment system, mirrors the situation that prevails in a number of OECD countries. Even if the assessment of alternatives is too ambitious at this stage, more could be done to deepen the substantive information in the assessment brief, and in particular to cover the repercussions on the region, citizens and business in a systematic way, and by broadening the analysis to cover all general regulations as well as laws with significant economic effects. This would be the case for example for the commercial and retail sector which will be discussed below. In this case, the urbanistic impacts have been examined in depth but the economic consequences of lack of competition, in terms of higher prices and *in fine* lower living standards for the population, seem to have received less attention.

The situation in Campania is not much different. There is no general requirement for *ex ante* or *ex post* assessments, or for systematic consideration of regulatory alternatives. Draft laws are assessed on their financial feasibility and legal conformity, in terms of the national constitution. Information that could be useful for *ex post* evaluations may be required as part of an evaluation clause in draft legislation. But to be effective, such a requirement would need to be supported by the assignment of specific resources. The situation is much the same in Calabria. This region too does not include evaluation clauses systematically in regulations. Nevertheless, some laws (accounting for 4% of total legislation since 1971) do contain such reporting requirements while avoiding specific detail on how the implementation is to be carried out.

One complicating factor in all four regions concerns the fact that several different units may be involved in the drafting of laws and regulations at a time when an impact assessment may be feasible and desirable. These units and their procedures for both Council and the Executive are likely to involve budgetary as well as legal or legislative functions. Better co-ordination or a clear assignment of responsibility would be needed to assure a proper RIA process. The regional report on Calabria is particularly illustrative on this point. The Regional Council there set up a special Committee for the Quality and Feasibility of Laws as a support structure composed of five members of the Council and a technical unit with outside consultants. This Committee produced two reports on the quality of legislation covering the periods 1971-2005, and 2005 itself, but the implementation of its recommendations are still pending.

Appeals and dispute resolution mechanisms

Appeals concerning regulations and administrative measures procedures are qualified: only interested parties may file appeals with a regional administrative court. These courts suffer from lack of staff, resulting in significant delays. The Constitutional Court adopts decisions in about 1.5 years, but the regional administrative courts take 3.5 years. At the end of 2005, the administrative caseload in the Veneto had a backlog of some 2 000 appeals. Many relate to the lack of clarity and quality of regulations.

Alternative dispute resolution mechanisms such as arbitration and conciliation commissions become more important in this context. For example, the Chamber of Commerce of Naples has introduced an on-line conciliation service for the informal settling of disputes between companies and consumers. Regions have also established regional ombudsmen, even if in some cases the person has not been nominated. It is worth noting that Italy is one of the few countries were an ombudsman has not been established at the national level.

Simplification of administrative procedures and the use of ICT and e-government techniques

Administrative simplification is an important regulatory tool to increase the competitiveness of the country and it has received significant attention at the national level since the Bassanini reforms in the mid 1990s, followed up by important simplification laws in recent years. This aspect has also been promoted at the regional level, particularly with regards to their responsibilities in sectors such as retail trade, tourism, agriculture and industry.

Tuscany has been a leading region in terms of simplifying the legal framework. Regional authorities are making regular use of simplification methodologies, such as "abrogation laws", "reorganisation laws" and "innovative single texts". This has been particularly relevant when laws and regulations are being consolidated in a sector for which provision has been made to introduce regulatory and administrative simplification. Single texts have provided the opportunity to initiate processes of deregulation, and to implement administrative simplification, for example with regard to authorisation procedures.

Simplification of procedures and cutting red tape is high on the regional agenda. In Tuscany, the region has adopted several laws in the field of administrative simplification and it has established a regional office responsible for the planning and comprehensive management of organisational initiatives in the field of simplification. In 2004, a working group on the quality of regulation was established by a decision of the Regional Executive of Campania. The results of this experience were used to introduce a system of legislative reorganisation which cancelled legislative and regulatory provisions that had been repealed implicitly or are no longer effective, and which simplified and streamlined administrative procedures. Calabria has adopted a law on administrative procedure that does not apply to the procedures for adopting general regulations or tax procedures. But it does allow for the simplification of procedures to reduce the number of steps and administrations involved, completion times and procedures that are most costly for government and citizens. The implementing measures however have not yet been adopted. Up-dating and review of regulations are handicapped in Calabria by the lack of a system of annual monitoring of legislative output providing quantitative and qualitative data. Unlike other regions, Veneto has not drafted simplification laws. In that region, different tools for simplification are distributed across different agencies. The lack of a central office to handle simplification also reduces the incentive to make this a priority.

Administrative simplification policies are often supported by the use of ICT tools and e-government, which make it easier to identify laws and rules, and to introduce and implement simplification procedures. Tuscany has approved a law in 2004 to promote e-government and the information society and knowledge of the regional system. The region has launched an initiative to promote the establishment and implementation of the *One-stop shop for productive activities*. In Campania, a technical committee prepared a strategic plan for the information society including both administrative activities and also "e-business". The level of computerisation however limits the possibility of using ICT, as well as limiting the impact of "one-stop shops". The Regional Council of Calabria has its own website, which the Council's Computer Unit is improving through a complex integrated management of the flows of documents generated by all Council structures. Access to information is a priority on its own terms, and is critical to a good consultation process.

Lessons from sectors

A sectoral approach can help to shed more light on the economic implications of regulatory processes. This section will discuss the implications of the current regulatory tools and institutions for retail trade in Calabria and Veneto and urban transport in Campania.

The backdrop for the sectoral studies is a concern to achieve net welfare benefits, taking account of the fact that change usually involves short-term costs as well as medium-term gains. These costs are often seen in terms of jobs lost or fees increased. All three regional studies focus on essentially urban areas and services. Enhanced competition is seen as providing more choice and lower prices to consumers (retail trade), while increasing job opportunities and better services and upgraded infrastructure in the case of transport. But the legal instruments used at regional level are not always aligned to deliver these benefits.

An implicit tension exists between sectoral and area-based approaches to policy objectives which can be exploited to keep out new entrants. There are also tensions between different superimposed legal approaches at the national level, for example between preserving social or urbanistic aspects, and promoting competition. The regions are sometimes facing ambiguities in policy making that have not been fully resolved at the national level. The absence of specific competition offices at the regional level implies that the national advocacy function of the competition authority is not exerted and that the balance may be tipped towards other objectives at the regional level than those that had been foreseen at the national level.[3]

This is for example the case for the retail trade sector, where the implementation at the regional level has fallen short when national objectives are implemented through local action. At the local level, the management of this sector has been integrated into urban planning law, with its own administrative procedures which can be slow, and its rules which can be complex (based on land-use criteria that differ according to the size of the commercial unit and the size of the community, the distance between one unit and another, etc.). This was for example the case in Veneto, where the laws implemented at the regional level have slowed down the introduction and development of large-scale facilities which had been developing rapidly in this part of Italy, with a view of preserving the urban character of the cities of the region. It also seems that the strong involvement of local actors, including representatives of smaller shops and craftsmanship at the local level has exerted a significant influence on the decision-making process at the local level. Similar effects have happened in Calabria: communes may suspend or block the opening of neighbourhood stores for a maximum of two years in urban areas which are experiencing difficulties However, in that region, a fragmented regulatory system, with the lack of a single text, has preserved some opportunities for that sector to develop and expand, with some provisions introduced by budget laws. At the moment, and to its credit, Calabria is studying the adoption of a single text governing all productive activities.

Similar mechanisms exist in transport, which have limited the impact of measures to open the market to new suppliers. This is due to a number of factors. First, the implicit conflicts of interest that may occur at the local level, where local municipalities have a stake in local transport companies, which are also seen as a source of jobs. This may come at a heavy price in terms of transport services or subsidies that will have to be borne by tax payers. There is also a certain lack of capacity to manage the transport system, particularly

to promote efficient bidding procedures that would improve efficiency, in the face of fairly large transport companies. The setting of fares in Campania makes it difficult for companies to set an adequate fare structure that would promote efficiency and improvements in service. Deficits accumulate on an annual basis, requiring government financial intervention.

Another aspect is the unresolved conflicts between calls for competition at the local level, and national legal requirements that impede competitive processes. For example, social clauses which require a firm entering the market to employ all the workers of an outgoing firm are permitted but not required by national legislation and Community law. These are a few examples which call for regulatory reform and a more integrated approach in a key sector for regional economic development.

The above examples call attention to the need of new operational schemes of regulation, in order to screen the economic and social impact of sectoral legislation, and to build wider constituency for reform, where the interest of citizens, both as tax payers and as consumers, would be taken into account. In this sense, it is remarkable the agreement that State, Regions and local authorities found at the "Unified Conference" on 29 March 2007, concerning the wide adoption of regulatory tools such as regulatory drafting, RIA, public consultation, measuring of administrative costs and burdens, reduction of the number of laws, to improve the quality of regulation at all levels of government. More efforts are going on to facilitate the alignment of policy objectives at regional level with those at national level and to reinforce the voice of competition at the local level.

In general, the pace of legislative reform appears to lag behind the pace of change in economic activity and regional development. Thus, to take the example of transport in Campania, different problems related to the planning for investment and services – integrated transport networks, bidding procedures, the setting up of independent agencies, etc. – are addressed in a fragmented manner. This is quite important as these concerns a population close to 6 million inhabitants, which is comparable to Switzerland, Finland, Ireland or Denmark.

Conclusion and policy options for consideration

General assessment

Multi-level regulatory governance is of growing importance in Italy as elsewhere. The move towards the regional level, often accompanied by the greater integration of the national State in a European context, together with strong local democratic traditions, illustrates the importance of capacity building, co-ordination and partnership at the local level for better regulatory outcomes.

This study has analysed multi regulatory governance issues in Italy from a wide number of angles, including competence sharing between levels of government, regulatory policy and management as well as co-ordination mechanisms. Overall, it produces a mixed picture with a number of grey areas which reveal the challenges of an unfinished agenda. The EU context provides in any case a framework for national and local policies in Italy alike. However, day to day implementation in the regions confronts the need to invent new methods of working and to exert wide regulatory responsibilities with relatively limited resources. This may also reflect a learning process, where both the regions and the central State are starting to learn how to make best use of the new institutional and legal order.

A first aspect reflects the need for the centre to take initiatives through agreements and partnerships. In a context of devolution, there is less need for "command and control" regulation, but for more flexible performance-based regulation and indeed for more managerial autonomy. This is reflected in some of the partnership agreements between the State and the regions, which now cover high quality regulation. This evolution mirrors some of the trends observed in neighbouring States, as in France, where decentralisation has been accompanied by contracts between the State and the region to implement nation wide policies.

A second issue reflects the need to provide regulations in a manner that is clear, accessible to the public and transparent. Italian regions have been confronted by the need to legislate in more policy fields and deliver public services in a more efficient way, with growing awareness to improve the quality of the legislation and integrate principles of regulatory quality in decision making. Generally, the legal quality of the text of draft laws and regulations prior to their enactment is an issue of concern, especially when regions are directly responsible for boosting economic development in key economic fields and consumer welfare. A legalistic approach tends sometimes to prevail, with insufficient attention to broader economic or social objectives. This would call for a need for encouraging market entry, innovation and competition as part of law proposals. Promoting reform also requires the allocation of specific responsibilities and powers to institutions able to monitor, oversee and promote progress across the regional public administration.

Even if frequently used, consultation is not mandatory and systematic in most Italian regions. As regions are closer to citizens, transparency through public consultation could be reinforced. Public consultation gives citizens and business the opportunity to make an active input in regulatory decisions. A well-designed and implemented consultation programme could contribute to higher quality regulations, identification of more effective alternatives, lower costs to business and administration, better compliance, and faster regulatory responses to changing conditions. Just as importantly, consultation can improve the credibility and legitimacy of government action, win the support of groups involved in the decision-making process, and increase acceptance by those affected. Strengthening citizens' participation in giving opinions on law proposals, such as it is already the case in Calabria through the website of the Council, could expand transparency in the regulatory process and make a valuable contribution to the efforts to better understand the effects of regulation in specific groups. It would be important to reflect the voice of those being consulted in this process.

Efforts to introduce RIA at regional level are underway, but do not seem to be fully operational, with significant gaps in implementation. Impact assessment is one of the foundation stones needed for evidence-based decision-making in the regulatory field. Just as several OECD countries have only started to introduce RIA programmes in recent years, this agenda is coming relatively late to regions as well. The lessons of experience show the importance of starting a RIA process, then of building it up in stages over time, investing in training, integrating RIA effectively and early on in decision-making, and making the results and benefits of RIA widely known inside government and with the public at large.

Judicial review is essential for transparency and accountability. It plays an important role in Italy, given some of the shortcomings of the regulatory framework. As a result it has become an important tool for regulatory quality control. The regional Advocate (*avvocato regionale*) plays a significant role in advising regional governments to minimise future

judicial disputes. Still, in all Italian regions surveyed, the number of administrative disputes and constitutional disagreement on regional laws is significant. The processes tend to be costly and time-consuming. This could reveal a fact that might have been neglected so far: quality of legislation together with easy access to the judicial system. Efforts are needed to integrate more comprehensive *ex ante* assessment of legislation, like the test of constitutionality of regional laws before they are adopted and of the feasibility of compliance of proposed regulations.

Cutting red tape is firmly on the political agenda in Italy as in most OECD countries. Some efforts for simplification at national level have found an echo at regional level, but much still needs to be done. In particular, regions confront the need to simplify procedures, licences and authorisations, to reduce barriers to entrepreneurship. The use of e-government instruments could be further expanded and link to major efforts to modernise the public administration. One key aspect in terms of simplification at the regional level is the codification and simplification of regional laws after 30 years of devolution to the regional level. Calabria has undertaken some efforts in this field. It would seem to be relatively important, as the superimposition of older and newer pieces of interrelated regulations, such as urbanistic and retail trade laws in Veneto, may create concerns for legal certainty.

To conclude, Italy presents a unique case among OECD countries, in terms of increasingly devolving powers to the local level. Broadening and diffusing high quality regulation tools becomes a significant challenge for the country, as the national State alone is not any longer in a position to implement nationwide policies in some sectors, even if it remains the driving force. Exerting a steering function in this context will represent a challenge, with a capacity for using partnerships and incentives to move national and local actors.

Policy options for consideration

This section identifies actions that, based on international consensus on good regulatory practices and on concrete experiences in OECD countries, are likely to be particularly beneficial to improving regulation in Italy. They are supported by previous analysis conducted by the OECD Secretariat on multi-level regulatory quality, based on the 2005 *OECD Guiding Principles for Regulatory Quality and Performance*. These call on countries to "encourage better regulation at all levels of government, improve co-ordination and avoid overlapping responsibilities among regulatory authorities and levels of government". The following recommendations build on these principles, relating to three broad areas: strengthening the capacities of the regulatory system, increasing co-ordination and co-operation across levels of government and improving the use of regulatory tools.

1. To improve the definition of roles and responsibilities for regulatory policy.

Institutional organisation is often laid down in the Constitution. As a reflection of a country's political, historic and geographic heritage, this balance is not easy to modify. With decentralisation, there have been substantial modifications in many countries over the last two decades. Yet the potential political cost and the complexity of amending the constitution have encouraged the search for other ways of identifying and deploying the appropriate administrative levels.

The increasing complexity of the regulatory process has to do not only with the multiplication of players, but also with the growing diversity of their roles. Thus, direct supervision is disappearing in favour of increasing disjunction between the responsibility for making a decision and that for executing it. In this context, it is particularly important

that each level be aware of the perimeters that define its area of intervention and its responsibility. The manner of devolution and the way the exercise of powers is organised will depend on each government, but it is important to ensure that the arrangement is clear and credible over the long term. This is a difficult exercise, because the more complex a process is, the harder it is to identify the political advantages of regulatory reform.

Regardless of their institutional form, States must cope with growing interdependence and with decision-making processes that are complicated both by the number of players and by the many policy areas that must be taken into account (environment, health, etc.). This new reality has a direct impact on the entire regulatory preparation process, and new, more innovative, more co-operative and more persuasive regulatory strategies are needed. In order to contain the potential for negative fallout from the sharing of regulatory responsibilities among different levels (contradictory rules, excessive regulation or regulatory gaps), regulatory quality must be optimised at each of these levels, and possible interactions taken into account.

In Italy, the constitutional amendments of the Title V from 2001 widened the competencies of regions, in particular to legislative and regulatory powers. On one hand, this process has not been always accompanied by the set up of a well-defined framework for implementation of such competencies. More needs to be done to clarify the roles and competencies between the State and the regions, particularly in areas of concurrent power. On the other hand, each region is confronted by specifics reflected in regional Statutes (or in the lack of them) that may, or may not contribute to make a clear definition of roles between the regional Executives and Legislatives. For example, in Tuscany, the new Statute published in 2005 clearly vests legislative power with the council and defines the respective powers of the Giunta and the Council. In Calabria too, many laws have been adopted by the executive under a delegation of legislative powers. In that region different procedures are being used in terms of quality regulation whether by the Council or the Giunta. There is scope for clarifying further the statutes and streamlining the procedures in Campania and Calabria.

The central government in Italy could play a leading role in advocating for regulatory reform and clarifying the context in which the regions are exerting widening competences. Full awareness at local level of the importance of regulatory policy is needed together with a better definition of the respective roles of the various actors. Information exchange and training programmes to expand knowledge about the advantages of integrating regulatory policy and improving the quality of legislation at regional level should be encouraged by the Italian government. This could help regions to better understand the importance of clarifying roles and responsibilities among institutions and actors for regulatory quality.

2. To strengthen capacities for regulatory quality in a multi-level context.

One element that has particular importance in a multi-level context refers to the need to create and support capacities at all levels of government for regulatory quality. The State has a number of instruments at its disposal which should be used to strengthen the human and technical capacities needed for integrating principles of high quality regulation. Among them, training to enhance the level of technical skills at the local level is fundamental. Some OECD countries have launched extensive programmes between the centre and other levels of government to establish networks among different players and to encourage a new vision for regulatory management in a multi-level context.

Regional governments and regional Councils in Italy have found it difficult to get the necessary human and technical resources to integrate principles and tools of high quality regulation and to develop regional policies for regulatory quality. In some regions, for example in Campania, it seems that there was a lack of permanent staff devoted to these issues. Resources are needed to have more highly qualified staff dealing with regulatory issues, such as codification and simplification processes and the integration of economic impact assessment of regulatory proposals. The efforts done by FORMEZ and the Department of Public Administration in terms of training regional staff on regulatory quality issues should be encouraged and supported.

3. To strengthen existing co-ordination mechanisms between the State and the regions.

The central government alone does not have sufficient capacity to manage the transfer of regulatory powers. Adoption of a strategic framework to strengthen co-ordination mechanisms allows for a more dynamic definition of powers, since local governments are constitutionally responsible if the law, or the Constitution, does not expressly assign a given power to the State. This principle of subsidiarity reflects a real concern for clarity, but it does not always succeed in avoiding overlapping and hence the need for co-ordination mechanisms.

The regional perspective must also be taken into account by the centre. Thus, a clearer allocation of responsibilities and better co-ordination among different levels of government are becoming strategic issues for the attractiveness of regions. With the multiplication of decision-making centres and competition over the sharing of powers, co-ordination among the different levels of authority is a key question.

In Italy, the search to devolve powers to the regions has a long tradition, but long-lasting and efficient mechanisms for co-ordination still need to be reinforced. The amendments to the Constitution provided for a new legal framework for federalism, but in terms of regulatory quality the existing co-ordination mechanisms do not always reflect the new relation between the State and the regions. Regulatory policy, for instance, is not yet a major topic for discussion in the framework of the Conference State-Regions even if it has received increased attention in the framework of the Unified Conference.

The way is open for innovative thinking to promote new regulatory strategies and to influence behaviour through agreements or transactions to guarantee regulatory quality in regional and institutional settings that are not always coherent. Italy should also look at "co-operative" solutions adopted by other OECD countries to associate local governments throughout the process of defining and implementing regulation. When it comes to national regulation that regions should implement, regions could be involved throughout the process or at one stage of it (formulation of objectives, for example) and make them responsible for all or a portion of the outcomes. Initially, this approach involves negotiation and may appear inefficient, but over time it will foster better adaptation. In Australia, the push for harmonisation and co-ordination has come primarily from local governments (*i.e.*, the States and territories), through the Council of Australian Governments, the intergovernmental forum in that country, composed by the Prime Ministers, State Premiers, Territory Chief Ministers and the President of the Australian Local Government Association. It initiates, develops and monitors the implementation of policy reforms that are of national significance and that require co-operative action by Australian governments, such as competition policy and regulatory reform. The regions could also be

associated upstream to the definition and Italian position in relation to European directives which play such an important role at the local level. Similarly, the regions could also consult the national State, or some of its bodies, when implementing national policies, or policies of wider economic implication. This could involve for example consulting the national competition authorities when developing new regulatory schemes with significant implications at the regional level.

Horizontal co-ordination should also be strengthened among regions. Initiatives such as to monitor the status of annual legislation or collective efforts to prepare guidelines for law drafting are welcome and should be supported by the center. The Inter-regional Legislative Observatory (ILO) is a very precious asset and it needs to be preserved and expanded. Regions could also envisage including regulatory policy as one of the main issues for discussion and work in their relation to the center in the framework of the different State-regions conferences.

4. To improve policy coherence facilitating the attainment of economic policy objectives.

The need for policy coherence is acknowledged by the 2005 *OECD Guiding Principles for Regulatory Quality and Performance*, which call on countries to "foster coherence across major policy objectives" and to "design regulations in all sectors to stimulate competition and efficiency". In Italy, policy coherence in the overall regulatory framework is the responsibility of the central State, but significant responsibilities are devolved to the regions in terms of implementation. The report has highlighted some of the issues that may arise in sectors such as retail trade and transport.

One of the challenges faced when implementing policy at a sectoral level is to align policy making at the regional level with broad national policy objectives. Regional policy makers are faced with superimposed national legal objectives, between social and urbanistic issues on the one hand, and the need to promote economic development on the other hand. Regulatory quality and policy coherence could be improved in a multi-level perspective if some of these tradeoffs could be resolved first at the national level, in order to promote policy coherence at the regional level. For example, the status of the social clause could be clarified, with national solutions before inviting regional authorities to promote competition in granting concessions to competing companies. Staff reallocation and compensation might be easier to handle at a national than at a regional level.

Another issue is to ensure that economic policy objectives are fully considered when developing regulations at the regional level. Given the strictly legal approach and the capacity constraints faced at the regional level for considering multiple impacts, as well as fragmented consultation processes, there is a risk that broader policy objectives and the need to promote economic efficiency would receive lower priority in policy making as a result. For example, as a result, recent regulatory measures implemented in Veneto had counter effects in relation to the original intension of the Bersani Decrees for liberalising the retail trade sector, and tended to freeze the development of larger retail units and to limit competition, hence hurting customers. Similarly in Campania, the introduction of competitive tender procedures has been implemented slowly and has not yet contributed to improve the efficiency of the regional transport network, which seems to be low by international standards. A special case could also be made for competition, as the voice of the national competition authority is not heard when developing regulations at the regional level.

Further support could also be offered to the regions, for example to develop standard bidding procedures and to highlight the costs of some of the current regulatory frameworks. Another possibility would also be to expand the role of the regional Audit Boards (*Corte dei Conti*) to allow them to perform broader economic assessment of the benefits and costs of the regulatory frameworks that prevail at the regional level, beyond the strict use of public funds. A clear picture of the situation published in official reports could also serve to inform future policy debates and improve regulatory quality at the regional level.

5. To encourage the use of Regulatory Impact Analysis (RIA) in a multi-level context.

Most governments can substantially reduce regulatory costs while increasing benefits, by making wiser regulatory decisions. Analytical evidence supports the conclusion that governments often regulate badly, with too little understanding of the consequences of their decisions and with little or no assessment of any alternatives other than traditional forms of law and regulations. In Italy, one of the most important regulatory tools that could help regional governments to better regulate, RIA, is neither used in a systematised way nor integrated into the decision-making process.

OECD experience shows that RIA is a tool that provides decision makers with valuable empirical data and a comprehensive framework in which they can assess their options and the consequences their decisions may have. To fully use the potential of this tool, RIA should be integrated into the decision-making process as early as possible. Experimental efforts to introduce RIA at regional level should be supported by the State, encouraging the training of officials and supporting the regions with technical resources to undertake it.

A clear leading role – supportive of innovation and policy learning – must be taken by reform authorities if RIA is to make serious headway into the policy system. Italy should consider expanding the use of RIA at regional level, as key economic sectors are regulated by regional legislation. Training programmes could be envisaged to learn more about it.

The results of the review clearly show the lead taken by Tuscany in implementing RIA which should be encouraged and supported and which can be used as a positive example in relation to the other regions. There is a need for regions such as Veneto or Campania where the assessment of some impacts exist, but merely from a budgetary perspective, to move to a wider and more systematic practice of impact assessment, including the assessment of the impact on competition and the price of services at the regional level. Calabria could also use this process for renewing its retail trade legislation which is currently underway.

The agreement recently signed in the framework of the Unified Conference between the State, regions and provinces in terms of simplification and the quality of regulation envisages reinforcing the training of officials confronted with the use of RIA, cost-benefit analysis, evaluation clauses, consultation techniques, etc. This activity should be encouraged and supported at different levels of government to make good use of the political capital of such an agreement.

6. To continue and deepen administrative simplification efforts.

Among OECD countries there is an increasing awareness of the importance of promoting administrative simplification and regulatory quality at all levels of governments. This is particular important in cases where lower levels of government are

assigned with the role of issuing licences and authorisations, imposing charges to business and citizens and to create better conditions for economic activity and business start-ups.

Italy is characterised by an inflation of the normative corpus, which has, as a result, an increasing number of administrative procedures. Inside the national administration, more than 5 400 procedures have been identified, and in some cases they date from the 1960s and have not been updated or reviewed. This has enormous consequences for economic activity and entrepreneurship, as it is burdensome to comply with regulations, legal provisions and administrative controls.

Regions also confront legal instruments that overlap, not always in a coherent way. Efforts for codification, such as those currently undertaken by regional Council of Calabria, and the use of consolidated texts (*testo unico*) should be encouraged at all levels of government, in order to have a better and more transparent legal framework. Tuscany has made good progress in integrating abrogation and reorganisation laws to improve the quality of regulation. The adoption of regional simplification laws at regional level, such as in the case of Campania, could help to have more certitude in the efforts done. Legislation should also include the use of review clauses, as a requirement for *ex post* evaluation after a certain period of time.

Regions in Italy are aware of the importance to cut red tape, but much still remains to be done. Regional legislation on simplification is not fully implemented in most of the cases, like in Calabria that tends to lag behind in this field. The new Action Plan for administrative simplification presented in 2007 by the Italian government contains important amendments to the current national legislation on simplification. This Action Plan could serve as a model for the regions that are trying to introduce and implement simplification measures and laws in their jurisdiction. The efforts to analyse the status of administrative simplification measures done by institutions such as FORMEZ and the Inter-regional Legislative Observatory could be used as benchmarking to push further efforts to simplify laws at regional level and eliminate outdated procedures.

The simplification efforts should be reinforced by the use of e-government instruments. Simplification tools should serve to make regulatory information requirements easily and cost-effectively available for relevant target groups, they should enable and facilitate regulatory information transactions between authorities and business and citizens, and they should help to commonly store and share information required according to regulations between different government bodies. ICT mechanisms involve a mix of information dissemination and transactional aspects. Tuscany and Veneto have been able to make better use of e-government mechanisms for simplification purposes. Regions such as Calabria and Campania could expand the use of their existing regulatory tools to facilitate interactive processes leading to the full computerisation of the relationship with some of the users, particularly with businesses. Promoting one-stop shops at the local level would serve to facilitate the creation of new businesses, particularly in services at local level and reducing the scope for informality.

7. To streamline the frameworks for appeal processes and dispute mechanisms.

An appeal process should be clear, predictable and consistent. Variation on the time delays in different procedures, the likely costs of appeals for both the government and the appellant, and the technicalities of the process should be taken in consideration. Evidence from Italy and the Italian regions reveals that time delays are high and appeal processes

are costly in different ways (costs for legal representation, attendant delays, etc.). The number of disputes tends to increase over time and national and regional administrations are not well equipped to face the challenges ahead.

In Italy there are several channels to log appeals, depending on the nature of the issue being appealed. This includes formal appeals to administrative tribunals, an Ombudsman and even the Constitutional Court. Transparent and consistent processes for making, implementing and revising regulations are fundamental to ensuring public confidence in the regulatory process and safeguarding opportunities to participate. In Italy, this may also reflect an issue in relation to resources and the organisation of the judiciary as a whole, to increase its capacity to respond to the demand of the public, and reduce the burden generated by unnecessary complaints.

Given the length of administrative judicial procedures, some alternatives have been sought in Italy. The use of alternative dispute resolution systems, such as arbitration or conciliation, is interesting and should be encouraged, only if their rules are clear and not too complex.

Notes

1. Camera dei Deputati/Ossservatorio sulla Legislazione (2007), *Rapporto 2006 sulla legislazione tra Stato, Regioni e Unione Europea*, Volume II, Rome, p. 229.
2. In the Italian judicial system, incidental constitutional review refers to fact in which the question of a law's constitutionality arises as an "incident" to ordinary legal proceedings, and is certified to the Court by the judge presiding over those proceedings.
3. Autorità Garante della Concorrenza e del Mercato.

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ITALY

ENSURING REGULATORY QUALITY ACROSS LEVELS OF GOVERNMENT

In recent years Italy has moved towards greater devolution of regulatory powers at regional level, in a European context where this dimension becomes increasingly important. Italy is also strengthening the competitiveness of its economy and reducing red tape in order to sustain renewed economic growth. Multi-layered regulatory systems may create complex institutional settings, which, in turn, call for appropriate consultation and communication strategies to ensure policy coherence, clarity, and accountability. Italy has established several conferences that facilitate dialogue with the state.

Capacities for quality regulation tend to differ across regions, with different statutes and provisions, as well as an uneven recourse to regulatory impact analysis, or administrative simplification. Significant efforts have been undertaken to encourage the use of better information and communication technologies. However, strengthening the legal framework in terms of clarity, transparency of procedures and access to the market, would help to promote competition and to improve the economic performance of Italian regions. This was also highlighted in a sectoral analysis that focused on retail trade and local metropolitan transport in some of these regions.

Italy has requested a review by the OECD of its regulatory practices and reforms from a multi-level perspective. This review analyses first the institutional set-up for multi-level regulation, the specifics of power sharing between the state and the regions, as well as the horizontal and vertical co-ordination mechanisms in place in the country, before turning to the use of policy instruments and regulatory tools in four Italian regions: Veneto, Calabria, Campania and Tuscany.

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