



**Better Regulation in Europe**  
**FRANCE**





# **Better Regulation in Europe: France 2010**



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## *Foreword*

The OECD Review of Better Regulation in France is one of a series of country reports launched by the OECD in partnership with the European Commission. The objective is to assess regulatory management capacities in the 15 original member states of the European Union (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, United Kingdom), including trends in their development, and to identify gaps in relation to good practice as defined by the OECD and the EU in their guidelines and policies for Better Regulation.

The project is also an opportunity to discuss the follow-up to the OECD's multidisciplinary reviews, for those countries which were part of this process, and to find out what has happened in respect of the recommendations made at the time. Austria, Belgium, Luxembourg and Portugal were not covered by these previous reviews. The multidisciplinary review of France was published in 2004 [OECD (2004), *OECD Reviews of Regulatory Reform France 2004: Charting a Clearer Way Forward*, OECD Publishing, Paris].

France is part of the second group of countries to be reviewed – the other five are Belgium, Finland, Germany, Spain and Sweden. The first group of Denmark, the Netherlands, Portugal and the United Kingdom were published in May 2009 and the remaining countries will follow in the second half of 2010. This report was discussed and approved for publication at a meeting of the OECD's Regulatory Policy Committee on 15 April 2010.

The completed reviews will form the basis for a synthesis report, which will also take into account the experiences of other OECD countries. This will be an opportunity to put the results of the reviews in a broader international perspective, and to flesh out prospects for the next ten years of regulatory reform.



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### *Abbreviations and acronyms*

<b>AAI</b>	Independent Administrative Authority (Autorité administrative indépendante).
<b>ADAE</b>	Agency for the Development of e-Government (Agence pour le développement de l'administration électronique).
<b>ADF</b>	Assembly of the Departments of France (Assemblée des départements de France).
<b>AERES</b>	Research and Higher Education Assessment Agency (Agence d'évaluation de la recherche et de l'enseignement supérieur).
<b>AFLD</b>	French Agency for the Fight Against Doping (Agence française de lutte contre le dopage).
<b>AMF</b>	Association of the Mayors of France (Association des maires de France).
<b>AMF</b>	Financial Markets Regulatory Authority (Autorité des marchés financiers).
<b>ARCEP</b>	Regulatory Authority for Electronic and Postal Communications (Autorité de régulation des communications électroniques et des postes).
<b>ARMT</b>	Regulatory Authority on Technical Measures (Autorité de régulation des mesures techniques).
<b>ARF</b>	Association of the Regions of France (Association des régions de France).
<b>ART</b>	Telecommunications Regulatory Authority (Autorité de régulation des télécommunications) replaced by ARCEP.
<b>ASN</b>	Nuclear Safety Authority (Autorité de sécurité nucléaire).
<b>CC</b>	Constitutional Council (Conseil constitutionnel).
<b>CCEN</b>	Advisory Commission on Evaluation Standards (Commission consultative d'évaluation des normes).
<b>CE</b>	Council of State (Conseil d'État).
<b>CES</b>	Economic and Social Council (Conseil économique et social).
<b>CFE</b>	Centre for Business Administration (Centre de formalités des entreprises).
<b>CGCT</b>	Local Authorities General Code (Code général des collectivités territoriales).
<b>CIE</b>	Inter-ministerial Committee on Europe (Comité interministériel sur l'Europe).
<b>CNE</b>	National Executive Committee (Commission nationale des exécutifs).

<b>CNIL</b>	National Commission for Information and Privacy (Commission nationale de l'informatique et des libertés).
<b>CRE</b>	Commission for Energy Regulation (Commission de régulation de l'énergie).
<b>CSA</b>	Audiovisual High Council (Conseil supérieur de l'audiovisuel).
<b>DGME</b>	General Directorate for the Modernisation of the State (Direction générale de la modernisation de l'État).
<b>ECPI</b>	Public Institution for Inter-municipal Co-operation (Établissement public de coopération intercommunale).
<b>FIS</b>	Simplified impact record (Fiche d'impact simplifiée).
<b>H3C</b>	High Council of Auditors (Haut conseil du commissariat aux comptes).
<b>HALDE</b>	High Authority Against Discrimination and for Equality (Haute autorité de lutte contre les discriminations et pour l'égalité).
<b>HAS</b>	High Authority for Health (Haute autorité de santé).
<b>IGPDE</b>	Institute of Public Management and Economic Development (Institut de la gestion publique et du développement économique).
<b>LOLF</b>	Organic law on financial legislation (Loi organique relative aux lois de finances).
<b>LOLFSS</b>	The Funding Social Security Act (Loi de financement de la sécurité sociale).
<b>MRCA</b>	Monitoring the reduction of administrative burden (Mesure de la réduction de la charge administrative).
<b>RGPP</b>	Public Policy Review (Révision générale des politiques publiques).
<b>SCM</b>	Standard Cost Model.
<b>SGAE</b>	General Secretariat for European Affairs (Secrétariat général des affaires européennes).
<b>SGG</b>	Secretariat General of the Government (Secrétariat général du gouvernement).

*Country Profile – France*

Source: CIA Factbook, [www.cia.gov/library/publications/the-world-factbook/geos/fr.html](http://www.cia.gov/library/publications/the-world-factbook/geos/fr.html).

## Country Profile – France

<b>The land</b>		
Total Area (1 000 km <sup>2</sup> ):	632.8	
Agricultural, excluding overseas departments (1 000 km <sup>2</sup> ):	302.8	
Major regions/cities (thousand inhabitants):	Paris	2 125
	Marseille	807
	Lyon	453
<b>The people</b>		
Population (thousands, 2007):	61 938	
Number of inhabitants per km <sup>2</sup> :	113	
Net increase (2006/07):	0.6	
Total labour force (thousands, 2007):	27 702	
Unemployment rate (% harmonised):	9.5 (2009)	
<b>The economy</b>		
Gross domestic product in USD billion:	2 140.7	
Per capita (PPP in USD):	33 400	
Exports of goods and services (% of GDP):	26.6	
Imports of goods and services (% of GDP):	28.5	
Monetary unit:	Euro	
<b>The government</b>		
System of executive power:	Dual executive	
Type of legislature:	Bicameral	
Date of last general election:	22 April and 6 May 2007	
Date of next general election:	Spring 2012	
State structure:	Unitary	
Date of entry into the EU:	Founding member (1957)	
Composition of the main chamber (Number of Seats):	Union for a Popular Movement (UMP)	313
	Socialist Party (PS) and Left Radical Party (PRG)	193
	New Centre (NC)	22
	French Communist Party (PCF)	15
	Others	34
	<b>Total</b>	<b>577</b>

Note: 2008 unless otherwise stated.

Sources: OECD Economic Survey of France 2009, OECD in Figures 2009, OECD Employment Outlook 2009, OECD Government at a Glance 2009, and Official results of elections: France Interior Ministry website.

## Executive Summary

### Economic context and drivers of Better Regulation

France is a major player in the world economy. It faces substantial challenges, including loss of business competitiveness on world markets. At the same time, France can boast a range of advantages which should help it to rise to meet these challenges. The implementation of certain necessary structural reforms partly depends on a further strengthening of regulatory governance policy.

In recent years, French policies for Better Regulation have underlined a political will, which has grown in strength since 2004, to undertake reforms in order to improve regulatory quality. A stronger and deeper understanding of the importance of effective regulatory management within the administration has helped to promote this trend. A number of public reports on the quality of the law have fuelled discussion, and contributed to a promotion of the principles of regulatory quality. The perception of what some have labelled the "French disease" (which is not confined to France, but can also be found in some other countries), meaning a proliferation of regulations which need to be controlled, has led to a reassessment of the changes necessary to improve the rule-making process.

French policy on regulatory governance is also strongly linked to the reforms undertaken to modernise the state, in the context of a deep seated use of legal instruments as the dominant instrument of state intervention. The current initiatives, with regard to impact assessment or the reduction of administrative burdens, also fall within the wider framework of the general review of public policies (RGPP), launched in June 2007, immediately after the presidential elections. The RGPP aims to achieve budgetary savings and improve the effectiveness of public policies, including the quality of the services provided to citizens and businesses.

The relevance of effective regulatory governance for economic performance is not absent from the debates, but is less visible compared with other European countries where economic considerations have provided the main driving force of regulatory reforms. One of the government's regulatory policies is the reduction of administrative burden on businesses. Even if the aim of this particular programme is to promote the competitiveness of French businesses, this consideration is not at the "core" of French regulatory governance policy. The fact that economic considerations play a relatively minor role in regulatory policy is somewhat surprising in the context of post-crisis recovery. The lack of a clear link with economic policies means that regulatory governance policy is not particularly visible beyond a restricted group of administrative and political institutions.

### Public governance framework for Better Regulation

The organisation of public governance in France is structured around the following features: shared executive authority between the President of the Republic and the prime

minister; maintenance of strong central government (even though France has embarked on a process of decentralisation over the last three decades); a public administration characterised by recruitment, based on competitive examinations and key role played by distinctive formal groups of public servants (*grands corps de l'État*); and a significant public sector.

A range of extensive reforms undertaken since 2007 is leading – or will lead – to changes in this institutional framework:

- The constitutional law of 23 July 2008, provided parliament with new mechanisms. It should be noted that the new provisions to strengthen parliament have limitations, not least the willingness of members to make use of them. They are also conditioned by the reality of a parliamentary majority.
- The territorial reform began following the debate prompted by the report of the “Attali” Committee (2008) which, amongst other things, advocated the dismantling of one of the main subnational levels of government (that of the department).
- The reform of the public service includes a reduction in the number of public servants and an overhaul of the regulations governing the public service, so that there is a better match between needs and jobs.

## Developments in Better Regulation and main findings of this review

### *Strategy and policies for Better Regulation*

Since the OECD Review of Regulatory Reform of France published in 2004, France has undertaken a set of ambitious measures to improve regulatory quality; these measures constitute a major quality change. Three substantial fields of action may be distinguished. Two are upstream: the first tackles the process of drafting regulations by strengthening *ex ante* impact assessment; the second is the overhaul of public consultation processes. The third field is downstream of regulatory production. The French government has conducted a simplification policy which combines legal simplification and a reduction in administrative burdens. Special efforts have also been developed to reduce the backlog of EU legislation to be transposed into national law, and to speed up the production of secondary regulations necessary for the implementation of primary laws, two weaknesses emphasised in the OECD 2004 report.

**Upstream and downstream policies are tending to join up.** A discussion has begun on how best to combine *ex ante* impact assessment and the *ex post* simplification policies. To date, there is no integrated strategy in the field, but an evolutionary process is underway to provide a framework for future developments. This trend is also relevant to other EU countries.

**The expression "Better Regulation" does not always accurately reflect the nature of French regulatory governance policy.** The term goes beyond simplification and legal clarity. Strictly speaking, there is no regulatory governance strategy in France, but rather a set of measures intended to improve regulatory quality, basically propelled by the perception of "French disease". In other words, an overproduction of regulations that needs to be controlled. The economic dimension and the economic cost of excessive regulation or of "poor" regulation have not yet been fully taken into account.



**Continued progress in regulatory governance depends on maintaining strong political will.** The progress achieved since 2004, for instance, on impact assessment, administrative simplification and the transposition of EU directives, has depended on a strong political will on the part of the government and parliament. It should be emphasised that many of these policies are “work in progress”, and at a midpoint of implementation. Processes and tools need to be set up and implemented, a lengthy and exacting process. Regulatory governance is a long-term policy, with little immediate political gain, and subject to short-term pressures.

**There is no clear communication which brings together the different strands of regulatory governance.** This reflects the lack of any integrated policy and the dilution of certain initiatives in the RGPP. It is above all presented as an initiative in favour of “users” (citizens and businesses) and improved public services, rather than a support for economic recovery. The various reforms are the subject of separate internal communications within the administration in an *ad hoc* fashion (such as in February 2010 on progress with the simplification plan). This does not provide clear visibility for these reforms, either within the administration, or outside it (for stakeholders).

**France stands out (positively) in terms of the large number of reports on regulatory quality.** The reports by the *Council of State* and other *ad hoc* committee reports which focus on specific aspects, such as the *Balladur* report on local governments and the *Warsmann* report on regulatory quality, may be cited. These assessments, although not regular events, have given rise to substantial changes, which suggests strongly that it would be helpful to conduct these assessments on a more systematic basis.

**France has several players who may be able to provide regular evaluations of regulatory policy over time.** The *Cour des comptes* (*Court of audit*), independent of the executive, has not yet undertaken studies on regulatory governance, but could be very useful for general assessments. The programmes to reduce administrative burdens and impact assessment processes could be candidates for this approach, as can be seen in other countries. This approach could be envisaged as part of the development of public policy assessments outlined in the recent constitutional revision. The *Council of State* remains a major player. A new section (the administration section) was recently set up, enabling it to take a more in-depth cross-cutting view of state reform and its objectives.

### ***Institutional capacities for Better Regulation***

**There has been real progress, based on structures firmly rooted in the French institutional landscape.** Regulatory governance in France depends on several key-players, most importantly the *Council of State*, the prime minister's services and the General Directorate for the Modernisation of the State (DGME) in the Budget Ministry. It has been decided to develop the network around specialised units: the legislation and quality of the law service in the General Government Secretariat (SGG) and the General Secretariat for European Affairs (SGAE) within the prime minister's services; and the DGME within the Budget Ministry. The SGG deals mainly with the flow (production of regulations), the SGAE covers the transposition of EU legislation, while the DGME looks after stock management (administrative simplification). The *Council of State* remains a key element both upstream (through its consultative function for the government and its control of legal quality) and downstream (as the administrative judge of last resort).

**The question is – on which actor should France now depend within the government to secure the long-term future of these reforms?** The SGG appears to be

best placed to tackle cross-cutting issues. It is emerging as a key-partner to ministries in their law making processes. It does not have any direct sanctioning powers, but its close relationship to the head of the government gives it a strong persuasive platform from which to encourage progress. However, as is the case of many of its counterparts in other countries, as a prime minister's service, it is more likely to play a co-ordination role than that of a powerful driver of a regulatory governance network. Furthermore, it has few resources (compared to the ministries). The French government decided to build regulatory quality policy on a network of correspondents throughout the ministries rather than to establish a single regulatory management body, which is difficult to fit in with the existing institutional structures and the administrative culture. Nevertheless, this network must still be based on a strong and clear political intention, associated with a clearly recognised centre of gravity, without which, it runs the risk of gradually disappearing.

**Progress in recent years is the result of monitoring and discipline (including penalties) as well as the development of methodologies and support tools.** The administrative culture is gradually changing with, for instance, the development of progress charts, impact assessment, the establishment of networks of correspondents on administrative simplification and quality of the law, and the development of new forms of consultation. The beginnings of a change in culture are evident. Two issues need attention. First, the administrative culture remains marked by the dominant weight of legal training and, in comparison to other countries, there is little sign of an economic culture. Second, the development of regulatory quality requires particular attention to the training of civil servants, including in-house training. Acculturation must continue so that the processes and tools which have been set up function effectively.

### ***Transparency through public consultation and communication***

**Since the 2004 OECD review, the French approach to public consultation has experienced major changes.** France has moved away from a model based largely on corporatism, though with plenty of scope for traditional elements. The method chosen for reshaping the approach has not been to do away completely with traditional institutionalised forms (advisory boards or committees) and pursue “all-out use” of the Internet, but to supervise them more closely, diversify consultation procedures and involve stakeholders more effectively beforehand in drawing up public policies. These lines of action reflect recognition of the need to reform public consultation so that it is more effective, and to adapt consultation methods to changes in society, while taking account of the institutional heritage and some degree of wariness among many administrative authorities regarding the effectiveness of open consultation over the Internet.

**In recent years, significant breakthroughs have been achieved in revitalising public consultation.** First of all, rules have been devised governing the establishment and operation of all advisory boards, and almost 40% of these boards were abolished in June 2009, following a process of review with “cut-off” clauses. This rationalisation of the advisory boards will only have a long-term impact if it occurs in conjunction with regular monitoring of the rules for the establishment and the work of the boards. Second, ministries have developed new consultation methods to involve stakeholders more effectively in drawing up public policies prior to the process (the *Grenelle* forum, Internet forums on reforms or major schemes under consideration, and the establishment of a “Business Council”). Third, with the January 2007 law for modernisation of the social dialogue, the reform of public consultation has also affected the processes of consultation

and negotiation involving the government and “social partners” (trade unions and business representatives).

**The work undertaken has to be part of a broader and more ambitious policy for reshaping public consultation.** This need is recognised by the administration, which is seeking to establish clearer guidelines, but it has not (yet) resulted in comprehensive reflection and discussion. While reform of the advisory boards may make the system less cumbersome, it must be part of a strategic vision of what public consultation is expected to achieve. There is a need to strengthen the openness and diversity of consultation procedures, beyond experimentation with new methods. It is increasingly hard to rely solely on predetermined expert groups in more complex societies.

**Consultation currently lacks a baseline methodology to support a clearer strategy and raise its profile.** During the OECD discussions, several interlocutors (from within and outside the public administration) highlighted the need to establish more structured procedures and, more generally, to develop guidance on consultation. Reference was made to how the views of stakeholders were often not considered and to the lack of feedback on consultation (a frequently mentioned weak point, and not solely in France), partly because of the pressure of time.

**Much attention is focused on access to the law.** Considerable effort has been invested and maintained in developing mechanisms for accessing the law, and in particular the *Légifrance* and *monservicpublic.fr* websites.

### ***The development of new regulations***

**Since 2004, steps have been taken to strengthen rule-making processes.** The government's work programme has been set up (and remains the government's internal working document), which, every six months, establishes the government's overall direction, containing the list of bills, orders and decrees. The time limits for implementing the acts' application decrees have been reduced. An application has been developed to dematerialise the regulatory production chain. Finally, the support tools for drafting laws have been strengthened. The rules for drafting legal texts have been grouped in the "legal drafting manual" (*guide legistic*). This voluminous manual (500 pages) concentrates on legal drafting and does not adopt a comprehensive approach to the production of regulations. It has still to be integrated into the online tools for the production of regulations. The need to strengthen legal drafting capacities in the various ministries was often emphasised at OECD meetings, particularly to produce texts that are clearer and easily accessible.

**Bills introduced by the parliament need attention.** Since the constitutional revision of 2008 provides greater scope for parliamentary initiative, the issue arises of the need to reinforce the procedures ensuring the quality of draft laws proposed by the members of parliament, including impact assessment. There is the risk of a “fast-track” procedure under which government initiatives are promoted through the intervention of one or more members of parliament.

**France has set up a new system for impact assessment, which gives it a leading position in Europe, at least in principle.** Since 1 September 2009, impact assessment has been a constitutional requirement. This anchoring constitutes a “first” in comparison with other countries. According to the new provisions, an impact assessment must be attached to all bills the government sends to parliament. Failing this, the conference of presidents of the parliamentary chamber to which they have been initially referred, may

refuse to put the bill on the agenda, including if it considers that the impact assessment is inadequate. In the event of a disagreement between the parliament and the prime minister, the question is referred to the *Constitutional Council*.

**Recourse to a constitutional and organic text underscored the difficulty of making headway on impact assessment in the rule-making process without imposing a substantial constraint.** Earlier efforts (based on prime ministerial circulars) did not succeed in making impact assessment a part of ministries' practice and culture. They also failed because of a lack of rigour and penalties. In the current system, three elements should help: the system is based on a review process in which all the players (government, parliament, *Council of State*, administration) are engaged. The obligations and the practical details for control are laid down very precisely by an organic law, and cannot therefore be easily changed. Substantial penalties may be incurred if an assessment turns out to be inadequate (*Council of State* comments and may refuse to put the draft regulation on the parliament's agenda. This refusal may be endorsed by the *Constitutional Council*).

**The first months of the new regime are encouraging.** The government bills introduced to parliament now have an impact assessment with a significant scope and which is published on the *Légifrance* site. The SGG has developed methodologies and reference materials, while leaving each ministry room to manoeuvre in adapting the impact assessment's structure and content to its field of activity. The initial months show that impact assessment dossiers have started to be used as an argument during the parliamentary debate, and are also taken into consideration in the broader public debate.

**The current interest in impact assessment must be maintained over time and resist pressures.** The commitment – both political and administrative – made by the various stakeholders, in the first place the prime minister, the *Council of State* and the National Assembly's Law Commission was a key factor in setting up this system. It is essential that the government and the parliament maintain strong and sustainable political attention so that the threat of penalties remains credible.

**The system does not clearly incorporate public consultation procedures and does not sufficiently draw attention to the “zero” (do nothing) option.** In order for impact assessment to be a genuine decision-making tool, it must be accompanied by a public consultation tool to collect the elements required for good decision-making. The studies' publication (and the comments received) should contribute to the tool's quality. Impact assessment must also reflect on the actual need for the law. The analysis must therefore start far enough upstream of the reform project itself.

**The methodological tools need to be strengthened.** Developing impact assessment will require the methodology to be updated and developed in more detail, particularly for economic analysis and cost calculations (so far as possible), a point raised by several interviewees. With regard to calculating the cost of administrative information obligations, the *Oscar* tool should continue to be developed and updated so that it remains relevant. Efforts to determine what statistics need to be collected must also continue. Particular attention should be given to impacts on France's competitiveness internationally.

**The right balance must be found when determining the system's field of application and the proportionality of the effort devoted to impact assessment.** The current system is mandatory for all government bills, and does not apply to bills initiated by members of parliament and to draft decrees. There are no details with regard to

updating the impact assessment to take amendments to a government bill into consideration. It would also be useful to consider the content and the accuracy of the assessment, relative to the importance of the draft text, so that the efforts are proportionate.

**An ambitious reform has been initiated, and institutional capacities need to match this ambition.** The SGG must ensure that the impact assessments are undertaken from the start of the drafting process, that the methodology is developed, and that adequate support tools are put in place. The quality and the reliability of the current impact assessments depend to a large degree on individual ministries. It is important to improve economic skills so that economic aspects both in the SGG and in the ministries are better taken into account. It is also important to strengthen the *Council of State's* capacities to evaluate impact assessments.

### ***The management and rationalisation of existing regulations***

**The French government has made substantial and sustained efforts over time to codify the law, which distinguishes France from the majority of other European countries.** Today, more than 40% of the laws in force are grouped into almost 70 codes. However, not all legislation can be codified and maintaining existing codes requires considerable resources when faced with the flow of new regulations or amended regulations. Codification must be not only an *ex post* remedy for the proliferation of regulations but needs to be associated with efforts to control the flow of regulations upstream, initially impact assessment.

**Since 2003, annual simplification laws have embedded simplification in the French political landscape.** These laws have helped to simplify the legal stock in a large number of domains and also made it possible to reduce administrative burdens on businesses and citizens. The regular use of simplification laws has raised the visibility of administrative simplification policy. The approach can however, lead to a proliferation of measures, undermining clarity.

**Since the OECD review of 2004, the French government has developed a distinctly more active policy for the reduction of administrative burdens.** A major element was the programme to "measure the reduction of the administrative burden" (MRCA), rooted in France's commitment to reduce administrative burdens on businesses by 25%, made at the end of 2007. Substantial progress has been made, including a mapping of the information requirements burdening businesses, the quantitative measurement of almost 800 of these obligations, the development of a methodology (based on the SCM), and a data base (*Oscar*).

**Since 2008, the government has given a new slant to its administrative simplification policy, which led to a plan to simplify 15 measures in the autumn of 2009.** It was decided to re-focus efforts on a small number of measures (irritants) and to base this selection on an analysis of life events. The change in orientation underscores a willingness to respond better to priorities as expressed by users of the administration, including businesses, and to communicate better in order to encourage and sustain interest (political, in the administration, among users). However, this change occurred without the measurement work carried out within the scope of the MRCA being the subject of an *ex post* and detailed assessment of the whole. Furthermore, no plans were made to update *Oscar* which, in the long run, runs the risk of devaluing the capital invested, just at the point when this tool could be used to help strengthen impact assessments.

**More strategically, the policy to reduce administrative burdens is not clearly attached to economic policy objectives.** Above all, it is incorporated into the wider state modernisation programme (RGPP), in which the main objective is to make the state more effective. In so doing, business competitiveness, even if it is mentioned and is the subject of specific initiatives (such as the simplification of business creation procedures), is not a prime objective. In the current context of the emergence of the world economy (and that of France) from one of the more serious crises in its history, it would be timely to create a more direct and closer link between the policy on reducing administrative burdens and boosting the economy.

**The objectives to be attained have not been clearly determined or assigned.** The 25% reduction objective was a step towards a more quantitative and specific approach, which can be found in the MRCA programme. The objective was set globally, without taking into account the flow of new regulations and without setting detailed objectives by ministry. With the slant towards life events, it is even more important to stay on course with regard to clearly determined objectives. However, if the 25% reduction objective is not to be officially abandoned, it is not clear, in the absence of well-defined quantitative monitoring, how progress made towards achieving this objective can be assessed.

**An issue which needs attention is the co-ordination of administrative simplification actions throughout the administration.** Discussions held by the OECD showed that the project to reduce administrative burdens is somewhat out of touch with ministries' initiatives, which do not fall clearly within an overall programme. The lack of specific objectives by ministry, for which they must be held accountable, has made it difficult to mobilise shared support for the project, and, more broadly, for administrative simplification.

**There is a need for more information on progress.** Until recently, no detailed and regular information was provided on the progress of the administrative burden reduction programme, so much so that this policy has remained relatively invisible both for the external stakeholders and for the rest of the administration. The publication in February 2010 of a follow-up sheet on the 15 simplification measures is a step in the right direction.

### ***Compliance, enforcement, appeals***

**Enforcement activities are (rightly) moving towards increased consideration of risk and better co-ordination between inspection services.** “Obligations based on results” have replaced “obligations of means” while risk analysis is increasingly used to target controls. The policy on state modernisation and application of EU regulations have also led to the regrouping of some services (which in France are primarily under the remit of central government) and to improve co-ordination of inspection bodies. Simplification and co-ordination of inspection and control activities are concerns raised by business representatives.

**Alternatives to judicial appeals have been developed, in particular, administrative appeals and the mediator.** This meets the need to reduce the number of cases that come before administrative courts. The mediator fills in (or attempts to fill in) the gaps in the formal system. A major necessary improvement relates to the need for greater transparency in relation to information about appeals procedures, in particular time limits for referring a case which are often very short. Another difficulty lies in the delays for taking cases forward, as the number of cases continues to rise.

### ***The interface between member states and the European Union***

Since the 2004 review, there has been a marked improvement in timely transposition. France used to be a “poor performer” in the EU with regard to transposition. It has made up considerable ground in transposing directives and has achieved its policy goal of reducing its transposition deficit to below 1%. This can be put down to the introduction of careful planning and monitoring arrangements. The government has set up a system to monitor transposition very closely, with a strong “name and shame” factor. It is important to maintain the frequency of high-level group meetings as well as political pressure via the European Inter-ministerial Committee.

**Quality control needs to be stepped up.** The main weakness of the current system is its failure to cover the quality of transposition (this is not unique to France). Quality control relies heavily on the European Commission (done at the end of the process). Working on the quality of transposition requires increased anticipation (upstream, as soon as the negotiation starts) and use of impact assessment by lead line ministries.

**France should be more active in developing Better Regulation issues at the EU level.** There is a need to take forward the major discussions it launched during its EU Presidency. This includes law accessibility, including with respect to the interaction between EU and national legislation, and use of ICT for better access, interaction between impact assessment at the EU and national level, interaction between impact assessment and administrative simplification. A lack of resources appears to be hindering the ability to follow up actively on these various issues at the EU level.

### ***The interface between subnational and national levels of government***

**Complex structures at the subnational levels heighten the need for a coherent Better Regulation policy.** Over the past three decades, France has moved forward in a decentralisation process intended to shift new powers and responsibilities to local officials and subnational levels of government. Better Regulation is all the more necessary because the subnational structure rests on a large and diverse range of municipalities, which are a fundamental point of contact for businesses and citizens.

**Substantial progress has been made towards including subnational governments in the process of making regulations.** The Advisory Board for Regulatory Evaluation (*Commission consultative sur l'évaluation des normes – CCEN*) has recently been established so that proposed regulations from the centre can take account of the financial consequences downstream (thereby avoiding unfunded mandates). Strengthening consultation with local governments would help identify impacts of draft laws and decrees at the local level, beyond financial impacts.

**Progress could also be made to encourage understanding of Better Regulation principles and good practices at the local level.** Exchanges of good practices between local governments are currently very limited compared to other countries. Such exchanges could be helpful to local governments, for example in the development of model or standard administrative acts, or methods for public consultation. Such exchanges could take place whilst respecting the fact that no local authority can have jurisdiction over another local authority.

## Key recommendations

<i>Better Regulation strategy and policies</i>	
1.1.	Regroup the different initiatives to create an overall strategy. Launch an integrated communication strategy covering the initiatives and the vision for the future, highlighting the link to economic performance. Produce an annual progress report, which could be sent to the prime minister and parliament by a minister given the responsibility for co-ordination of the strategy, its implementation, and its communication. This report would be made public.
1.2.	Elaborate a communications strategy that regroups the different initiatives, showing the interaction, leaving room for communication on individual reforms. Ensure that communication is targeted to meet the needs of the administration as well as those of the general public, outside the administration.
1.3.	Reinforce and make more systematic the evaluation of Better Regulation policies. Anticipate the evaluation of key programmes, such as impact assessment. A global evaluation could also be done to show the link between Better Regulation policies and economic performance. Consider which body would be best placed to carry out such evaluations.
<i>Institutional capacities for Better Regulation</i>	
2.1.	Evaluate capacities and mechanisms in place for ensuring that line ministries take full and active responsibility for their part in simplification policies.
2.2.	Consider what the adequate role and resources (including in terms of economic capacities) of the SGG should be to ensure an efficient monitoring of Better Regulation policies from the centre of government.



2.3.	Consider setting up an inter-ministerial committee to provide political support to Better Regulation policies as a whole. The Inter-ministerial Committee on Europe (CIE) could be taken as a template. Nominate a minister in charge of following up and communicating on Better Regulation policies.
2.4.	Strengthen administrative culture as necessary for implementation of Better Regulation policies. Review training policy so that civil servants fully grasp Better Regulation tools. Review economic skills.

### ***Transparency through public consultation and communication***

3.1.	Engage a discussion on the overhaul of public consultation. This could be partly based on targeted audits, for example, on open consultation processes on the Internet.
3.2.	Establish consultation guidelines. Set up a consultation portal (in which the forum website could be integrated). Encourage ministries to share their experiences in order to highlight good practices and the most useful processes.
3.3.	Consider how <i>Légifrance</i> can be further developed (the public website providing access to legal texts) further.

### ***Development of new regulations***

4.1.	Continue to reinforce basic processes for making new regulations. Further develop online tools, in particular by integrating the <i>legistic</i> guide and developing training programmes in parallel. Continue to focus on monitoring delays for issuing secondary regulations necessary for the implementation of laws and for transposing directives. Publish the government programme to increase its visibility.
4.2.	Encourage strengthening of procedures for making new regulations when they are initiated by members of parliament.

4.3.	Define a policy for consultation regarding impact assessment. Clearly integrate the “zero option” at the very beginning of the impact assessment process.
4.4.	Reinforce methodological tools, including quantification of costs as far as possible. Establish an adequate framework and sufficient resources for the maintenance of the <i>Oscar</i> database.
4.5.	Consider extending impact assessment to draft decrees. Encourage a similar development for draft laws initiated by members of parliament as well as for parliamentary amendments.
4.6.	Integrate economists in the teams responsible for impact assessment. Set up a common training programme across ministries to promote culture change.
4.7.	Evaluate the implementation of impact assessment in a regular and detailed way. Publish these evaluations. This could be integrated in the annual report proposed.
4.8.	Highlight possible ways of integrating <i>ex ante</i> impact assessment and <i>ex post</i> simplification.

### ***The management and rationalisation of existing regulations***

5.1.	Evaluate the contribution of codification to regulatory governance and more particularly its capacity to control regulatory inflation.
5.2.	Make a clear connection between administrative simplification policies and economic challenges.
5.3.	Set up clear objectives on administrative simplification and processes for allocating objectives to the different bodies in charge of conducting simplification. These bodies should be made accountable for the implementation of policies in a detailed and public way. Do not abandon quantification.

5.4.	Prepare and publish scoreboards on the effective implementation and specific results of simplification initiatives, for both government and external stakeholders, in addition to general communication on RGPP.
5.5.	Establish a schedule for regular evaluations. Identify the body which is best placed to carrying out these evaluations.

### *Compliance, enforcement, appeals*

6.1.	Encourage co-ordination between inspection bodies, including through mergers if necessary.
6.2.	Monitor the transparency of the different appeal processes for businesses and citizens, and time taken in processing appeals.

### *The interface between member states and the European Union*

7.1.	Maintain pressure on the monitoring of the transposition of EU directives by ministries.
7.2.	Continue to reflect on the interaction between impact assessment undertaken at the European Commission's level and the national level, and on integration of impact assessment in the transposition process.
7.3.	Reinforce France's role in discussions on Better Regulation at the EU level. Consider how to secure adequate resources to support this objective.

### *The interface between subnational and national levels of government*

8.1.	Consider monitoring and an extension of the scope of the work of the Advisory Commission on Evaluation Standards (CCEN).
8.2.	Encourage the development of good practice exchanges between local governments.

8.3.	Improve communication on local regulations by identifying possible tools and measures ( <i>e.g.</i> legal portals, progressive codification of local regulations).
8.4.	Efforts should be continued to incorporate subnational entities into the central government's administrative simplification initiatives.

## Introduction: Conduct of the review

### Peer review and country contributions

The review was conducted by a team consisting of members of the OECD Secretariat, and peer reviewers drawn from the administrations of other European countries with expertise in Better Regulation. The review team for France was:

- Caroline Varley, Project Leader for the EU 15 reviews, Regulatory Policy Division of the Public Governance Directorate, OECD.
- Sophie Bismut, Policy Analyst, EU 15 project, Regulatory Policy Division of the Public Governance Directorate, OECD.
- Susana Brasil de Brito, Director, Centro Jurídico (CEJUR), Presidency of the Council of Ministers, Portugal.
- Damian Nussbaum, Deputy Director, Better Regulation Executive (BRE), Department for Business, Innovation and Skills (BIS), United Kingdom.

The current review of France reflects discussions held in Paris by an OECD review team with French officials and external stakeholders on 30 January 2009 and 23-27 March 2009. Major initiatives and developments between these missions and clearance of the report for publication in May 2010 are referenced in the report, but have not been evaluated.

The team interviewed representatives of the following organisations:

- Association of the Mayors of France (Association des maires de France) (AMF).
- Association of the Regions of France (Association des régions de France) (ARF).
- Competition Authority (Autorité de la concurrence).
- Authority Governing Financial Markets (Autorité des marchés financiers) (AMF).
- prime minister's Office (Cabinet du Premier ministre).
- Centre for Strategic Analysis (Centre d'analyse stratégique) (CAS).
- Legal Commission of the National Assembly (Commission des lois de l'Assemblée nationale).
- National Commission for Public Debate (Commission nationale du débat public).
- Council of State (Conseil d'État).
- Court of Auditors (Cour des comptes).

- Department of Tax Legislation, Ministry of Budget, Public Accounts, the Civil Service and State Reform (Direction de la Législation fiscale, ministère du Budget, des Comptes publics, de la Fonction publique et de la Réforme de l'État).
- Department of Social Security (Direction de la Sécurité sociale) (DSS).
- Department of Civil Affairs and the Seal, Ministry of Justice and Freedom (Direction des Affaires civiles et du Sceau, ministère de la Justice et des Libertés).
- Department of Legal Affairs, Ministry of Budget, Public Accounts, the Civil Service and State Reform and the Ministry of Economy, Industry and Employment (Direction des Affaires juridiques, ministère du Budget, des Comptes publics, de la Fonction publique et de la Réforme de l'État et ministère de l'Économie, de l'Industrie et de l'Emploi).
- Competitiveness Department, Industry and Services (DGCIS), Ministry of Economy, Industry and Employment (Direction générale de la Compétitivité, de l'Industrie et des Services (DGCIS), ministère de l'Économie, de l'Industrie et de l'Emploi).
- Directorate General for the Modernisation of the State (DGME), Ministry of Budget, Public Accounts, the Civil Service and State Reform (Direction générale de la Modernisation de l'État (DGME), ministère du Budget, des Comptes publics, de la Fonction publique et de la Réforme de l'État).
- Directorate General of Local Authorities (DGCL), Ministry of the Interior, Overseas France and Local Authorities (Direction générale des Collectivités locales (DGCL), ministère de l'Intérieur, de l'Outre-Mer et des Collectivités territoriales).
- Directorate General of Labour (DGT), Ministry of Labour, Social Relations, Family, Solidarity and the City (Direction générale du Travail (DGT), ministère du Travail, des Relations sociales, de la Famille, de la Solidarité et de la Ville).
- Mediator of the Republic (Médiateur de la République).
- The Senate (Sénat).
- Department of Legal Affairs, General Secretariat for Food, Agriculture and Fisheries Ministry (Service des Affaires juridiques, secrétariat général du ministère de l'Alimentation, de l'Agriculture et de la Pêche).
- Secretariat General for European Affairs (Secrétariat général des Affaires européennes) (SGAE).
- General Secretariat of the Government (Secrétariat général du Gouvernement) (SGG).

- French Confederation of Professionals – Confederation of Professionals (Confédération française de l’encadrement – Confederation generale des cadres) (CFE-CGC).
- French Confederation of Christian Workers (Confédération française des travailleurs chrétiens) (CFTC).
- General Confederation of Small and Medium Enterprises (Confédération générale des petites et moyennes entreprises) (CGPME).
- General Labour Confederation (Confédération générale du travail) (CGT).
- Workers' Force (Force ouvrière) (FO).
- French Business Movement (Mouvement des entreprises de France) (MEDEF).
- Federal Union of Consumers – What to Choose (Union fédérale des consommateurs – Que Choisir) (UFC – Que Choisir).
- Paris X University, Nanterre (Université Paris X Nanterre).

The report, which was drafted by the OECD Secretariat, was the subject of comments and contributions from the peer reviewers as well as from colleagues within the OECD Secretariat. It was fact checked by France.

The report is also based on material provided by France in response to a questionnaire, including relevant documents, as well as relevant recent reports and reviews carried out by the OECD and other international organisations on linked issues such as e-Government and public governance.

Within the OECD Secretariat, the EU 15 project is led by Caroline Varley, supported by Sophie Bismut. Elsa Cruz de Cisneros and Shayne MacLachlan provided administrative and communications support, respectively, for the development and publication of the report.

## Structure of the report

The report is structured into eight chapters. The project baseline is set out at the start of each chapter. This is followed by an assessment and recommendations, and background material.

- **Strategy and policies for Better Regulation.** This chapter first considers the drivers of Better Regulation policies. It seeks to provide a “helicopter view” of Better Regulation strategy and policies. It then considers overall communication to stakeholders on strategy and policies, as a means of encouraging their ongoing support. It reviews the mechanisms in place for the evaluation of strategy and policies aimed at testing their effectiveness. Finally, it (briefly) considers the role of e-Government in support of Better Regulation.
- **Institutional capacities for Better Regulation.** This chapter seeks to map and understand the different and often interlocking roles of the entities involved in regulatory management and the promotion and implementation of Better

Regulation policies, against the background of the country's public governance framework. It also examines training and capacity building within government.

- **Transparency through consultation and communication.** This chapter examines how the country secures transparency in the regulatory environment, both through public consultation in the process of rule-making and public communication on regulatory requirements.
- **The development of new regulations.** This chapter considers the processes, which may be interwoven, for the development of new regulations: procedures for the development of new regulations (forward planning; administrative procedures, legal quality); the *ex ante* impact assessment of new regulations; and the consideration of alternatives to regulation.
- **The management and rationalisation of existing regulations.** This chapter looks at regulatory policies focused on the management of the “stock” of regulations. These policies include initiatives to simplify the existing stock of regulations, and initiatives to reduce burdens which administrative requirements impose on businesses, citizens and the administration itself.
- **Compliance, enforcement, appeals.** This chapter considers the processes for ensuring compliance and enforcement of regulations, as well administrative and judicial review procedures available to citizens and businesses for raising issues related to the rules that bind them.
- **The interface between member states and the EU.** This chapter considers the processes that are in place to manage the negotiation of EU regulations, and their transposition into national regulations. It also briefly considers the interface of national Better Regulation policies with Better Regulation policies implemented at EU level.
- **The interface between subnational and national levels of government.** This chapter considers the rule-making and rule-enforcement activities of local/sub-federal levels of government, and their interplay with the national/federal level. It reviews the allocation of regulatory responsibilities at the different levels of government, the capacities of the local/sub federal levels to produce quality regulation, and co-ordination mechanisms between the different levels.

## Methodology

The starting point for the reviews is a “project baseline” which draws on the initiatives for Better Regulation promoted by both the OECD and the European Commission over the last few years:

- The OECD's 2005 Guiding Principles for Regulatory Quality and Performance set out core principles of effective regulatory management which have been tested and debated in the OECD membership.
- The OECD's multidisciplinary reviews over the last few years of regulatory reform in 11 of the 15 countries to be reviewed in this project included a comprehensive analysis of regulatory management in those countries, and recommendations.



- The OECD/SIGMA regulatory management reviews in the 12 “new” EU member states carried out between 2005 and 2007.
- The 2005 renewed Lisbon Strategy adopted by the European Council which emphasises actions for growth and jobs, enhanced productivity and competitiveness, including measures to improve the regulatory environment for businesses. The Lisbon Agenda includes national reform programmes to be carried out by member states.
- The European Commission’s 2006 Better Regulation Strategy, and associated guidelines, which puts special emphasis on businesses and especially small to medium-sized enterprises, drawing attention to the need for a reduction in administrative burdens.
- The European Commission’s follow up Action Programme for reducing administrative burdens, endorsed by the European Council in March 2007.
- The European Commission’s development of its own strategy and tools for Better Regulation, notably the establishment of an impact assessment process applied to the development of its own regulations.
- The OECD’s recent studies of specific aspects of regulatory management, notably on cutting red tape and e-Government, including country reviews on these issues.

### **Regulation: What the term means for this project**

The term “regulation” in this project is generally used to cover any instrument by which governments set requirements on citizens and enterprises. It therefore includes all laws (primary and secondary), formal and informal orders, subordinate rules, administrative formalities and rules issued by non-governmental or self-regulatory bodies to whom governments have delegated regulatory powers. The term is not to be confused with EU regulations. These are one of three types of EC binding legal instrument under the Treaties (the other two being directives and decisions).



## Chapter 1

### Strategy and policies for Better Regulation

Regulatory policy may be defined broadly as an explicit, dynamic, and consistent “whole-of-government” policy to pursue high quality regulation. A key part of the OECD’s 2005 Guiding Principles for Regulatory Quality and Performance is that countries adopt broad programmes of regulatory reform that establish principles of “good regulation”, as well as a framework for implementation. Experience across the OECD suggests that an effective regulatory policy should be adopted at the highest political levels, contain explicit and measurable regulatory quality standards, and provide for continued regulatory management capacity.

Effective communication to stakeholders is of growing importance to secure ongoing support for regulatory quality work. A key issue relates to stakeholders’ perceptions of regulatory achievements (business, for example, may continue to complain about regulatory issues that are better managed than previously).

Governments are accountable for the often significant resources as well as political capital invested in regulatory management systems. There is a growing interest in the systematic evaluation of regulatory management performance – “measuring the gap” between regulatory policies as set out in principle and their efficiency and effectiveness in practice. How do specific institutions, tools and processes perform? What contributes to their effective design? The systematic application of *ex post* evaluation and measurement techniques can provide part of the answer and help to strengthen the framework.

E-Government is an important support tool for Better Regulation. It permeates virtually all aspects of regulatory policy from consultation and communication to stakeholders, to the effective development of strategies addressing administrative burdens, and not least as a means of disseminating Better Regulation policies, best practices, and guidance across government, including local levels. Whilst a full evaluation of this aspect is beyond the scope of this exercise and would be inappropriate, the report makes a few comments that may prove helpful for a more in-depth analysis.

## Assessment and recommendations

### *Development of Better Regulation strategy and policies*

Since the OECD Review of Regulatory Reform of France published in 2004, France has undertaken a set of ambitious measures to improve regulatory quality; these measures constitute a major change in quality. Three substantial fields of action may be distinguished. Two are upstream: the first tackles the process of drafting regulations by strengthening *ex ante* impact assessment; the second is the overhaul of the public consultation processes. The third field is downstream of regulatory production. The French government has conducted a simplification policy which combines legal simplification and a reduction in administrative burdens. Special efforts have also been developed to reduce the backlog of EU legislation to be transposed into national law, and to speed up the production of secondary regulations necessary for the implementation of primary laws, two weaknesses emphasised in the 2004 OECD report. Upstream and downstream actions are converging. There is growing consideration of how to combine *ex ante* impact assessment and *ex post* simplification. While there is still no integrated strategy on the ground, principles guiding future developments are clearly coming to fruition. This discussion is of just as much importance to France as to other countries.

In the area of regulatory governance, France has long emphasised the importance of rule drafting and achieving legal consistency, but the debate on these matters is broadening. High quality regulation is increasingly regarded as an aim of public policies; which was not previously the case. The most recent period has been important in heightening awareness about the significance of high quality regulation and a real desire for change, in contrast to the significant lack of progress apparent in 2003/04. This awareness is broadly shared (on the part of the government, the *Council of State*, the parliament and the public administration), even though external stakeholders (and particularly business representatives) have been only modestly involved in the debate in comparison to other European countries. Awareness has also been influenced by examples from other countries, through the sharing of good practice and experience. Compared to other countries, it is worth emphasising the innovative nature of the impact assessment arrangements introduced in France since 2009, as well as the changes in the area of public consultation. These represent a major breakthrough, offering scope for creativity in a context that remains largely traditional and centralised.

The approach to regulatory governance continues to be strongly influenced by legal considerations. Legal codification and simplification, as well as access to the law, are still important mainstays of regulatory governance. Regulatory governance policy is largely driven by the perception that France would suffer more than it should from “overproduction of legal norms”, which has prompted discussion about what needs to change in order for regulatory management to improve. The definition and policy field of French regulatory governance do not always fit the expression “Better Regulation”, which is difficult to translate into French.<sup>1</sup> It means more than just the simplification and clarification of laws. France does not have a regulatory governance strategy in the strict sense, but a set of measures to improve the quality of regulation, which are driven essentially by the perception of a “French disease”, namely the overproduction of legal norms that has to be kept in check.

The economic dimension and the cost to the economy of excessive regulation or “poor” regulation still tends to be discounted. Reference is made to economic concerns but with a less important emphasis, compared to other European countries. Action in the

field of regulatory governance is part of a broader programme reviewing public policies (RGPP), which aims to modernise government administration and increase its effectiveness. The economic goal is thus not central to the system. Administrative burdens aside, there is arguably insufficient awareness of the fact that regulation has a cost, as well as benefits, which is a rough equivalent to the cost of public expenditure. For example, the United Kingdom has considered the idea of “regulatory budgets”, though difficult to put into practice, tend to point to the importance of keeping regulatory costs in check. Symptomatic of this lack of awareness is that the Ministry for Economic Affairs and the *Cour des Comptes* (the *Court of audit*) are still insufficiently involved in regulatory governance issues.

*Continued progress in regulatory governance depends on maintaining strong political will.* The progress achieved since 2004, for example, on impact assessment, administrative simplification, and the transposition of EU directives, has depended on a strong political will on the part of the government and parliament. It should be emphasised that many of these policies are a “work in progress”, and at the midpoint of implementation. Processes and tools need to be set up and implemented, a lengthy and exacting process. Regulatory governance is a long-term policy, with little immediate political gain, and subject to short-term pressures. It is harder to raise its profile in France given, that on the one hand, there is a lack of a comprehensive regulatory governance programme which might be sustained with political backing and, on the other, the relative disregard for economic concerns, which is somewhat surprising at a time when policy is geared towards economic recovery. Under these circumstances, relatively little attention is paid to the issue of regulatory governance beyond the limited context of administrative and political institutions. Identifying an overall policy could increase the visibility of the process and give it impetus over time.

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**Recommendation 1.1. Regroup the different initiatives to create an overall strategy. Launch an integrated communication strategy covering the initiatives and the vision for the future, highlighting the link to economic performance. Produce an annual progress report, which could be sent to the prime minister and parliament by a minister given the responsibility for co-ordination of the strategy, its implementation, and its communication. This report would be made public.**

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### ***Communication on Better Regulation strategy and policies***

*There is no clear communication which brings together the different strands of regulatory governance.* This reflects the lack of any integrated policy and the dilution of certain initiatives in the RGPP. It is above all presented as an initiative in favour of “users” (citizens and businesses) and improved public services, rather than a support for economic recovery. The various reforms are the subject of separate internal communications within the administration in an *ad hoc* fashion (such as in February 2010 on progress with the simplification plan). This does not provide clear visibility for these reforms, either within the administration, or outside it (for stakeholders).

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**Recommendation 1.2. Elaborate a communications strategy that regroups the different initiatives, showing the interaction, leaving room for communication on individual reforms. Ensure that communication is targeted to meet the needs of the administration as well as those of the general public, outside the administration.**

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### ***Ex post evaluation of Better Regulation strategy and policies***

*France stands out (positively) in terms of the large number of reports on regulatory quality.* The reports by the *Council of State* and other *ad hoc* committee reports which focus on specific aspects, such as the *Balladur* report on local governments and the *Warsmann* report on regulatory quality, may be cited. These assessments, although not regular events, have given rise to substantial changes, which suggests that it would be helpful to conduct these assessments on a more systematic basis. Thus the publication of several reports which emphasises the ineffectiveness of the measures introduced by a decree or a circular to establish impact assessments, has contributed to the setting up of more stringent and ambitious arrangements through the constitutional reform of 2008 (Chapter 4).

*France has several players who may be able to provide regular evaluations of regulatory policy over time.* The *Cour des comptes* (*Court of audit*), independent of the executive, has not yet undertaken studies on regulatory governance, but could be very useful for general assessments. The programmes to reduce administrative burdens and impact assessment processes could be candidates for this approach, as can be seen in other countries. This approach could be envisaged as part of the development of public policy assessments outlined in the recent constitutional revision. The *Council of State* remains a major player. A new section (the administration section) was recently set up, enabling it to take a more in-depth cross-cutting view of state reform and its objectives.

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**Recommendation 1.3. Reinforce and make the evaluation of Better Regulation policies more systematic. Anticipate the evaluation of key programmes, such as impact assessment. A global evaluation could also be carried out to show the link between Better Regulation policies and economic performance. Consider which body would be best placed to carry out such evaluations.**

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### ***E-Government in support of Better Regulation***

*Many initiatives have been supported by the development of e-Government.* The spread of *e-Government* has provided a mechanism for many reforms in the area of regulatory governance. This applies in particular to measures for administrative simplification (for example, in order fully to dematerialise administrative procedures applicable to businesses). It also concerns access to information (especially with *Légifrance*), the simplification of administrative procedures through developing the public service portal (*mon.service-public.fr*) and the internal operation of public administration. This progress has been acknowledged by businesses. Several OECD interviewees have suggested the need to go further, particularly by simplifying the “back office”.

### Box 1.1. Extracts from the 2004 OECD report: Strategy and policies of regulatory governance

#### Evaluation

The solid legal character of the French system, with formalised procedures for preparing and recording, has long masked the necessity for a global effort aimed at improving the quality of regulations and strengthening the resources for developing controls. There are directives prepared by the prime minister, such as that of 26 August 2003 which recall the importance that must be attached to the quality of the rule of law, by using the legal expertise of ministries appropriately and co-ordinating it between different ministerial departments. However, such directives do not have any legal binding on legislation that has been drawn up, and their impact has not been assessed. Moreover, in some sector ministries, legal and economic expert resources have long failed to respond to the prior demands of regulatory quality and evaluation.

Thus regulatory reform policies have retained a fragmented character for a long time without a global framework of concepts enabling regulatory quality to be defined. However, from 2001, the work carried out as a result of the *Mandelkern* report has led to planning conditions for transposing principles for regulating quality which apply at the inter-departmental level.

Source: OECD (2004), *Regulatory Reform in France: Government capacity to assure high quality regulation*, OECD Publishing, Paris.

## Background

### *Economic context and drivers of Better Regulation*

France is a major player in the world economy. It faces substantial challenges, including loss of business competitiveness on world markets. At the same time France can boast a range of advantages which should help it to rise to these challenges. The implementation of certain necessary structural reforms partly depends on a further strengthening of regulatory governance policy, which requires strong and sustainable will. For example, it will be important to draw on modernisation brought by the organic law on impact assessment and the new models for public participation in the elaboration of policies.

In recent years, French policies for Better Regulation have underlined a political will, which has grown in strength since 2004, to undertake reforms in order to improve regulatory quality. A stronger and deeper understanding of the importance of effective regulatory management within the administration has helped to promote this trend. A number of public reports on the quality of laws have fuelled discussion, and contributed to a promotion of the principles of regulatory quality (Box 2.1). The perception of what some have termed “French disease” (but in fact a disease present in other countries, though not all), corresponding to the overproduction of legal norms that has to be controlled, has led to discussion about what has to change to give rise to better legislative and regulatory management. These debates, which have involved among others the government, parliament, the *Council of State* and the central administrative authorities have resulted in actions aimed at improving regulatory quality both from the outset (by reforming the process for drawing up standards) and subsequently (by evaluating and simplifying what is already in place). The momentum generated by the Community (EU) “Better Regulation” initiative (in French, *mieux légiférer*), in conjunction with the Lisbon process, has also helped to create a context more conducive to reforms in the area of regulatory quality. In the interviews conducted by the OECD, many informants stressed

how there was heightened awareness of the importance of regulatory quality and a kind of “acculturation” on the part of French administration both to reform and to evaluation.

### Box 1.2. Main reports on regulatory quality

#### The *Picq* report (1994)

This report followed the 1991 *Council of State* report on the proliferation of regulations and their inadequate quality. These reports are part of the growth in awareness, from the end of the 1990s, of the need to reform the State. They highlighted the fact that the increased number of formal regulations was in practice of little use to direct, modernise and control state operations. The *Picq* report proposed an overall strategy to modernise the role of the state by refocusing it on its basic responsibilities, by improving the delegation of responsibility and modernising budgetary and accounting rules. It also led to initiate regulatory impact analysis (RIA) in 1997.

#### The *Mandelkern* report (2002)

On 12 October 2000, the inter-departmental committee for state reform entrusted an inter-ministerial working group on the quality of regulation with the task of examining the following questions: civic consultation on draft texts; access to the law; the readability and intelligibility of the law; impact studies; and the cost of regulation. This working group chaired by Mr Dieudonné Mandelkern (who also chaired the High-Level Advisory Group on Better Regulation, appointed by the European Commission in 2000) submitted a set of proposals intended to establish more “proportionate” regulations, which were indeed implemented and more readily accepted. The most important recommendations were concerned with the implementation of an annual simplification programme, the preparation of cost indicators for each new regulation, systematic consultation with the departments expected to ensure observance of the text, and improvements to the processes of preparing and finalising texts. The working group undertook a close examination of the practice of impact assessments as hitherto carried out, noting that they were often belated and generally formal, but also the fact that much draft legislation avoided this form of scrutiny (Mandelkern, 2002).

#### The *Lasserre* report (2004)

The observations on impact assessments in the *Mandelkern* report were further examined in a supplementary evaluation undertaken, at the request of the prime minister, by a working group chaired by Mr. Bruno Lasserre, which submitted its report in 2004. This report too, noted the limits to the arrangement based on a circular from the prime minister, and recommended that the projected analysis of the impact should be taken into account at a much earlier stage, when the basic options confronting the reform were determined (Lasserre, 2004).

#### The *Council of State* report on legal certainty and the complexity of the law (2006)

The *Council of State* devoted considerable effort to evaluating the policy for the quality of the law in the general review of issues in its 2006 public report entitled *Sécurité juridique et complexité du droit* (“legal certainty and the complexity of the law”), (*Conseil d’État*, 2006). A working group was accordingly formed by the General Secretariat of the government to draw conclusions from it, and proposed that the obligation to undertake impact assessments should be included in an organic law (*Secrétariat général du gouvernement*, 2007).

#### The *Warsmann* report (2009)

In June 2008, the prime minister commissioned Mr. Warsmann, a deputy and chair of the National Assembly Commission for Laws, with the brief to identify an “operational” strategy for the quality of the legal standard, the aim being to devise a methodology for simplification of the law, and then to ensure that the constitutional aim of intelligibility was achieved more effectively and that every citizen could access all legal norms. This strategy was defined with reference to an appraisal of existing



practices for producing and publicising the standard. A second part of the brief was to propose simplification measures in three areas: namely company accounting; VAT; and public procurement. Submitted in January 2009, the report contained 103 proposals, including 46 concerned with the fore mentioned areas.

French policy for regulatory quality is also strongly linked to reforms for modernising the state, under circumstances in which regulation has become deeply embedded as a primary means of state intervention. The various current initiatives, for example as regards impact assessments or the reduction of administrative burdens, are part of the broader framework of the RGPP, which was initiated in June 2007 just after the presidential election. The RGPP seeks to produce gains in budgetary savings and improve the effectiveness of public policies, which includes action to strengthen the quality of services provided for citizens and businesses (OECD, 2009). The actions to promote regulatory quality are also linked to institutional reforms, and especially the constitutional reform of July 2008 (which formally upheld the principle of impact assessments) and the territorial reform (see Chapter 2).

Economic issues and the relevance of effective regulatory governance for economic performance are not totally removed from regulatory governance policies, but they are not nearly as conspicuous as in some other European countries (such as the United Kingdom or the Netherlands), in which they have been the main driving force behind reforms. One of the government actions is to reduce the administrative burden on businesses. While the aim of this programme is certainly to promote the competitiveness of French business, it does not lie at the “heart” of policies for regulatory governance. The relatively low profile of economic concerns may also be attributed to the paramount importance traditionally attached to legal order and legal certainty. Policies must benefit private individuals and businesses, which are above all portrayed as “users” of public services rather than economic players. Already noted in the 2004 OECD report, the economic goal is not central to the system.

### ***Developments in France’s Better Regulation agenda***

Initiatives to improve regulatory governance have become steadily more substantive in the last 40 years. The first raft of reforms in the 1970s sought primarily to lessen the distance between ordinary citizens and administrative authorities and put an end to the traditional secrecy and lack of openness in administrative activity (creation of the post of Republic Ombudsman in 1973, and the laws of 1978 and 1979 on access to administrative documents). A second wave of reforms occurred in the 1990s to facilitate access to the law (with the establishment of *Légifrance*) and, in a more limited way, simplify existing law. In the years from 2000 onwards, the field of Better Regulation became broader. In particular, regulatory policy covered accessibility of the law, the reform of conditions for the drafting of standards, the simplification of existing law and the reduction of the administrative burden. These various initiatives have not been part of a formal strategy for Better Regulation. However, the quality of the law has become an increasingly clear aim and the different actions of recent years have been geared to it.

Since the 2004 OECD report, the French government has undertaken several major initiatives. A key measure has been the inclusion – enshrined in the Constitution – of *ex ante* impact evaluation on draft legislation. The government has initiated other reforms pointing in several directions: simplification of the law and lessening of the administrative burdens for private individuals and businesses, access to the law,

modernisation of public consultation procedures, and legal certainty in the application of Community (EU) legislation and the enforcement of laws.

**Table 1.1. Main stages of policies for Better Regulatory governance in France**

1978	Law of 17 July 1978 on administrative transparency.
1981	Establishment of business formality centres (BFCs) linked to the chambers of commerce and industry.
1987	Decree by the prime minister who required an assessment of the budgetary impact and impact in terms of jobs for all regulations.
1991	<i>Council of State</i> report on the proliferation of regulations and their inadequate quality.
1994	<i>Picq</i> report on reform of the state (following the 1991 <i>Council of State</i> report).
1997	<ul style="list-style-type: none"> <li>• Experimentation with impact assessments for draft laws and draft decrees in the Council of Ministers.</li> <li>• Administrative simplification programme (decentralised to the level of the ministries).</li> </ul>
1998	Creation of <i>Légifrance</i> .
1989	Decree of 12 September 1989 which revitalised codification.
2000	<ul style="list-style-type: none"> <li>• The <i>Mandelkern</i> report (inter-ministerial working group on state reform).</li> <li>• Law N° 2000-321 of 12 April 2000, concerning the rights of citizens in their relations with administrative authorities, which broadened the area of simplification beyond the central state to territorial authorities, local public institutions and social security bodies.</li> </ul>
2002	<ul style="list-style-type: none"> <li>• Law N° 2002-276 of 27 February 2002 concerning community-based democracy.</li> <li>• Decree of 7 August 2002 on general distribution of the law over the Internet.</li> </ul>
2003	Enabling law for administrative simplification (July).
2004	<i>Lasserre</i> report “for better quality regulation”.
2006	<ul style="list-style-type: none"> <li>• Annual report of the <i>Council of State</i> which dealt extensively with the evaluation of policy for the quality of the law (“legal certainty and the complexity of the law”).</li> <li>• Decree N° 2006-672 of 8 June 2006 on consultative committees.</li> </ul>
2007	<ul style="list-style-type: none"> <li>• Law of 31 January 2007 on reform of the social dialogue.</li> <li>• Government commitment to a 25% reduction by the end of 2011 in the burden resulting from the 1 000 heaviest or most irritating formalities weighing on businesses (December).</li> </ul>
2008	The constitutional law of 23 July 2008. Intended to strengthen the capacity of parliament to examine draft reforms, the constitutional reform established in particular an obligation to conduct prior evaluation of draft legislation.
2009	<ul style="list-style-type: none"> <li>• The <i>Warsmann</i> report, “Let’s make the Law simpler to cure a French disease”.</li> <li>• Organic Law No 2009-403 of 15 April 2009 which incorporated the rule on prior evaluation of draft legislative measures.</li> </ul>

### ***Guiding principles for the current Better Regulation agenda***

Just as there is no integrated policy for Better Regulation, the French government has not drawn up a special set of principles for Better Regulation. However, the various policies and initiatives in this area have led in actual fact to the emergence of two major guiding principles – legal certainty and access to the law – more strikingly than in most other European countries. There is a broad consensus among political and administrative leaders, as well as the economic players, that France appears to be suffering more than it should from a constant tendency to over-regulate (see Chapter 4). This is regarded as a source of legal uncertainty and of a cost to society and the economy, which is affecting the credibility and effectiveness of public action. Many people are further concerned that

steps should be taken to ensure that citizens are fully familiar with the law, and that their relations with public administration should be simplified.

### ***Main Better Regulation policies***

#### *Legislative simplification and reduction of the administrative burden*

Simplification of the law constitutes one of the main strategic components of the RGPP. This policy targets all categories of “users” (private individuals, businesses, territorial authorities and associations). Its aim is to simplify regulation along with the relation between the state and its users and to reduce the administrative burden weighing on the latter in their relations with the administrative authorities. The policy for simplification in France is based on a prescriptive programme for simplifying the law and procedures (especially through the simplification laws of 2003, 2004, 2007, 2008 and 2009) and a programme for the modernisation of public administration, including the introduction of e-Government.

Meanwhile, the French government introduced a special programme in 2006 to reduce the administrative burdens weighing on businesses. “Measurement and reduction of the administrative burden” (MRAB) is part of both the Lisbon Strategy and the public undertaking of the French government at the first Council for the Modernisation of Public Policies on 12 December 2007, to achieve a 25% reduction by the end of 2011 in the burden resulting from the 1 000 heaviest or most irritating formalities weighing on businesses. Supervision of this activity has been handed to the *Direction général de la Modernisation de l’État* (DGME, or Directorate General for State Modernisation), within the Ministry of the Budget, Public Accounts and State Reform. Recently, this programme has changed in terms of its target group (it is intended for all users) and its methodology, with the use of common life events in selecting simplification activities (see Chapter 5).

#### *Impact assessment*

The French government has embarked on a reform of methods for drawing up the standard, by modernising parliamentary procedure and formally approving an obligation to evaluate draft legislation at a much earlier stage. The constitutional law of 23 July 2008 and the organic law of 15 April 2009 represent major steps in taking account of legal quality requirements in relations between government and parliament. One aspect of this reform has indeed been to introduce an obligation to evaluate draft legislation from the outset, disregard for which is likely to carry political or even judicial penalties (imposed by the *Constitutional Council*). This obligation came into effect on 1 September 2009. The government anticipated it and has implemented impact assessments systematically (for draft legislation) since April 2009 (Chapter 4).

#### *Modernising consultation with stakeholders*

Several joint actions have been launched to modernise consultation with stakeholders when devising public policies and prescriptive draft documents, in ways that include greater use of information technology. They entail overhauling forms of traditional consultation (which occurs within institutional advisory boards) and diversifying methods of consultation so that stakeholders are involved in the process of drawing up public policies (Chapter 3). These actions have included:

- *The reform of traditional institutional consultation*, with a systematic overhaul of existing advisory boards. This has led to the abrogation of over 200 such bodies. Rules have also been defined to guide the establishment of new boards.
- *Reform of the social dialogue*. The law of 31 January 2007 on modernising the social dialogue has established, in the case of any government proposal involving reforms in industrial relations, employment or vocational training, an obligation to engage in prior consultation with the social partners (nationally recognised representative union organisations of employees and inter-professional employers' organisations) in order to begin a negotiation procedure. The Houses of the parliament have recently defined a protocol giving social partners equal rights regarding draft bills on social reforms when they are introduced by members of parliament.<sup>2</sup>
- *The development of new forms of participatory consultation* about the determination of public policies (with in particular the *Grenelle Environment Forum*).

#### *Promoting legal quality*

- *Legal certainty in the application of Community (EU) legislation* and the enforcement of laws. Fresh measures have been introduced by the prime minister in both areas, especially as regards the organisation of inter-departmental activity. Their aim has been to reduce the gap in transposing European directives (Chapter 4).
- *Access to the law*. This remains a central feature of national regulatory policy, which was highlighted by France during its EU presidency in the second half of 2008. It has materialised most notably in an enlargement of the *Légifrance* website (Chapter 3).
- *The national codification programme*. This is going ahead with special attention paid to maintaining existing codes (Chapter 5). The circulation, since 2005, of a "Guide for Drafting Legislation and Regulations" jointly published by the *Council of State* and the SGG is indicative of the progress made with legislative drafting (Chapter 4).

#### ***Communication on Better Regulation strategy and policies***

As in the case of many other EU countries, France has not developed an integrated communication strategy for matters concerned with quality regulation. However, many reports on regulatory quality have fuelled the public debate. Several government websites give details about the process of drafting legislation and about simplification initiatives. As regards the general framework, the "regulatory quality" heading on the home page of the *Légifrance*<sup>3</sup> website provides access to information on progress with the codification programme and on the development of drafting rules for legislative and regulatory documents, as well as on trends in the volume of such documents. The DGME websites<sup>4</sup> contain details about simplification initiatives.

### ***Ex post evaluation of Better Regulation strategy and policies***

As in most other EU member countries, *ex post* evaluations have not been undertaken systematically. That said, it has been possible to evaluate different measures for regulatory quality in reports by the *Council of State*, as well as in various reports commissioned by the President of the Republic or the prime minister (Box 1.2). Several reports have thus emphasised the ineffectiveness of measures taken by decree or by circular to introduce impact assessments, and have led to the establishment of more stringent and ambitious arrangements through the constitutional reform of 2008 (Chapter 4). The *Court of audit* has produced no report devoted specifically to a programme directly concerned with policies for regulatory quality. By means of some reports, however, it may identify on an *ad hoc* basis the difficulties faced by the administrative authorities, such as the mass of decrees that have to be produced or the deadlines for transposing European directives.

### ***E-Government in support of Better Regulation***

In October 2008, the French government initiated a development plan for the digital economy known as *France numérique 2012* (“Digital France 2012”). It follows the first plan for the development of e-Government, known as *Adèle*, which ran between 2004 and 2007. The current plan is part of the RGPP and its progress is thus monitored by the Council for the Modernisation of Public Policies. Organised in terms of 150 actions, *France numérique 2012* seeks to develop an infrastructure (access for all and development of VDSL), the promotion of digital content, the promotion and diversification of services used by business, the public authorities and private individuals, and the modernisation of digital economy governance. To encourage the rapid development of e-Government, one priority has been to promote the spread of electronic identity cards.

E-Government is regarded as an essential mechanism in simplifying administration for users (who here include private individuals, businesses and associations), as well as improving the accessibility and quality of public services. The full dematerialisation of administrative procedures applicable to businesses has been a goal pursued in close co-operation with the business formality centres, particularly in transposing the so-called “services” directive. The aim has been to establish by then a new portal combining many online services already available. As regards access to information, France has possessed since 2000 a single government portal ([www.service-public.fr](http://www.service-public.fr)) run by the *Documentation française* (the French national office for documentary resources). The portal is intended both for private individuals and businesses (with a special section for SMEs) and has become gradually more detailed and extensive. In January 2008, two-thirds of administrative procedures could be undertaken on line.<sup>5</sup> The DGME has offered Internet users new facilities and the opportunity to open a personal account for online procedures at “[mon.service-public.fr](http://mon.service-public.fr)” (MSP). The first services became operational at the beginning of 2009.

Information and communication technology is also a mechanism to reform processes for drafting and publicising the law. An important stage in the incorporation of these procedures was completed in 2007 when the *Système d’Organisation en ligne des Opérations Normatives (SOLON*, or the “online system for regulatory operations”) was introduced throughout all central government departments. The system dematerialises the path of legislation published in the *Journal officiel de la République française* (the “Official Gazette of the French Republic”) in its “Laws and Decrees” edition via the

involvement of ministries, the *Council of State* and the SGG. *SOLON* is notably of benefit in providing for better monitoring of government activity, by reliably keeping track of the successive draft versions of documents prior to their final publication in the “Official Gazette”. The system also enables common models to be circulated among ministries to support the decentralised production of legal norms. However, it does not provide direct assistance with drafting and is not clearly linked to the “Guide for Drafting Legislation and Regulations”. Moreover, it includes neither independent regulatory authorities, nor the dialogue between government and parliament. However, there are plans for a forthcoming expanded version which in particular should pave the way for the consolidation of documents when preparing draft regulations.

## Notes

1. The expression generally used is *Mieux légiférer*.
2. In December 2009, the Bureau of the Senate adopted a protocol which organises consultation with social partners previous to Senate discussion of draft bills initiated by Parliament on individual and collective labour relations, employment and vocational education. The Senate is implementing this protocol on an experimental and will evaluate it by 30 September 2011. In practical terms, when a the President Conference considers to table a draft “social” bill initiated by Parliament, the President of the Social Affairs Commission informs social partners by writing to get their views and, if relevant, to see if they want to open negotiations.
3. [www.legifrance.gouv.fr/](http://www.legifrance.gouv.fr/).
4. [www.ensemble-simplifions.fr](http://www.ensemble-simplifions.fr) and [www.modernisation.gouv.fr](http://www.modernisation.gouv.fr).
5. *Source*: e-Government in France, EC.

## *Chapter 2*

### **Institutional capacities for Better Regulation**

Regulatory management needs to find its place in a country's institutional architecture, and have support from all the relevant institutions. The institutional framework within which Better Regulation must exert influence extends well beyond the executive centre of government, although this is the main starting point. The legislature and the judiciary, regulatory agencies and the subnational levels of government, as well as international structures (notably, for this project, the EU), also play critical roles in the development, implementation and enforcement of policies and regulations.

The parliament may initiate new primary legislation, and proposals from the executive rarely if ever become law without integrating the changes generated by parliamentary scrutiny. The judiciary may have the role of constitutional guardian, and is generally responsible for ensuring that the executive acts within its proper authority, as well as playing an important role in the interpretation and enforcement of regulations. Regulatory agencies and subnational levels of government may exercise a range of regulatory responsibilities. They may be responsible (variously) for the development of secondary regulations, issue guidance on regulations, have discretionary powers to interpret regulations, enforce regulations, as well as influencing the development of the overall policy and regulatory framework. What role should each actor have, taking into account accountability, feasibility, and balance across government? What is the best way to secure effective institutional oversight of Better Regulation policies?

The OECD's previous country reviews highlight the fact that the institutional context for implanting effective regulatory management is complex and often highly fragmented. Approaches need to be customised, as countries' institutional settings and legal systems can be very specific, ranging from systems adapted to small societies with closely knit governments that rely on trust and informality, to large federal systems that must find ways of dealing with high levels of autonomy and diversity.

Continuous training and capacity building within government, supported by adequate financial resources, contributes to the effective application of Better Regulation. Beyond the technical need for training in certain processes such as impact assessment or plain drafting, training communicates the message to administrators that this is an important issue, recognised as such by the administrative and political hierarchy. It can be seen as a measure of the political commitment to Better Regulation. It also fosters a sense of ownership for reform initiatives, and enhances co-ordination and regulatory coherence.

## Assessment and recommendations

### *General context*

*There has been real progress, based on structures firmly rooted in the French institutional landscape.* Regulatory governance in France depends on several key-players, most importantly the *Council of State*, the prime minister's services and the General Directorate for the Modernisation of the State (DGME) in the Budget Ministry. It has been decided to develop the network around specialised units: the legislation and quality of the law service in the General Government Secretariat (SGG) and the General Secretariat for European Affairs (SGAE) within the prime minister's services; and the DGME within the Budget Ministry. The SGG deals mainly with the flow (production of regulations), the SGAE covers the transposition of EU legislation, while the DGME looks after stock management (administrative simplification). The *Council of State* remains a key element both upstream (through its consultative function for the government and its control of legal quality) and downstream (as the administrative judge of last resort).

*Since 2004, the role of the SGG in the conduct and monitoring of regulatory governance policy has become stronger.* The 2004 OECD report emphasised that “... the role of the SGG remains unassuming at a public level with duties like those of a ‘clerk of the court’ to the Republic...”. While this role remains unobtrusive *vis-à-vis* the public, it has been decisive in many key areas of work in regulatory governance (running and monitoring impact assessments, the “Guide for Drafting Legislation and Regulations” in co-operation with the *Council of State*, the transposition of European directives with the SGAE, and reform of the advisory boards), and far exceeded its customary responsibility for co-ordinating and preparing documents for the Council of Ministers. The legislative department of the SGG has been strengthened and its reorganisation into a “department of legislation and quality of the law” reflects how its role has changed. The SGG is increasingly exercising authority as a partner to the ministries in the process of drawing up legislation. While it possesses no direct binding authority, its closeness to the head of government may lend it considerable powers of persuasion. It also gains from its close relations with the *Council of State*, from which its top officials originally come.

*The DGME is responsible for all questions to do with administrative simplification, which constitutes one of the main basic principles of regulatory governance policy.* The work involved combines administrative simplification (including reduction of the administrative burden), the development of *e-Government*, and adjustments to administrative organisation. It has recently changed considerably with its action more closely focused on 15 key simplification measures announced in October 2009 (Chapter 5). As directorate of one of the main ministries, the DGME is capable of unlocking resources on a scale well beyond that of the SGG. This has led, for example, to the introduction of the *Oscar* tool for measurement of administrative burdens (Chapter 4). A noteworthy point is the co-ordination of action for administrative simplification via public administration. The OECD-led discussions have indeed pointed to some disjointedness between the plans for reducing the administrative burden and different actions by the ministries, which are not clearly part of an overall programme. The lack of clear aims for which individual ministries have to be accountable has made it hard to generate strong joint action to further reduction of the administrative burden, and more broadly administrative simplification.



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**Recommendation 2.1. Evaluate capacities and mechanisms in place for ensuring that line ministries take full and active responsibility for their part in simplification policies.**

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*The Constitutional Council appears capable of playing a very significant role, especially as regards the development of impact assessments.* Under the arrangements introduced following the constitutional reform, in the event of disagreement between the prime minister and the parliament about the quality of impact assessments, the prime minister and the President of the assembly to which the case has been referred may call upon the *Constitutional Council* to settle the dispute. The arrangement is still too recent to have provided a clear demonstration of how the *Constitutional Council* may perform this role. The Council has also taken high profile decisions regarding the accessibility of the law.

*In the area of regulatory governance, France is distinctive as regards the important role of parliament in the central activities of simplifying the law and improving its quality.* The National Assembly Commission for Laws has played an important part in reviving simplification policy through detailed recommendations (the January 2009 *Warsmann* report) and the simplification laws (several of them introduced by members of parliament). The 2008 constitutional reforms have expanded the role of parliament in evaluating public policy and, as pointed out above, have enabled it to postpone consideration of a text whose impact assessment was of substandard quality. The ability of parliament to exercise these powers depends on its means and resources (and particularly on teams for studying the quality of these assessments). A breakthrough is already apparent with the establishment of the National Assembly Committee for Evaluation of Public Policies, which submitted an initial report on impact assessment monitoring criteria in November 2009 (Chapter 4).

*The question is – on which actor should France now depend within the government to secure the long-term future of these reforms?* The SGG appears to be best placed to tackle cross-cutting issues. It is emerging as a key-partner to ministries in their law-making processes. It does not have any direct sanctioning powers, but its close relationship to the head of the government gives it a strong persuasive platform from which to encourage progress. However, as is the case of many of its counterparts in other countries, as a prime minister's service, it is more likely to play a co-ordination role than that of a powerful driver of a regulatory governance network. Furthermore, it has few resources (compared to the ministries). The French government decided to build regulatory quality policy on a network of correspondents throughout the ministries rather than to establish a single regulatory management body, which is difficult to fit in with the existing institutional structures and the administrative culture. Nevertheless, this network must still be based on a strong and clear political intention, associated with a clearly recognised centre of gravity, without which, it runs the risk of gradually disappearing.

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**Recommendation 2.2. Consider what the adequate role and resources (including in terms of economic capacities) of the SGG should be to ensure an efficient monitoring of Better Regulation policies from the centre of government.**

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*It is also necessary to provide for sustainable inter-ministerial accountability.* The breakthroughs with impact assessments and the transposition of EU legislation demonstrate that the “network” system may yield tangible results, in so far as the various

members of the network are actively committed to a clearly defined political goal. This again raises the issue of regulatory governance policy assuming a political incarnation (Chapter 1). A “natural” arrangement already exists with the role of the prime minister as arbitrator. Also to be noted, however, are a great many technical inter-ministerial meetings and less “policy” co-ordination (the inter-ministerial meetings are more concerned with form than with content). Stronger and more targeted organisational arrangements should be envisaged for taking regulatory policy forward. A first line of enquiry might be the experience of the Inter-ministerial Committee on Europe (CIE). This committee meets every month with the prime minister as chairperson, and has been able to stimulate momentum and determination to make progress with regard to European issues. Another course of action would be to see whether the arrangements established in other European Union countries might be transferred to France. To round off the high-level political arrangement, it seems desirable that a minister should be made responsible for overall supervision and for communicating the regulatory strategy (Chapter 1).

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**Recommendation 2.3. Consider setting up an inter-ministerial committee to provide political support to Better Regulation policies as a whole. The Inter-ministerial Committee on Europe (CIE) could be taken as a template. Nominate a minister in charge of following up and communicating on Better Regulation policies.**

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*Progress in recent years is the result of monitoring and discipline (including penalties) as well as the development of methodologies and support tools. The administrative culture is gradually changing with, for instance, the development of progress charts, impact assessment, the establishment of networks of correspondents on administrative simplification and quality of the law, and the development of new forms of consultation. The beginnings of a change in culture are evident. Two issues need attention. First, the administrative culture remains marked by the dominant weight of legal training and, in comparison to other countries, there is little sign of an economic culture. Second, the development of regulatory quality requires particular attention to the training of civil servants, including in-house training. Acculturation must continue so that the processes and tools which have been set up function effectively.*

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**Recommendation 2.4. Strengthen administrative culture as necessary for implementation of Better Regulation policies. Review training policy so that civil servants fully grasp Better Regulation tools. Review economic skills.**

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**Box 2.1. Extracts from the 2004 OECD report: Institutional Capacity for Regulatory Governance**

**Recommendations**

***Envisaging an institution in charge of the overall quality of new regulations***

The review of other OECD countries shows that having a specific institution taking decisions, and located as close as possible to the centre of government responsible for taking a final decision on policy and the implementation of policy in law can make a decisive contribution to improving the quality of regulations. However, such an institution is currently lacking in France, in spite of multiple players intervening in the preparation of texts, and those in charge of controlling their legal quality. However, the networking of the bodies responsible for this task would undoubtedly make it possible to take the

first step towards remedying this shortcoming by providing a blueprint for an institution which would have responsibility for the overall quality of new regulations. The remit of this institution, or the bodies that would act as its precursors, would ultimately be to take responsibility for promoting the quality of new regulations by taking into account their costs and induced impacts on society. Its remit would also be to regularly assess the cost of existing regulations, and giving recommendations to parliament to reduce it. This institution could give advice beforehand while regulatory and legislative bills are passed to the departments of the prime minister. The opinions issued by this network or institution could in future be made public, passed on to the *Council of State* and the Council of Ministers. To prevent it from being overwhelmed by the flood of new regulations, this institution could decide to scrutinise regulations of its choice, depending on their economic impacts. Finally, this institution could encourage questions of regulatory quality in the public debate, playing an educational role, particularly with regard to parliament.

### ***Rationalising the framework of independent regulators***

Independent regulators, who are now described as independent administrative authorities, have a very diverse and heterogeneous status. This is following the passing of the law on financial modernisation. The current system of crossed dual appeal with regard to the administrative and civil courts can be seen as fragile in terms of overall consistency. Cross-consultation procedures exist between regulators and the competition authority, but they could be made systematic and mandatory for all existing regulators with an economic role. Some small independent administrative authorities could be merged. As regulators are often financed using public funds, the budgetary mechanisms could also be amended in order to consolidate the independence of these regulators.

### **Evaluation**

The *Council of State* plays a central role in directing and controlling the procedures that take place within the regulatory process. However, its approach often remains purely legal. The Ministry of Finance may take the economic dimension into account but does not have global powers. The specialist prime minister's offices have not been in existence long enough to evaluate their activities. In a word the role of the SGG remains substantially neutral and closely dependent on the *Council of State*'s legal point of view. In spite of the large number of players, there is currently no permanent body responsible for initiating drawing up and implementing the application of a global, permanent policy in favour of improving the quality of regulations.

*Source: OECD (2004).*

## **Background**

### ***The French public governance context***

The organisation of public governance in France displays the following features:

- *Executive authority is shared between the President of the Republic and the prime minister.* Where the presidential majority and the parliamentary majority belong to the same political family (as has been the case since 2002), the political agenda is determined by the President and implemented by the prime minister. Another distinctively French aspect is that the prime minister plays a dominant role in the production of legal regulations. He or she in principle initiates draft legislation (in practice prepared by ministries) and settles any disagreement between ministries. Ministers may only pursue their own political aims by co-ordinating their activity with the private offices of both the President of the Republic and prime minister.
- *Government oversight of parliament.* The system established by the 1958 constitution is said to be a “rationalised” parliamentary system, as it sets strict

limits on the legislative and management prerogatives of parliament to the benefit of the government. Thus members of parliament may introduce draft legislation, but Article 40 of the Constitution prevents this if its adoption would decrease public financial resources or increase public expenditure. The constitutional reform of July 2008 has lessened the oversight of the executive (notably through the introduction of a shared agenda), without completely writing off rationalised parliamentarism (see below).

- *The maintenance of strong central government.* Traditionally a unitary and centralised state, France has embarked on a process of decentralisation over the last three decades. This has led to a transfer of power and authority to locally elected representatives and the territorial authorities (see Chapter 8), as well as to new forms of institutional relationship between the central administration and the latter. Central government retains full responsibility in relatively few areas (such as pensions), and shares it with the territorial authorities in many others. However, it still plays a leading role which may involve exercising almost full responsibility (for example in the fields of employment and health even where some arrangements are decentralised). The central government remains the main employer of public servants (accounting for 2.5 million out of 5 million in this category on 31 December 2003) ahead of the territorial authorities (1.5 million) and the hospital sector (under 1 million).
- *Public administration made more professional by a competitive examination system.* Under this system, public servants become members of a distinct professional category (comprising a body of officials with the same special status, as in the case of prefects and highly qualified schoolteachers), in which they pursue their career. Essentially meritocratic, the system is meant to ensure a high standard of competence and integrity. However, administration is clearly affected by somewhat closed attitudes with regard to the wider world, particularly given that few high-level staff are externally appointed and outside consultants have relatively little influence. While legal competence is widely distributed, economic skills often remain confined to specialist research departments. Administration is also characterised by a mass of regulations which are not conducive to smoothness and flexibility, as well as by fragmentation into a high number of “corps” (professional sub-categories comprising some 500 different kinds of “corps”).
- *Public administration is also characterised by the role of the “grands corps de l’État” (the several distinctive major corps of public servants).* There is no precise legal definition of the concept of grand corps de l’État. It may be defined as a highly unified body of state officials which enjoys considerable prestige because its members occupy hierarchically very senior posts in the administration. These leading corps also play a very important role in the entourages of the President of the Republic, the prime minister and ministers in general, as well as in the parliamentary arena. The three administrative grands corps are the Finance Inspectorate, the *Council of State* and the *Court of audit*. All these corps are independent from the external hierarchy, and in principle fully autonomous in the case of magistrates.
- *A relatively preponderant public sector.* Public administrative expenditure accounted for almost 53% of GDP in 2008, second only in level to that of Sweden

in the 15 EU countries studied in the “Better Regulation in Europe” project (OECD, 2009).

### *Developments in France’s public governance context*

Various extensive reforms undertaken since 2007 are leading – or going to lead – to changes in the foregoing institutional framework.

- *The constitutional reform of 2008 and the strengthening of parliament.* The constitutional law of 23 July 2008 gave parliament new mechanisms (the agenda of parliamentary business was to be jointly managed by the government and parliament, approval of documents as submitted by parliamentary committees and not the version drawn up by the government, limits to the possible use of Article 49-3 which allows bills to be passed without a parliamentary vote, and scope for referendums organised on the initiative of one-fifth of the members of parliament supported by one-tenth of registered voters, possibility to adopt resolutions). The reform also seeks to alter the methods by which executive power is exercised (including the possibility of addressing parliament granted to the President of the Republic), and to uphold new rights for citizens (mechanism for constitutionality checks on legislation as a defence, and establishment of the post of “Defender of Citizen’s Rights”). The new provisions to strengthen parliament have significant limitations, not least of them being the willingness of members to make the most of them. They are also conditioned by the reality of a parliamentary majority. Except where this is strongly divided, it seems difficult for a parliamentary majority elected in the wake of a presidential election (which has been the case since the introduction of the five-year presidency) to trouble an executive branch on which its own existence depends. (For details about the constitutional reform, see Annex D).
- *The territorial reform.* This was begun following the debate prompted by the report of the *Attali* Committee (2008) which, amongst other things, advocated the dismantling of one of the main administrative levels (that of the Department). The government set up a Committee for the Reform of Local Authorities chaired by the former prime minister, Édouard Balladur, and asked it for proposals to simplify the structure of public administration. The main thrust of its recommendations has been that certain regions or departments should be grouped together on a voluntary basis and that local tax arrangements should be restructured. In October 2009, the government submitted a bill to the Senate, which was partly inspired by these proposals (and is undergoing review).
- *The reform of the public service.* It was drawn up by the President of the Republic in September 2007 and includes a reduction in the number of public servants and an overhaul of the regulations governing the service, so that there is a better match between needs and jobs. Following the second Council for the Modernisation of Public Policies and the publication of a white paper on the public service,<sup>1</sup> the law of 3 August 2009 on mobility and public service career paths lists provisions to abolish legal and statutory barriers to the mobility of public servants (especially between the different corps or other categories) and create more flexible conditions for engaging in temporary work or cumulative part-time work. The law further seeks to encourage staff to exercise their right to mobility, or to facilitate their mobility when it is enforced.

### ***Institutional framework for devising public policies and regulations***

France is a parliamentary democracy. The political system is that of the Fifth Republic established by the 1958 Constitution. Initially conceived of as a parliamentary system with stronger executive powers, the Fifth Republic has become a semi-presidential type of system since the 1962 referendum which instituted the election of the President of the Republic by direct universal suffrage. The Fifth Republic thus appears to be a hybrid system, which simultaneously displays features associated with the presidential system as well as with the parliamentary one (see Box 2.2).

#### **Box 2.2. Institutional framework for devising public policies and regulations**

##### **The Executive**

###### ***The President of the Republic***

Since 1962, the President of the Republic has been elected by direct universal suffrage; the period of office of the President has been reduced from seven to five years following the referendum of 24 September 2000.

The President of the Republic has many powers, including the following: appointment of the prime minister and of other ministers as proposed by the prime minister; chairing the weekly meeting of the Council of Ministers; the right to go to the country in a referendum (electors are asked to vote “yes” or “no” to a question put by the President of the Republic, or to a proposal from the government or both parliamentary chambers); dissolution of the National Assembly (and not the Senate); the exercise of exceptional powers in the event of grave crisis; the negotiation of treaties; command of the armed forces; ensuring respect for the Constitution and taking initial action to amend it; the right of pardon.

The balance between the President of the Republic and prime minister is altered in the event of political cohabitation. However, some presidential powers are less affected, especially in the area of foreign policy and defence (the “preserve of the President”).

###### ***The government and the prime minister***

Appointed by the President of the Republic, the prime minister is the head of government. Ministers are appointed in accordance with his or her proposal by the President of the Republic. The prime minister is empowered to introduce draft legislation, as are the members of parliament. Under the 1958 constitution, the prime minister holds regulatory power in a general way and “uses public authorities”.

The government has to “determine and direct the policy of the Nation”. It fixes the amount of state expenditure and revenue specified in the draft budget submitted to parliament for approval. In practice, the government prepares a major share of legislation which it submits to parliament as bills for discussion and approval, after their prior adoption by the Council of Ministers. The bills concerned are altered by deputies and senators by means of amendments.

The government is responsible to the National Assembly (and not to the Senate), which may compel it to resign if over half of the deputies vote in favour.

##### **The Legislature**

Legislative power is vested in parliament consisting of the National Assembly elected by direct universal suffrage, and the Senate, elected on the basis of indirect universal suffrage by an electoral college of “prominent electors” (deputies, locally elected representatives, etc.). The 577 deputies are elected for five years. A reform in 2003 has gradually changed the number of senators and shortened their period of parliamentary tenure from nine to six years. With effect from 2011, half of the Senate will be renewed once every three years.

As in most other parliamentary democracies, the bicameral system instituted by the 1958 constitution is inequalitarian, in the sense that the National Assembly has the final word in legislative matters in the event of disagreement with the Senate (though not in the case of constitutional issues in which equality prevails), and that it alone may challenge the authority of the government.

### **The Judiciary**

France is a country of written Roman law. The judiciary in France exercises its authority in accordance with a basic distinction between, on the one hand, judicial jurisdiction for settling disputes between persons and, on the other, administrative jurisdiction for disputes between citizens and the public authorities. Within these two jurisdictional orders, the various courts and tribunals are organised in accordance with a pyramidal structure:

- so-called courts of “first instance” (or trial courts) constitute the base of the pyramid;
- courts of appeal (or of “second instance”) consist of courts which rule on appeals against decisions taken by the courts of “first instance”; and
- at the top of each order, a supreme court of appeal is responsible for monitoring and ensuring consistency in the application of the law as implemented by other judges – the so-called *juges du fond* – responsible for the substantive aspects of cases. These two appeal courts are the *Cour de Cassation (Court of Cassation)* in the case of the judicial order, and the *Council of State* for the administrative order.

### **The Council of State**

The *Council of State* was established in 1799 to help draw up the most important regulatory legislation and to resolve disputes in government against a background of double civil and administrative jurisdiction, it was largely responsible for the Napoleonic Codes (1799-1814) which are still the keystone of legislation and regulation in France. The role of the *Council of State* in its current form was originally specified in the edict of 31 July 1945, which established the principle that it had to be consulted about any proposal of a legislative nature, a role upheld by the 1958 Constitution.

The *Council of State* is distinctive for its twofold function which is both advisory and concerned with litigation. On the one hand, it is the adviser to the government and thus responsible for giving a legal opinion on bills and some draft decrees. This is historically its prime responsibility. On the other hand, it acts as the supreme judge for administrative justice.

### **The Constitutional Council**

Established in 1958, the *Constitutional Council* is responsible first and foremost for *ex ante* control of the constitutionality of laws and international treaties. This control is mandatory in the case of parliamentary regulations and organic laws. It is optional in the case of ordinary laws and international commitments. Since the constitutional law of 23 July 2008 and entry into force of the organic law of 10 December 2009, the *Constitutional Council* may be petitioned, as brought up by a judicial or administrative court, about the unconstitutionality of a legislative provision by reference from the *Council of State* or the *Court of Cassation* according to the case. If the *Constitutional Court* judges that the provision is unconstitutional, its decision will lead to exclude it from the legal order towards everyone, and not only towards litigants.

Furthermore, the *Constitutional Council* is the judge of whether those national forms of consultation that are the presidential election, referendums, and legislative and senatorial elections are legally conducted. Finally and on a far more exceptional basis, the *Constitutional Council* is required to express opinions and formally verify the existence of certain situations (*e.g.* when the presidency is prevented from acting or vacant, or in the case of situations that justify granting the emergency powers conferred on the President of the Republic by Article 16 of the Constitution).

### The Territorial Communities<sup>2</sup>

Since the constitutional reform of 28 March 2003, Article 72 of the constitution identifies the “territorial communities of the Republic” as:

- the communes (36 873 in 2007);
- the Departments (96), to which must be added the four *Départements d’outre-mer* (DOM, or overseas Departments), namely Guadeloupe, French Guiana, Martinique and Réunion;
- the regions (22) to which must be added four *régions d’outre-mer* (ROM, or overseas regions) each with its own single Department (Guadeloupe, French Guiana, Martinique and Réunion);
- regional authorities with a special status, particularly the territorial authority of Corsica; and
- the overseas authorities, namely Mayotte, Saint Pierre and Miquelon, Wallis and Futuna, French Polynesia, Saint Martin and Saint Barthélemy.

The territorial communities are legal entities,<sup>3</sup> so they can take legal action and are administratively autonomous. They have powers of their own entrusted to them by law. They have decision-making power which is exercised through the proceedings of an elected council of representatives, whose decisions are then implemented by local executive authorities. Since the 28 March 2003 constitutional reform, the territorial communities have been granted regulatory power in discharging their responsibilities. It is not however general and unlimited in scope: the range of their remit and the procedures through which they exercise it are fixed by law and national regulatory authority; local regulatory power is subordinate to the administrative oversight of the state representative.

### The Court of Audit

The *Court of audit* (or National Audit Office), the jurisdiction for public auditing and public accounting officers, was set up by Napoleon in 1807, and later broadened its inspections and remit. According to the constitution, “the *Court of audit* shall assist parliament and the Government in supervising the implementation of the finance laws (...) [and] the Social Security finance laws”. The 2008 constitutional revision has extended this role to evaluation of public policies.

### Independent Administrative Authorities

**An *Autorité administrative indépendante* (AAI, or *Independent Administrative Authority*) is a state institution which has been made responsible in its own name for the regulation of sectors viewed as essential, in which the government does not wish to intervene too directly.** The term appeared for the first time in the law of 6 January 1978 setting up the National Commission on Information Technology and Civil Liberties (CNIL). The AAIs are a new judicial category because, contrary to French administrative tradition, they are not subordinate to the hierarchical authority of a minister. While they are administrative bodies and, in this respect, linked to the executive branch, ministers cannot issue them with orders, instructions or even simple advice and their members cannot be dismissed. They are subject to the oversight of the government and parliament to which they submit a public annual report. Their decisions can also give rise to appeal, for referral to the judicial or administrative judge as appropriate.

In 2009, the *Légifrance* website listed 41 AAIs (Annex E).<sup>4</sup> The AAIs are especially active in three areas, namely the rights of ordinary citizens, economic market regulation, and information and communication. The rules governing their membership and operations, along with their powers as defined in special statutes, vary from one AAI to the next. They are virtually all corporate authorities (though the Republic Ombudsman is an exception), whose members are generally appointed by decree (in the Council of Ministers or issued by the prime minister).



### *Developments in Better Regulation institutions*

Since the 2004 OECD review, three main alterations have been made to the institutional structure underpinning regulatory governance policy in France.

- In 2006, the establishment of the DGME within the Ministry of the Budget, Public Accounts, the Public Service and State Reform led to a regrouping of formerly quite separate departments active in the field of regulatory quality, namely the Delegation for Users and Administrative Simplifications (DUSA), the Delegation for Modernising Public Administration and State Organisations (DMGPSE) and an agency for developing e-Government (ADAE). As a result, the DUSA and the ADAE both instituted in 2003, together with the DMGPSE, all became departments of the prime minister.<sup>5</sup> This reorganisation has sought to generate enhanced interaction between the development of e-Government, administrative simplification and better quality service in public administration.
- In 2007, the SGG broadened the remit of its legislative department which was renamed the “department of legislation and quality of the law”. Besides its daily administration of procedures, this department is also responsible for developing and co-ordinating a policy for regulatory quality. Meanwhile, the organisation of SGG work has been changing through the growth of network activity, with the appointment in each ministry of senior public officials responsible for the quality of regulation.
- In 2008, Decree N° 2008-225 of 6 March 2008 on the organisation and activity of the *Council of State* reformed the conditions governing performance of the Council’s advisory duties, by acknowledging the wide variety of matters submitted to it. The decree included in particular the establishment of a new section – the administration section – with a uniform set of powers giving it a cross-functional view of the overall issues in state reform.

**Table 2.1. Institutional capacity for better regulatory governance: Main stages**

1966	Establishment of the Administrative Forms Registration Centre (CERFA).
1983	Establishment of the Commission for the simplification of formalities incumbent on companies ( <i>COSIFORM</i> ). Its remit was extended to include formalities incumbent on private individuals in 1989.
1995	Establishment of the Commissariat for State Reform (following the <i>Picq</i> report). The <i>Cosiform</i> was abolished.
1998	<ul style="list-style-type: none"> <li>• Establishment of the Inter-departmental Delegation for State Reform (DIRE), which replaced the Commissariat for State Reform and led policy for the reform of administrative authorities until 2003.</li> <li>• Establishment of the Committee for Simplified Administration (COSA), linked to the prime minister’s office from 2 December 1998.</li> </ul>
2001	Establishment of the Committee for the Simplification of Administrative Language (COSLA) (July).
2002	The National Committee on Public Debate became an independent administrative authority with a broader remit.

2003	The DIRE was replaced by: <ul style="list-style-type: none"> <li>• the Delegation for Modernising Public Administration and State Organisations (DMGPSE);</li> <li>• the Delegation for Users and Administrative Simplifications (DUSA); and</li> <li>• the Agency for Developing E-Government (ADAE).</li> </ul>
2005	First edition of the “Guide for Drafting Legislation and Regulations”.
2006	Establishment of the Directorate General for State Modernisation (DGME) within the Ministry of the Budget, which merged the DUSA and the ADAE.
2007	The legislative department of the SGG became the “department of legislation and quality of the law”. Second edition of the “Guide for Drafting Legislation and Regulations”.
2008	Decree N° 2008-225 of 6 March 2008 on the organisation and activity of the <i>Council of State</i> .

### ***Key institutional players for Better Regulation policy***

#### *The executive centre of government*

Under the 1958 constitution, the prime minister holds regulatory power in a general way and “uses public authorities”. On this basis, the prime minister’s offices at the heart of government (and in particular the SGG and, as regards European matters, the SGAE), play a vital part in driving regulatory policies. Of the ministries, the Ministry of the Budget, Public Accounts and the Public Service is a leading player responsible for modernising economic action for the benefit of SMEs and modernising public administration. The DGME, which is part of the Ministry of the Budget, plays an important role in simplifying administration and developing e-Government. The role of the Ministry of Justice (which may be significant in some other EU countries) is somewhat eclipsed in the field of Better Regulation.

#### The General Secretariat of the Government (SGG)

The SGG performs an important role in administrative co-ordination and as legal adviser within the government (Box 2.3). It has experienced a strengthening in its role in the monitoring and promotion of regulatory quality, which has been reflected in its organisation. In 2007, the legislative department became the “department of legislation and quality of the law” including, in addition to the department for regulatory activity responsible for the daily management of procedures such as publication of the “Official Gazette”, a “quality of the standard” mission (to co-ordinate impact assessments, draft legislation and undertake cross-functional activities for improving the quality of the law), an office for “simplification of the procedures and accessibility of the law”, a “mission for dematerialising legal procedures and publicising the law” and a unit for programming regulatory activity. In addition, this department provides support for the High Commission for Codification (Chapter 5), acting as its secretariat.

### Box 2.3. The General Secretariat of the Government

The General Secretariat of the Government (SGG), which was created in 1935,<sup>6</sup> plays a co-ordinating administrative role for government. It is a permanent administrative body (whose members are not replaced when the prime minister leaves office). The SGG acts as a monitor for drawing up and publishing laws, orders and the main regulatory acts. In this respect, under the authority of the prime minister's office and in constant contact with it, the SGG:

- prepares, on a proposal from the ministries, the six-monthly government working programme, covering draft documents intended for review in the Council of Ministers in subsequent months, and ensures that it is properly implemented;
- prepares the weekly meetings of the Council of Ministers;
- prepares with the ministries concerned the programming of enabling legislation for laws as they are published, publicises this programme on *Légifrance* and ensures compliance with its deadlines;
- supports the work of the General Secretariat for European Affairs (SGAE) in inter-departmental monitoring of the transposition of directives;
- provides the secretariat for inter-departmental meetings to reach final decisions on draft documents, which are chaired by the prime minister or a staff member in the prime minister's office; and
- follows all procedures for the drafting and approval of laws and the most important regulatory acts in liaison with the parliamentary chambers, the *Council of State* and, where appropriate, the *Constitutional Council*.

In addition, the SGG performs the role of legal adviser to the prime minister and, more broadly, to the government as a whole. It is charged with organising the representation of the government before the *Constitutional Council* when the latter is debating the constitutionality of the law. It monitors the legality and quality of documents to be signed by the prime minister and President of the Republic. It co-ordinates the activity of the legal departments of ministries in the interests of regulatory quality.

The SGG plays a key role in the new arrangement under which impact assessments have become mandatory since 1 September 2009 (see Chapter 4). Indeed, it has the task of guiding impact assessment activity, particularly through the provision of methodological support to ministers. While the minister mainly responsible for the draft reform is charged with the impact assessment, the departments in his or her ministry have to establish contact with the SGG as soon as work begins on the draft. Finally, the bill is brought before the *Council of State* (a mandatory stage in the preparation of bills and the main decrees) only if the impact assessment is considered satisfactory by the office of the prime minister and the SGG.

#### General Secretariat for European Affairs (SGAE)

The General Secretariat for European Affairs (SGAE) is responsible for the inter-departmental co-ordination of European administrative case files through the preparation of negotiating activity and the monitoring of transposition of community legislation and litigation. The main tasks of this department of the prime minister (which is distinct from the SGG and comes directly under his or her authority) are to establish the

position adopted by France in relation to Community issues, to co-ordinate and to liaise between the French administrative and government authorities and the European institutions. It is thus responsible for ensuring consistency in the stand taken by different French administrative authorities on European matters and, in case of disagreement, resolving any technicalities as required, so as to ensure that France “speaks with one voice” in the European institutions. The SGAE covers all fields identified by the Treaties on European Union, except foreign policy and joint security, which remains the sole preserve of the Ministry of Foreign Affairs, provided that this policy does not involve reliance on Community instruments.

#### Directorate General for State Modernisation (DGME)

The bodies responsible for the regulatory policies of administrative simplification and modernisation have been frequently reorganised, most recently with the establishment of the DGME in 2006.<sup>7</sup> The DGME is part of the Ministry of the Budget, Public Accounts and State Reform (see Box 2.4), in which it has oversight of all action to achieve administrative simplification and modernisation for users (businesses, citizens, associations and local governments) and public administration, with special responsibility for steering the general review of public policies (RGPP).

The aim of setting up the DGME was to achieve a critical mass and create positive interaction between the development of e-Government, administrative simplification and the service quality of public administration, while making the activity involved an integral part of state reform (RGPP). The DGME has brought together within a single entity all those previously separate units which were close to the prime minister, under the minister responsible for state reform, and which regularly took action in the areas of administrative simplification, e-Government and state modernisation: these units were the Delegation for Users and Administrative Simplifications (DUSA), the Delegation for Modernising Public Administration and State Organisations, and an agency for developing e-Government (ADAE).

#### **Box 2.4. The role of the Ministry of the Budget, Public Accounts and State Reform in matters of administrative simplification**

The Ministry of the Budget, Public Accounts and State Reform performs special activities in initiatives to achieve administrative simplification and modernisation for users (businesses and private individuals) and public administration. This remit is attributable to its cross-functional role and also to the scale of its human and financial resources. The Ministry of the Budget is a driving force in schemes to modernise both economic initiative on behalf of SMEs and the administrative authorities. It also has an important part to play in administrative simplification and the development of e-Government. This action is an integral part of the renewed effort embodied by the RGPP to modernise the state.

More particularly, the Ministry of the Budget, Public Accounts and State Reform has the following tasks in its terms of reference:

- As regards state modernisation, it prepares and implements measures likely to meet the needs of public service users, improve the effectiveness of public services, geographically decentralise responsibilities, modernise public management and develop the social dialogue within public administration.
- It prepares and implements measures to simplify the administrative formalities incumbent on users and co-ordinates the preparation of simplification programmes.

- It initiates and co-ordinates the work of the government in the evaluation of public policies.

It guides auditing and performance policy within public administration and implements a review of public policy programmes.

### *Co-ordination across central government on Better Regulation*

Government policy in France is co-ordinated through a great many inter-ministerial meetings that precede business in the Council of Ministers (Box 2.5). The SGG acts as secretariat to them. As regards regulatory governance, there is no special body (or bodies) to discuss it (such as exist in other EU countries). However, regulatory governance co-ordination mechanisms have been strengthened by establishing networks of correspondents in the ministries. Senior officials responsible for the quality of regulation have thus been appointed within each ministry and are the direct contact persons for the SGG. To a large extent, they are directors of legal affairs, but also departmental heads who are very active in devising regulations, or who contribute directly to the policy for regulatory quality, such as the Directorate General of the Treasury and Economic Policies, which is responsible among other things for boosting the economic attractiveness of France. This organisational arrangement is supplemented by bodies which have been established to support simplification policy, and those which exist to co-ordinate EU policy.

#### **Box 2.5. Inter-ministerial meetings**

Government policy in France is co-ordinated by means of a great many inter-ministerial meetings that precede those in the Council of Ministers. These meetings (1 500 a year) are the responsibility of the prime minister or the latter's advisers, with representatives of the ministries concerned. A member of the prime minister's office ensures the consistency of government policy or prepares the arbitration submitted for the prime minister's agreement. The SGG acts as secretariat to these inter-ministerial meetings. This process is first and foremost one of confrontation, sometimes involving conflict, between ministries, whose influence may vary with their "clout" (with the Ministry of the Budget thus assuming a key role). In the European sphere, the co-ordination process brings another department of the prime minister into play, namely the General Secretariat for European Affairs (SGAE) (see above and Chapter 7).

In 2007, the *Council of State* and the State Finance Inspectorate carried out a joint audit of inter-ministerial activity, as part of the modernisation audits initiated by the government in 2006. The report drew attention to the inflated co-ordination process, which was escalating in all directions and meant that many technical issues had to be submitted for arbitration and tended to obscure the essentials in major political issues. It recommended measures to improve the organisation of government activity (programming, consultation, impact assessments), to strengthen the role of the SGG in co-ordination and readjust the roles of each of the private offices and administrative bodies, and to strengthen the rules for organising inter-ministerial meetings (for example, compliance with a sufficient period of notice, use of alternative methods of co-ordination). (CE-IGF, 2007).

### *The parliament and Better Regulation*

The parliament plays a significant part in regulatory policy processes in France, in particular through the Commission for Laws in the National Assembly. Each of the two chambers possesses a standing commission for parliamentary laws concerned with regulatory work.<sup>8</sup> In recent years, many parliamentary reports – in certain cases commissioned by the prime minister – have considered the subjects of regulatory reform,

the modernisation of administration and simplification (see Box 1.2 in Chapter 1). The most recent of them, the *Warsmann* report, has played an especially important part in drawing up the organic law of 2009 which has established the new arrangements for impact assessment (Box 2.6).

### Box 2.6. The *Warsmann* report on legal simplification

Following a request from the prime minister, the chair of the National Assembly commission for laws, M. Warsmann, led a mission concerned with simplification of the law. Submitted in January 2009, his report includes 56 proposals for improving the production of legal norms, which have fed into government action, especially in the area of impact assessment, and 31 proposals for simplification (some of which have been implemented, for example in the field of public procurement).

The report advocates simplifying processes for producing the law, methods for evaluating it and its accessibility. Achieving better quality legal output means strengthening the preparatory phase of law-making (impact assessments, consultation processes). At a later stage, the idea should be to "eliminate pointless complexity" and to reduce the "administrative burden" weighing on citizens and businesses, particularly through the adoption of "at least one simplification law each year".

Improved readability and easier access to the law mean the continued pursuit of codification and a more concerted effort in terms of education: "Merging the Documentation *française* with the Directorate of Official Gazettes should provide an opportunity for producing observations, reviews of legislation and guides in areas relevant to user concerns".

In a second part, the report suggests 14 simplification measures for business accountancy, 15 for VAT-related provisions, and 17 on simplifying the public procurement code.

Key aspects of the observations and recommendations relevant to the OECD review:

- An impact assessment of benefit to all.
- Should be placed on line to obtain the opinion of interested persons.
- Should seek the opinion of a network of parliamentary-SME correspondents, which would be consulted on all bills and legislative proposals relevant to them.

Consultation processes for all users:

- Open consultation should be organised for drafting regulations. In the case of national or local administrative decisions, arranging either open or conventional consultation should be an option.

Implementation of laws:

- In the case of all unimplemented legislation dating back more than three years, a decision should be taken to enforce it immediately or rescind it.
- The implementation of newly approved laws is constantly improving. By contrast, the stock of provisions that have not yet been applied (*i.e.* not yet in force) is becoming a cause for concern.

One simplification law a year:

- Simplification policy should be regarded as a policy in its own right. Its two main aims should be to reduce unjustified administrative burdens and strengthen the certainty and legal consistency of our regulations.

- Ministerial simplification programmes should be drawn up each year, with a strengthening of the role and resources of the prime minister’s office.

Note: [www.premier-ministre.gouv.fr/acteurs/communiqués\\_4/premier\\_ministre\\_recoit\\_rapport\\_62473.html](http://www.premier-ministre.gouv.fr/acteurs/communiqués_4/premier_ministre_recoit_rapport_62473.html).

Parliament took up work directly on the simplification policy, and was the originator of the simplification laws of 2007 and 2009 (with proposals from the president of the Commission for Parliamentary Laws, Mr. Warsmann). The National Assembly commission for laws has launched its own website *Simplifions la loi* (“let’s make the law simpler”), on which individuals can identify legal measures which they consider to be in need of simplification, or report difficulties they have faced because of the complexity of the law. According to Mr. Warsmann, “by involving citizens in the legislative process, this initiative is part of the effort to strengthen parliamentary oversight, revitalise our institutions and develop public debate”.

Parliamentary responsibility for evaluating public policies has been substantially strengthened. The parliament has had a parliamentary office for evaluating legislation since 1996 as well as an analysis and control team which deals more with budgets. Alongside the parliamentary office for evaluating scientific and technological options, the organic laws on the financial laws (LOLF) and on legislation for funding the social security system (LOLFSS) have led to the development of “analysis and control teams” within the finance committees, which are required to give their opinion in particular on the efficiency of legislative and regulatory mechanisms.

### *Independent institutions*

#### *The Council of State*

The *Council of State* performs an essential role as regards regulatory quality in the law-making process. It is mandatorily consulted on any bill or draft order, as well as on all draft decrees for which its intervention is prescribed by a text of higher level (around 40% of the most important decrees). While the government is not expected to comply with *Council of State* drafts as a matter of course, the Council exerts from the outset a far-reaching influence on regulatory quality (Chapter 4). The *Council of State* has also had to be consulted for all draft Community acts since 1992 to determine whether they are considered a law or a decree under the constitution.

Since 2007, the *Council of State* has been thinking purposefully about changes in its consultative activity, especially with a view to developing its role in examining and making proposals to the government about the quality of the law. This thought and discussion has in essence been reflected in a 2008 decree which provides, among other things, for the establishment of a new section dealing cross-functionally with matters relating to state reform (Box 2.7). However, it is not the task of the Council to make judgements about the political timeliness of legislation, so it has hitherto been unable to embark on broader evaluation of a social or economic kind.

The *Council of State* is also the highest level of administrative jurisdiction. Today it is the appeal judge for administrative justice, following the reforms of 1953, which set up ordinary administrative courts and first instance administrative courts and then the reform of 1987 which set up 7 administrative appeal courts. As a first and last resort it considers

appeals mainly against decrees, administrative authorities' and independent regulators' decisions.

The *Council of State* gives a public report each year to the President of the Republic which sets out mainly legislative, regulatory or administrative reforms that it intends presenting to the government. A large part of the 2006 report was devoted to regulatory quality and contributed to the constitutional reform of July 2008 which led to organic regulations on impact assessments (*Conseil d'État*, 2006).

The role of the *Council of State* goes beyond its official purpose as such, because its members are involved in other branches of the administration. There are many *Council of State* members on secondment from other bodies which play a key role, such as the General Secretariat of the Government, the Ministry of Justice, and the prime minister's office, as well as various other ministerial offices and ministerial legal organisations.

### Box 2.7. The reform of the consultative role of the Council of State

Decree N° 2008-225 of 6 March 2008 on the organisation and activity of the *Council of State* reformed the conditions governing performance of the Council's advisory duties, by acknowledging the wide variety of matters submitted to it and seeking to provide for optimal allocation of the resources earmarked for dealing with them, while also consolidating the collective nature and quality of the Court's proceedings. In this respect, the decree provides for:

- The establishment of a new section – the administration section – with a uniform set of powers giving it a cross-functional view of the overall issues in state reform. While bills and draft decrees concerned with public service were formerly dealt with by three different sections depending on the ministry that originated the legislation, the new administration section now deals with all these matters in the *Council of State*. And in addition to handling relations between public administration and users, undisputed administrative procedure and national defence, the section also manages all public contracts as well as public property. The administration section is thus the one in charge of public management mechanisms.
- The setting up, within each administrative section, of an ordinary group which is small in number and responsible for the least complex matters, so that work on case files is organised in accordance with their importance.
- The granting of discussion and voting rights to all members of administrative sections, job enlargement for members assigned solely consultative duties, and the creation of a post of deputy chairperson to point up the corporate nature of activity.
- Securing greater support from persons who, in the light of their knowledge or experience, are well placed to inform the activity of the various consultative groups so that the *Council of State* is more responsive to the world beyond it.

## The Constitutional Council

The *Constitutional Council* is charged with ensuring the constitutionality of laws and international treaties. It does so on an *ex ante* optional basis in the case of regulations from the chambers and organic laws, between the adoption of the law by parliament and its promulgation by the President of the Republic, and on referral *a posteriori* for ordinary laws and international commitments. The Council is thus set to play a potentially important role in the context of the new measures for impact assessment which have been required by the constitution since the summer of 2008 (see Chapter 4). The right of



referral is open to the President of the Republic, the prime minister and members of parliament,<sup>9</sup> in the 15 days subsequent to enforcement of the law. Since 1 March 2010, the *Constitutional Council* may also be petitioned by any defendant about the unconstitutionality of a legislative provision by reference from the *Council of State* or the *Court of Cassation*. This reform thus institutes a very extensive *a posteriori* right of referral for the *Constitutional Council*. When it considers that a law is not consistent with one of the stated principles, it may wholly or partially censure it, or indeed issue reservations about its interpretation.

The recent case law of the *Constitutional Council* has led to the emergence of principles regarding the production of legal norms and the intelligibility of the law:

- Through a decision in 1999,<sup>10</sup> the *Constitutional Council* established that the aims of accessibility and intelligibility of the law had constitutional force.
- In 2003,<sup>11</sup> it considered that the “equality before the law referred to in Article 6 of the Declaration of the Rights of Man and of the Citizen and the assured ‘observance of the law’ required by its Article 16 would not apply if citizens lacked adequate knowledge of the regulations applicable to them and if these rules were needlessly complex”.
- Through a decision of 2005,<sup>12</sup> it censured an article of the finance law, which introduced a global ceiling on tax relief, for being over-complex.
- Furthermore, the *Constitutional Council* has recognised that the transposition of Community (EU) directives into internal law was a constitutional requirement (see Chapter 7).<sup>13</sup>

### The Court of Audit

The *Court of audit* has gradually extended its field of activity to the evaluation of regulatory and sometimes legislative documents. The constitutional reform of 2008 ratified the development of the practice. Until then, the constitution indicated that the *Court of audit* supervised implementation of the budget (certification of accounts), but solely in the budgetary and financial domain. The constitution as amended indicates that the *Court of audit* assists parliament in its supervisory role and in public policy evaluation.

The *Court of audit* has not directly evaluated programmes for regulatory governance. By evaluating certain texts, it has however considered questions concerned with regulatory quality, such as the organisation of public administrative authorities and the complexity of the law or administrative procedures.

### *Independent Administrative Authorities (AAI)*

Several measures introduced in recent years have altered the profile of the independent administrative authorities (around 40 in all, see Annex E). Some of them have been transformed, with a broadening of their responsibilities and a strengthening of their own resources (Electronic Communications Regulation Authority, Competition Authority, Financial Markets Authority). New independent administrative authorities have also expanded the institutional framework since 2004. Nine authorities have been established in different fields. Furthermore, the constitutional law of 23 July 2008 has provided for the creation of a “Defender of Rights”<sup>14</sup> who is taking over the

responsibilities of the Republic Ombudsman, as well as all or some of the duties assigned to other independent administrative authorities, which will be determined by means of an organic law.

Most of the independent administrative authorities possess powers to impose individual penalties, or to make recommendations or proposals. The AAIs may have advisory power or power to make recommendations, which involve either advising operators to adopt a particular practice (for example, the National Commission on Information Technology and Civil Liberties, CNIL), or attempting to find a compromise between the administrative authorities and a citizen (for example, the Ombudsman). Some of them have discretionary powers (to grant permission to pursue an activity, or the power of appointment). *The AAIs may also be empowered to impose penalties when one of the players in the supervised sector of activity fails to comply with the rules laid down by these institutions or the obligations incumbent on it.*

Just some AAIs wield derived regulatory power in their particular field: the National Commission on Information Technology and Civil Liberties (CNIL), the Financial Markets Authority (AMF), *l'Autorité de régulation des communications électroniques et des postes* (ARCEP), French broadcasting control authority (CSA) [*Conseil Supérieur de l'audiovisuel*] and the CRE (Energy Regulatory Commission). Yet this regulatory power may result only from a formal legislative provision, and relate to a precise and limited purpose, corresponding essentially to technical measures, in accordance with the position established by *Constitutional Council* case law as regards the French broadcasting control authority<sup>15</sup> (a framework generally corresponding to the situation of independent authorities in other OECD countries).

However, certain independent administrative authorities go so far as to enact general and sometimes detailed regulations (see for example, the general regulations of the Financial Markets Authority) and develop a power of “recommendation”. Even if such reference systems have no strictly legal weight, the great majority of operators regard them as binding in practice. These non-mandatory regulations tend to assume unusual importance in the context of independent administrative authorities arbitrating in a competitive system, through a consensus-based method of regulation.

The balance between general regulatory power and the derived regulatory power granted to independent administrative authorities, on the one hand, and between the option of applying new regulations and more flexible forms of regulation, on the other, are among the issues handled repeatedly by the legislature when an independent administrative authority is established or existing authorities are reformed.<sup>16</sup> It is not uncommon for the independent administrative authorities to be asked to let the government have appraisals or contributions concerning the development of regulatory policy. This applies cross-functionally to the Republic Ombudsman one of whose main tasks, when called upon to examine the practical difficulties of applying regulations in force, is to warn the government of their limits. Such is also the case when, as often occurs, an independent administrative authority has to be mandatorily consulted before new rules are enforced in its own field (for example, the National Commission on Information Technology and Civil Liberties).

### *The judiciary and Better Regulation*

As in other OECD countries, the (constitutional, judicial or administrative) judge plays a part in the overall construction of regulatory policy as the basis for developing case law. Certain aspects of the French regulatory landscape (as in some other countries

with written Roman law) accord special scope to judicial power, such as public consultation which is customarily based on obligations contained in legislation which, if they are overlooked, may lead the administrative judge to revoke the text.

The three major jurisdictions (*Council of State*, *Constitutional Council* and *Court of Cassation*) have strengthened requirements regarding regulatory quality in three main ways:

- They have upheld the constitutional requirement to transpose directives.
- The *Constitutional Council* has provided details about the scope of the constitutionally established aim that the law should be intelligible and clear (see Chapter 3).
- The *Council of State* has endorsed the principle of legal certainty in a 2006 decision<sup>17</sup> (case law of the *Council of State*, the *Constitutional Council* and the *Court of Cassation*).

### *Local levels of government and Better Regulation*

Current regulatory governance policies are essentially the responsibility of central government. However, there are initiatives to encourage heightened awareness of the implications of new regulatory legislation for the territorial authorities as with the establishment of the Advisory Committee for Standards Evaluation (CCEN). These matters are considered in Chapter 8.

### ***Resources and training***

#### *Staff*

In confining the discussion to staff who work mainly to improve regulation, one may note the following orders of magnitude:

- General Secretariat of the Government: 120 officials (36 of whom are in the legislation and regulatory quality department, including seven within the “quality of the standard” mission).
- General Secretariat for European Affairs: 200 officials.
- *Council of State*: 300 members, around half of whom are assigned to advisory sections.
- Directorate general for State Modernisation (DGME): 125 officials (10 of whom are allocated to administrative simplification project).
- Legal directorates in ministries: 600 officials (around 40 on average in each ministry), of whom senior officials (around 30) are the direct contact points for the SGG.

Units more specifically concerned with regulatory governance policies are the legislation and regulatory quality department in the SGG, the department responsible for the programme for administrative simplification in the DGME and the inter-departmental network of directors of legal affairs and senior officials in charge of regulatory quality.

The two main entities involved in regulatory governance policies are structurally different. The legislation and regulatory quality department is part of the SGG, forming a somewhat restricted entity (similar to the office of the prime minister in other EU countries), whereas the DGME is a directorate within a large-scale ministry, which implies access to potentially greater resources.

### *Training*

Training in drafting legal or regulatory texts is provided recurrently at ministerial and inter-ministerial levels, either for the benefit of staff newly allocated to the departments concerned, or to review topical legal issues, or yet again to train persons in new governance techniques. It should be noted that draft legislative or regulatory documents are the work of departments in the ministry concerned, and do not involve a team of legal specialists specifically trained to draft standards (like the British Parliamentary Counsel). Around 100 officials a year receive this training. Several informants have emphasised the progress achieved in recent years in the spread of regulatory quality “culture” throughout government. This training is primarily concerned with legal aspects. Training courses in impact assessment are conspicuously lacking (see Chapter 4).

The Institute of Public Management and Economic Development (IGPDE), a body with national responsibilities attached to the Ministry for Economic Affairs, Industry and Employment, and the Ministry of the Budget, Public Accounts and the Public Service, provides staff of both ministries and, through some of its activities, those in other ministries too, with an extensive range of continuing training. At the same time, the IGPDE develops assignments involving research, monitoring, and discussion in the fields of public management and economic development. These activities enable it to share and circulate expertise useful to the development of the new public management culture and to supporting the modernisation of public administration. As examples, one may cite the following:

- Establishment of training courses following the publication on 1 August 2006, of the new Public Procurement Code. In all, 384 trainees took these courses in 2007 (1 131 course-days). Special courses were also provided on the subject of the new code, including one for the Ministry of Defence which alone was attended by no less than 41 staff (204 course-days).
- Publication of a special issue of the *Perspective gestions publiques* periodical<sup>18</sup> devoted to Better Regulation, in September 2007 (summary of the sixth “International Meeting on Public Management” organised in July 2007 in Paris, in partnership with the OECD).

## Notes

1. [www.ladocumentationfrancaise.fr/rapports-publics/084000231/index.shtml](http://www.ladocumentationfrancaise.fr/rapports-publics/084000231/index.shtml).
2. An expression denoting all subnational strata in France. Article 72 of the 1958 Constitution states that the territorial communities are: the Communes, the Departments, the Regions, the Special-Status communities and the Overseas Territorial communities.
3. “Legal entity” is a term referring to a group which has a recognised legal existence, and which as such has rights and obligations (examples: society, association). It is distinct from physical persons, *i.e.* individuals.
4. [www.legifrance.gouv.fr/html/sites/sites\\_autorites.htm](http://www.legifrance.gouv.fr/html/sites/sites_autorites.htm).
5. The DMGPSE was responsible for implementing ministerial reform strategies introduced by the Prime Minister and, in particular, the enabling measures of the Organic Law of 1 August 2001. Before 2003, the Inter-departmental Delegation for State Reform (DIRE) itself replaced in 1998 the Commissariat for State Reform which had been set up in 1995, following the *Picq* report, to drive the administrative reform policy.
6. Decree of 31 January 1935 on organisation of the administrative departments of the Presidency of the Council. At that time, the British system was used as an example.
7. On previous changes, see OECD (2004), pp. 48-49.
8. The Commission on Constitutional Laws, Legislation, Universal Suffrage, Regulations and General Administration in the case of the Senate, and the Commission on Constitutional Laws, Legislation and General Administration of the Republic in the National Assembly. The parliamentary commissions are working bodies that specialise in the study of general or *ad hoc* problems – particularly of a legislative nature – prior to their examination in public session.
9. The president of the Senate, the president of the National Assembly, 60 deputies or 60 senators.
10. Decision N° 99-421 DC of 16 December 1999, pertaining to the law on authorisation of the government to adopt the legislative part of some codes by order.
11. Decision N° 2003-473 DC.
12. Decision N° 2005-530 DC of 29 December 2005 on the finance law for 2006.
13. Decisions N° 2004-496 DC of the Law of 10 June 2004 for trust in the digital economy and N° 2004-505 DC of the 19 November 2004 Treaty establishing a Constitution for the European Union.
14. Article 71-1 of the Constitution.

15. Constitutional Council, 18 September 1986, Freedom of Communication. The Constitutional Council accepted here that the provisions of Article 21 of the Constitution did not “prevent the legislature from assigning to an authority other than the Prime Minister the task of fixing (...) standards for implementation of a law”, on condition that it was “in a specified field and within the framework established by the laws and regulations”.
16. In 2006, the parliamentary office for the evaluation of legislation thus published a report on the independent administrative authorities, which was submitted by the senator, Mr Patrice Gélard. The office approved 30 recommendations advocated in the report, seeking to rationalise the legal system and organisation of the AAIs, guarantee their independence and strengthen parliamentary oversight of their activity ([www.assemblee-nationale.fr/12/rap-off/i3166-tl.asp](http://www.assemblee-nationale.fr/12/rap-off/i3166-tl.asp)).
17. Through its *Assemblée Société* KPMG decision and other decisions of 24 March 2006, the Council of State formally endorsed the principle of legal certainty, by firmly undertaking to provide for provisional measures in a decree on a code of conduct for auditors.
18. In this periodical (“Public Management Outlook”), IGPDE takes stock of the main issues concerning public management and activity, with numerous international comparisons.

## *Chapter 3*

### **Transparency through consultation and communication**

Transparency is one of the central pillars of effective regulation, supporting accountability, sustaining confidence in the legal environment, making regulations more secure and accessible, less influenced by special interests, and therefore more open to competition, trade and investment. It involves a range of actions including standardised procedures for making and changing regulations, consultation with stakeholders, effective communication and publication of regulations and plain language drafting, codification, controls on administrative discretion, and effective appeals processes. It can involve a mix of formal and informal processes. Techniques such as common commencement dates (CCDs) can make it easier for business to digest regulatory requirements. The contribution of e-Government to improve transparency, consultation and communication is of growing importance.

This chapter focuses on two main elements of transparency: public consultation and communication on regulations (other aspects are considered elsewhere in the text, for example appeals are considered in Chapter 6).<sup>1</sup>

#### **Assessment and recommendations**

##### ***Public consultation on regulations***

*Since the 2004 OECD review, the French approach to public consultation has experienced major changes, France has moved away from a model based largely on corporatism, though with plenty of scope for traditional elements.* The method chosen for reshaping the approach has not been to do away completely with traditional institutionalised forms (advisory boards or committees) and pursue “all-out use” of the Internet, but to supervise them more closely, diversify consultation procedures and involve stakeholders more effectively beforehand in drawing up public policies. These lines of action reflect recognition of the need to reform public consultation so that it is more effective, and to adapt consultation methods to changes in society, while taking account of the institutional heritage and some degree of wariness among many administrative authorities regarding the effectiveness of open consultation over the Internet.

*In recent years, significant breakthroughs have been achieved in revitalising public consultation.* First of all, rules have been devised governing the establishment and operation of all advisory boards, and almost 40% of these boards were abolished in June 2009, following a process of review with “cut-off” clauses. This rationalisation of the advisory boards will only have a long-term impact if it occurs in conjunction with regular monitoring of the rules for the establishment and the work of the boards. Second, ministries have developed new consultation methods to involve stakeholders more effectively in drawing up public policies prior to the process (the *Grenelle* forum, Internet forums on reforms or major schemes under consideration, and the establishment of a “Business Council”). Third, with the January 2007 law for modernisation of the social dialogue, the reform of public consultation has also affected the processes of consultation and negotiation involving the government and “social partners” (trade unions and business representatives).

*The work undertaken has to be part of a broader and more ambitious policy for reshaping public consultation.* This need is recognised by the administration, which is seeking to establish clearer guidelines, but it has not (yet) resulted in comprehensive reflection and discussion. While reform of the advisory boards may make the system less cumbersome, it must be part of a more strategic vision of what public consultation is expected to achieve. Although the progress made is widely acknowledged, a sense of frustration has also been apparent in the discussions. Consultation is first and foremost a means of identifying all points of view needed for fully enlightened decision-making.

*What does one wish to gain from a consultation process?* It would enable improved identification of the one or more methods to be adopted. For example, in devising new policies from the outset, it is desirable to ensure that all the stakeholders are able to contribute and provide feedback informed by experience, so that the government can grasp the measure of the claims and the evidence, and allow for innovative ideas. Two points call for special attention. First, there is a need to strengthen the openness and diversity of consultation procedures, beyond experimentation with new methods. It is indeed increasingly hard to rely solely on predetermined expert groups in more complex societies. Next, the present field of consultation should also be reviewed since, as the 2004 OECD report already noted, consultation is used broadly for bills and draft decrees relevant to the autonomous regulatory field of the government, but far less for implementation decrees or legislative proposals.

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**Recommendation 3.1. Engage a discussion on the overhaul of public consultation. This could be partly based on targeted audits, for example, on open consultation processes on the Internet.**

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*Consultation currently lacks a baseline methodology to support a clearer strategy and raise its profile.* During the OECD discussions, several interlocutors (from within and outside the public administration) highlighted the need to establish more structured procedures and, more generally, to develop guidance on consultation. Reference was made to how the views of stakeholders were often not considered and to the lack of feedback on consultation (a frequently mentioned weak point, and not solely in France), partly because of the pressure of time. Each ministry develops its own methods of consultation (informal consultation, open consultation over the Internet, forums), which means that the aspects specific to each area can be taken into account, and gives free rein to innovation. Yet baseline methodologies would make it easier to share experience and raise the profile of consultation.



**Recommendation 3.2. Establish consultation guidelines. Set up a consultation portal (in which the forum website could be integrated). Encourage ministries to share their experiences to highlight good practices and the most useful processes.**

*Consultation should also be included in the process of impact assessment.* This is a provision of the organic law introducing the new impact assessment system whereas, until now, impact assessment and consultation have been regarded as separate processes. It may also be noted that parliament has recently introduced measures along these lines. However, good practice, not to mention firm requirements in this area, is (still) not clearly defined (Chapter 4).

### Box 3.1. Passages from the 2004 OECD report: Public consultation

#### Recommendation

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

The high number of consultative bodies in France does not necessarily ensure an efficient consultation process. A transparent and systematic process of public consultation which takes into account the impact on citizens and business ensures an improved quality to the regulatory process in many OECD countries. Internet offers an interesting opportunity which should be taken. For example, France could set up a central unique registry on the Internet with all the drafts in consultation. The registry should also include the comments of the interested parties with the comments and answers from the regulatory authorities. The process could in addition be integrated to the framework of the Regulatory Impact Analysis. It is common in the French administrative system that parties involved in drafting a law or defining a policy meet beforehand. However, this is neither systematically applied nor formalised at a legal level, except in the environmental field. The parties have a great amount of freedom to make proposals and counter-proposals when consulted on a regulation concerning either draft laws (initiated by the Government), or draft decrees from the Government's autonomous regulatory domain. On the other hand, and by their nature, neither draft parliamentary laws nor parliamentary amendments can be considered for prior consultation, carried out by the government, on a proposed law. Similarly, the freedom of parties involved to propose or counter-propose is quite limited when it concerns a decree for implementing a law.

#### Evaluation

The undeniable effort in consultation, however, results in a large number of consultative bodies. This proliferation and lack of standard procedures may lead to a complex situation. The excessive number of consultative bodies is a source of confusion and leads to impenetrability. In spite of the fact that there appear to be a number of consultative procedures, the general consultative system often remains insufficient. The edict, adopted in 2003 to simplify administration, proposes rationalising consultative bodies. The various bodies do not have a standard consultative procedure as the rules are defined for each individual case. Nevertheless, some procedural rules are common. These have been elaborated by administrative case law. The efficiency of the consultation process in France could be improved through more transparent and more systematic consultation processes.

The development of the Internet has been the major innovation in enabling constituents to get together to work on regulations. Ministries have used this vehicle to launch several forums to enable the general public to react to projects involving several topics. At the end of 2001 the Government decided that each national public internet site distributing information on public policies would have to have some means of debate with the citizens on specific topics (digital fingerprinting). Local public sites would be encouraged to develop this type of functionality in co-operation with the general sites

*www.service-public.fr* and *www.vie-publique.fr*. Internet offers an interesting opportunity which should be taken. For example, France could set up a central unique registry on the Internet with all the drafts in consultation. The registry should also include the comments of the interested parties with the comments and answers from the regulatory authorities. The process could in addition be integrated to the framework of the Regulatory Impact Analysis.

In spite of the large number of formal options for consultation, for some topics there are fewer consultation and drafting procedures. Therefore, alongside this general background, press leaks also play a significant role and allow us to find out a little about the evolution of the process. Moreover, when there has only been partial prior consultation, the parliament's role is to afterwards listen to various interest and population groups, which will try to make their voice heard through the limited means provided by amendments. Sometimes, the absence of prior consultation triggers spontaneous reactions in the public and unions' opinions, with public protest movements or strikes which force a second consultative phase.

It is common in the French administrative system that parties involved in drafting a law or defining a policy meet beforehand. However, this is neither systematically applied nor formalised at a legal level, except in the environmental field. The parties have a great amount of freedom to make proposals and counter-proposals when consulted on a regulation concerning either draft laws (initiated by the Government), or draft decrees from the Government's autonomous regulatory domain. On the other hand, and by their nature, neither draft parliamentary laws nor parliamentary amendments can be considered for prior consultation, carried out by the government, on a proposed law. Similarly, the freedom of parties involved to propose or counter-propose is quite limited when it concerns a decree for implementing a law.

The structure is the same at local level for all decisions relating to town planning, agriculture or the environment. The difficulty here lies more in the plethora of local committees and consultative bodies. These committees call upon so many local elected representatives and union or socio-professional representatives at local level that it may become difficult for them to operate properly. This therefore brings about the problem of consultation "fatigue" and difficulties in recruiting for local assemblies.

Source: OECD (2004).

### ***Access to the law***

*Much attention is focused on access to the law.* Considerable effort has been invested and maintained in developing mechanisms for accessing the law, and in particular the *Légifrance* and *mon.service-public.fr* websites. Both are still being expanded and are visited with increasing frequency. It would appear that the *Légifrance* website has considerable scope for future development, which would strengthen access to the law still further, especially as regards publicising local law (Warsmann, 2009).

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**Recommendation 3.3. Consider how *Légifrance* can be further developed (the public website providing access to legal texts) further.**

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## **Background**

### ***Public consultation on regulations***

Public consultation in France has been traditionally based on many institutionalised administrative boards and written obligations in official documents, which if they are overlooked, may result in the administrative judge revoking the text concerned. There is a conspicuous trend towards a stronger more modern approach. Consultation is one of the main activities prioritised by France in the area of regulatory governance. According to

the French government, a fresh balance is being reached between traditional forms of institutionalised consultation (advisory boards) and more open forms (open consultation over the Internet). The “modernisation of consultation with the stakeholders” is a formally declared aim of government action.

Major structural reforms have occurred since the 2004 OECD report:

- rationalisation of the institutionalised advisory boards (“cut-off clause” in the decree of 8 June 2006 which abolished 40% of them), and the establishment of operational rules for all the boards;
- growth of open consultation over the Internet;
- growth of new methods of consultation, occasionally on an experimental basis (in particular the *Grenelle Environnement Forum*). One may also cite the Business Council, an informal body whose purpose is to promote dialogue and debate between businesses and public administration;
- reform of the social dialogue which seeks to promote consultation with the social partners for reform schemes in the area of work, and alters the conditions of union representativeness;
- openness towards citizens to strengthen local democracy (see Chapter 8); and
- restructuring of impact assessment arrangements (see Chapter 4), in which an impact assessment has to include the list of bodies consulted.

If one takes account of the well-established approaches (formal conventional committees, dialogue on major infrastructural schemes) that exist alongside new forms, France currently possesses a wide range of consultation methods. An obligation to undertake prior consultation exists for the greater share of the production of legal norms, as specified in the “Guide for Drafting Legislation and Regulations” (see also Chapter 4). The idea underlying these rules about consultation is to gather the opinions of those stakeholders who are considered as the most concerned, or at least to ensure that they have had the opportunity to express their point of view. In most cases, this form of consultation is based on a preliminary draft text prepared by the government. However, other procedures may be preferred in certain areas. Thus, in the social sphere, consultation is now organised at an earlier stage of the process using a strategy document, which leaves unbroken the very principle of reform.

A distinction should be drawn between procedures which may be applicable to a draft text, and those appropriate to the preparation of a policy in outline, before reaching the stage of a properly drafted bill (assuming this is the case). It should also be emphasised that involvement of the stakeholders may occur on the basis of official consultations carried out as part of the official system for drawing up draft laws or decrees provided for by the Constitution or organic laws. This makes it compulsory for certain bodies to be consulted, such as the Economic, Social and Environmental Council. Involvement may also be based on more informal non-standardised procedures.

## ***Public consultation on regulations***

### *Formal consultation and advisory boards*

#### Obligations associated with consultation

In French law, there are many obligations pertaining to consultation. They involve various bodies closely linked to central government, which were recently over 500 in number (Box 3.2). These obligations are of considerable legal significance, especially in the case of regulatory acts, since disregard for them may lead the administrative judge to revoke the text concerned for this reason alone. Consultation with these bodies is distinct from any consultation or discussions undertaken beforehand or concurrently with stakeholders on a less official basis.

The mandatory nature (or otherwise) of consultation with a particular body stems either from the text which has established the body (which may originate from various levels, namely the constitution, a law, decree or regulation), or more frequently from a text providing for such a procedure. Aside from the very few cases in which a higher level text requires that the bodies consulted approve a proposal, their opinions are not binding on the government, which may take account of them or not, as it wishes. Where consultation is mandatory and even if the administrative authority is not bound by the opinion(s) expressed, it may not take a decision on fresh matters regarding the proposal submitted for consultation or the comments it may have elicited from the body concerned.

#### **Box 3.2. Consultative bodies**

Irrespective of what these bodies are called (board, council, commission, committee, etc.), their aim is to provide political or administrative authorities with instructive information and involve all interested parties in the decision-making process, including sometimes a few members of parliament and, very frequently, highly qualified prominent persons.

Some of these bodies are fairly general in purpose, as in the case of the Economic, Social and Environmental Council (CESE) whose existence is enshrined in the constitution, with its duties specified in organic laws, and whose membership includes representatives of civil society and personalities from all walks of social and economic life. Most other consultative bodies belong to specialised fields of interest, within a single sector such as the environment, transport or agriculture. The government may also form *ad hoc* consultative commissions when preparing draft documents or a particular reform, for the purpose of bringing together categories of citizens who represent different interests which are not always represented in the official consultative bodies.

The CESE has undergone reforms. The constitutional reform of July 2008 extended its purview to environmental matters and instituted a procedure under which citizens could petition it (until then only the prime minister was empowered to do so). An in-depth reform of the CESE, whose membership<sup>2</sup> and usefulness are often challenged, is currently in discussion in parliament. A study report requested by the President of the Republic highlights the uncertain position of the CESE (in competition in reality with a great many specialised consultative bodies) and weaknesses in its operational activity. The report emphasises that its make-up is anachronistic and not representative of contemporary society, that its work is too wide-ranging in scope and that it lacks visibility (Chertier, 2009).

Certain rules concerning the procedures that the state must follow when dealing with consultative bodies have been set by the decree of 8 June 2006.<sup>3</sup> They include an obligation to convene the consultative body and send them relevant useful documents at least five days before the meeting; the conditions for a quorum and voting regulations; formal exclusion from the proceedings of members with a personal vested interest in the matter considered; and the obligation to provide written minutes of meetings. These general rules may be specified for each individual case in the text which established

the body to be consulted. In practice, if the period covered by the consultation procedure varies depending on the particular body, the questions raised, and their possibly urgent consideration, which the government may request, consultation generally occurs in the weeks preceding submission of the text to parliament or – in the case of regulatory documents – before their signature by the prime minister or other ministers and, where applicable, before consultation with the *Council of State*. The rules concerning mandatory forms of consultation are covered in the “Guide for Drafting Legislation and Regulations”<sup>4</sup> (see Chapter 4) which recommends that they should also apply to optional consultations.

Consultative bodies at local level have the same structure, in the case of all decisions relating to town planning, agriculture or the environment.

### Rationalisation of the advisory boards

In recent years, the French government has begun to rationalise the advisory boards by doing away with some that served little purpose and requiring any new ones to demonstrate they satisfy a real need, thereby reining in their continued expansion. The government and administrative authorities consider that this method of consultation provides a way of engaging with different interests and reaching a shared perspective, but that it may also very significantly delay final decision-making, especially when the field concerned is a narrow one and meetings are therefore somewhat few and far between. This disadvantage has been aggravated by the marked increase in consultative bodies set up since the 1980s. In many cases, the tasks of these new bodies could have been performed by others already in existence.<sup>5</sup>

As regards the advisory boards close to central government departments, the decree of 8 June 2006 ruled that, unless their existence was provided for in law, they would be established by decree for a five-year period. A study had to be undertaken beforehand to check that their proposed tasks corresponded to a real need and were not already performed by another board. The decree also included a “cut-off clause” under which all boards whose existence had not been ratified within a three-year period would be abolished. After a period spent making an inventory, the implementation of the decree led to the abolition of 211 boards out of a total 545 set up through regulatory procedures.<sup>6</sup> The prime minister is planning a similar operation for boards established by law.

Boards linked to geographically decentralised administrative authorities were also reformed. Order N° 2004-637 of 1 July 2004<sup>7</sup> replaced around 70 formerly decentralised boards by a limited number of subject-oriented boards close to the prefects, which are sometimes termed *commissions pivots* (“anchor boards”). The remit and the rules governing the organisation and operations of these boards are now determined by decree.<sup>8</sup>

### *Special-purpose consultation*

In addition to formal consultation, there is the practice of informal consultations, which occur very frequently during the preparation of reforms to help the regulatory authority grasp the specifics of particular aspects of the problem at issue. Thus the government may undertake bilateral consultation with representatives of the parties concerned when drawing up the draft regulation.

In a more formal way, the government may also entrust members of parliament or influential people with exploratory missions to examine a reform proposal. Their role would be to consult all interested parties and if necessary to test a draft law. They normally rely, to a considerable extent, on officials and administrative departments which

provide support for drafting and carry out synthesis work. Such missions enable officials, union officials, representatives of economic circles and experts from the academic world to meet. Another example of informal but organised consultation is the Business Council set up in July 2007 and linked to the Minister for Economic Affairs, Industry and Employment responsible for business and foreign trade. This Council is an informal body whose purpose is to promote dialogue between businesses and administration, and “break down artificial barriers within the worlds of business and administration, so as to be more fully responsive to the realities of businesses and establish permanent contact with them” (see Chapter 5).

### *Use of the Internet*

Open consultation over the Internet has occurred on an *ad hoc* basis in recent years. It may involve bringing on line preliminary draft texts, or less commonly White or Green papers, as well as forums on reform topics. These consultation processes occur on the initiative of individual ministries which are responsible for their content, the practicalities of transmission and, where applicable, the publication of a summary of results (see for example the actions of the DGME in the area of administrative simplification, Chapter 5, and the consultation on the White Paper on carbon tax in June 2009). Internet discussion forums are concerned with wide-ranging reform proposals, rather than specific texts.<sup>9</sup> They generally supplement consultation with established boards or commissions. In 2008 a dedicated portal<sup>10</sup> for accessing ongoing and archived forums (including a summary of contributions to them) was set up to make it easier to access these forums. Furthermore, all ongoing or planned public debates can be followed on the *Vie-publique.fr* website, which includes provision for mapping them throughout France in its entirety. This is a recent facility which has yet to prove its worth.

The discussions organised by the OECD revealed contrasting appraisals of the effectiveness of Internet consultation, which typically reflected the whole spectrum of approaches from the conservative to the innovative. Some informants pinpointed the weakness of the results compared to the time needed for this kind of consultation and the need to rely on intermediaries. There may therefore be some wariness, if not outright distrust, of Internet consultation. Others highlighted successful experiments and the maturity of civil society, noting that these open forms of consultation had resulted in helpful information and, in some cases, enabled difficulties to be identified in the process of drafting the regulation.

### *The “Grenelle” forums*

Recently, consultation has tended to occur at an earlier stage in the preparation of draft proposals and to combine different types of procedure. A prime example of this tendency is provided by the drafting of the bill on “active solidarity income” (RSA).<sup>11</sup> It led to consultation on a “Green Paper” which was almost unheard of in France. Over 60 contributions from bodies of all kinds were submitted.<sup>12</sup> The second example is the “*Grenelle de l’environnement*” (the *Grenelle Environment Forum*), the name given to the consultation procedure on environmental policy development.<sup>13</sup> Initiated in July 2007, this process has included consultation involving special working groups, institutional advisory boards, meetings organised in the regions and open consultation over the Internet (Box 3.3). This method of consultation has since been adopted for other topics using the name *Grenelle* (*Grenelle on the sea*, *Grenelle on social integration*, *Grenelle on radio broadcasting*) or similarly *états généraux* (national consultations), with *états généraux* on the press and on the overseas territories.

### Box 3.3. Grenelle Environment Forum

The *Grenelle* Environment Forum brought together the central government and representatives of civil society in order to draw up a road map for ecology, and sustainable development and planning. The aim was to establish an action plan of 15-20 concrete and quantifiable measures that would meet with the broadest possible agreement among participants.

The *Grenelle* Environment Forum led the government to combine several forms of consultation, joint action or appeals for contributions, as part of a co-ordinated process:

- The first phase from mid-July to the end of September 2007 was given over to dialogue and the preparation of proposals within six working groups consisting of 40 members drawn from five colleges all of exactly the same size, namely the central government, local authorities, NGOs, employers and wage-earners. They were given the task of identifying not just a diagnosis but above all operational proposals to respond to it. Each proposal for action was expected to indicate impediments of any possible kind (whether legal, social, budgetary or technical) facing it, as well as the resources needed to eliminate them. These proposals were recorded in a set of reports.
- The second stage of the *Grenelle Forum* from the end of September to mid-October 2007 was devoted to consultation with the public on the action proposals from the working groups, via different channels:
  - The government took stock of the opinions of the various advisory boards, institutions or bodies, including parliament: 31 councils and committees were consulted, while parliament debated them on 3 October in the National Assembly and on 4 October in the Senate.
  - Regional meetings were organised from 5-22 October 2007. Any citizen could take part on application to the prefecture of the Department concerned. The government selected 17 towns (or cities) as follows: Annecy-le-Vieux, Arras, Aurillac, Besançon, Bourges, Brest, Chalons-en-Champagne, Drancy, Épinal, Laval, Le Havre, Mulhouse, Nice, Périgueux, Perpignan, Saint-Denis (Réunion), Saint Etienne. These gatherings were often preceded by workshops chaired by prominent local people to give a first opinion concerning the proposals and conclusions of the national working groups. These regional meetings were attended by almost 17 000 participants in all, including elected representatives, people representing the economic, social and voluntary sectors or ordinary citizens.
  - Finally, another form of participation was proposed over the Internet: citizens were able on line to comment on and suggest amendments to the proposals of the working groups on the website forum, from 28 September to 14 October. This method of online consultation was an unqualified success, with 72 000 visits and over 11 000 contributions published in 17 days.
- The third stage on 24-26 October resulted in negotiations and decisions. Within four panel discussions involving the five colleges, 268 commitments were identified.
- In the fourth stage (December 2007), 33 operational assignments were initiated in order to obtain proposals for action enabling the conclusions of the *Grenelle* Forum to be implemented.

The results of these assignments fed into the bill for environmental programming which was passed by parliament in June 2009. The act known as the *loi Grenelle 1* identifies major lines of action and

reveals the decisions taken without however always stating precisely how they will be implemented or funded. It places on a legislative footing the commitments reached in October 2007. The funding and precise procedures for giving effect to the arrangements set out in the *loi Grenelle 1* were itemised in the finance law for 2009 (December 2008) and in a second law known as *Grenelle 2* (undergoing review in parliament). The two bills arising from *Grenelle* were the subject of an economic, social and environmental impact assessment, and were publicised on the Internet as soon as they were submitted to parliament.

### The public debate procedure for schemes concerned with planning or amenities

Public debate – a procedure governed by the law of 2 February 1995 on protecting the environment – is a stage in decision-making which occurs prior to the process of drawing up a significantly-sized scheme concerned with amenities or planning. It constitutes a phase of openness and dialogue in which people can obtain information and give their opinions on the scheme at hand before final decisions on it are taken. The law of 27 February 2002 transformed the National Committee on Public Debate (CNDP) set up under the law of 2 February 1995 into an independent administrative authority and broadened its remit. The *Grenelle 2* law (undergoing review in parliament), which seeks in particular to encourage broader consultation prior to public decision-making whenever a significant impact on the environment is at issue, adds a few further elements to this public debate procedure (Box 3.4).

#### Box 3.4. The National Committee on Public Debate

Law 2002-276 of 27 February 2002 concerning local democracy transformed the National Committee on Public Debate (CNDP), set up under the act known as *Barnier's law* in 1995, into an independent administrative authority and broadened its remit.

The CNDP is now charged with ensuring that the general public are involved in the process of preparing schemes for planning or amenities in the national interest, as soon as the proposals raise major socio-economic concerns or are set to have a significant impact on the environment or regional planning. Public participation may be in the form of a public debate on the timeliness, aims and main features of the scheme.

La CNDP has 21 members. Besides its president and two vice-presidents, it includes members of parliament, local elected representatives, members of the administrative and civil jurisdictions, the *Court of audit*, representatives of environmental and consumer defence associations and highly qualified public figures. The CNDP may either organise the public debate itself or entrust the task, in accordance with its own recommendations, to the developer concerned. If it considers that there is no real need for a public debate, it recommends that the developer organise a consultation process and proposes what form it should take. Public involvement is guaranteed during the entire phase of preparing the scheme, from the point at which preliminary studies are undertaken until the end of the public enquiry prior to the order declaring the scheme to be in the public interest. The *Grenelle 2 law* (undergoing review) includes an amendment to the make-up of the CNDP, adding representatives of employee trade union organisations and of economic interests to its membership. It broadens the range of subjects that may be brought before the CNDP. And it institutes an obligation to inform the public about the follow-up to the debate.

### The social dialogue and its reform

In the French system, the government may involve trade unions and business representatives (referred to as “social partners”) in decision-making by means of a discussion or “dialogue” phase. This dialogue may entail the provision of information on



government policies and decisions, or on the form of unofficial or official consultation about a decision (which may be more or less interactive). Finally, the decision may be the direct outcome of a tripartite agreement reached between the government, trade union and employer organisations, or a bipartite agreement involving the social partners alone. The arrangements underlying this “social dialogue” have been the focus of reforms with the adoption of the law of 31 January 2007 (Box 3.5).

### Box 3.5. Modernisation of the social dialogue

The law of 31 January 2007 to modernise the social dialogue established that the social partners (nationally recognised representative employee trade unions and inter-professional employers’ organisations) had to be consulted beforehand about any government scheme involving reforms of industrial relations, employment or vocational training, so that a negotiation procedure could be started. For this purpose, the government has to provide the social partners with “strategy documents” setting out its diagnosis, its aims and the procedures envisaged in the event of negotiation. It is for the social partners to inform the public authorities whether they wish to negotiate and to indicate the timetable they consider necessary. This reform is the follow-up in particular to the “Chertier” report which took stock of the organisational arrangements underlying negotiation between the social partners.<sup>14</sup>

The legal draft documents stemming from any such negotiations then have to be submitted for an opinion to the *Commission nationale de la négociation collective* (National Collective Bargaining Commission). The Commission is formed from the ministers responsible for employment, agriculture and the economy, as well as from representatives of national employee trade unions and employers’ organisations. Where applicable, the Higher Council for Employment and the National Council for Lifelong Vocational Training may also be consulted for an opinion. Furthermore, the new Article L.2211-3 of the labour regulations states that “each year the main lines of government policy concerning individual and collective labour relations, employment and vocational training, as well as the timetable envisaged for implementing them are submitted, for the forthcoming year, to the National Collective Bargaining Commission”.

Negotiations on modernising the labour market have been among the first to be affected by this new framework:

- On 18 June 2007, the prime minister sent the social partners two strategy documents on, first, the modernisation of the labour market and the provision of career security and, secondly, on social democracy. Following a meeting organised soon afterwards, the social partners decided to begin a negotiation procedure on modernising the labour market, with the focus on the provision of career security, the employment contract and unemployment insurance.
- A series of meetings beginning in September 2007, led in January 2008 to an agreement between the three employers’ organisations (MEDEF, CGPME and UPA) and four of the five employee trade union organisations (CFDT, CGT-FO, CFTC and CFE-CGC). The law of 25 June 2008 on modernising the labour market transposed the provisions of this national inter-professional agreement.

The negotiations begun early in 2008 on representativeness, the development of the social dialogue and the funding of the trade unions applied the new provisions arising from the law of 31 January 2007 for a second time. On completion of a similar process, the law of 20 August 2008 on revitalising social democracy and the reform of working time transposed the measures in the “common position” which was signed on 10 April 2008 by two trade union organisations (CGT and CFDT) and two employers’ organisations (MEDEF and CGPME) and concerned the representativeness of trade union organisations and the funding of the social dialogue. Other ongoing reforms, particularly in the area of working conditions and occupational health services, as well as staff and skills management planning (GPEC) and vocational training, are currently the subject of negotiation by the social partners in accordance with this law.

### *The case of the economic regulation authorities*

Like their counterparts in the other EU countries, the economic regulation authorities<sup>15</sup> have established their own public consultation processes when preparing their decisions. ARCEP (responsible for regulation in the telecommunications sector) provides an illustration of this (Box 3.6).

#### **Box 3.6. Regulation authorities and public consultation: The example of ARCEP**

Since it was established in 1997, the *Autorité de régulation des communications électroniques et des postes* (ARCEP, or the Authority for the Regulation of Electronic Communication and Postal Services) regularly consults the sector about draft decisions with an effect on the market, such as those concerned with relevant market analysis and the portability of landline numbers, as well as the transmission of calls to fixed or mobile portable numbers, the price control of mobile voice call termination, the quality of the landline service, shared use of 3G facilities, future needs regarding mobile numbers and the opening of the 07 block of numbers for use by mobile services, and access to letter boxes in buildings fitted with access control systems, etc. The aim is to obtain the opinions and comments of interested players, thus upholding the principle of transparency to which the institution is committed.

**Working groups.** The Authority co-ordinates the activity of many working groups on sometimes highly specialised technical subjects. These forums provide an opportunity for dialogue, especially with operators, to consider certain problems and ways of overcoming them. For example, the Expert Committee for the Introduction of new Local Loop Techniques, which was set up in 2002, brought together operators unbundling the metallic local loop, the main components manufacturers and the established operator France Telecom. Chaired by a recognised expert in the industry, the Committee aims to issue opinions on technical questions concerned with introducing new technology into the local loop. In 2007, it declared itself in favour of introducing the ADSL2+ technique to the street cabinet, the VDSL2 technique to the France Telecom local loop and the E-SDSL technique to the MDF (metallic distribution frame). In the postal sector in 2007, the Authority led a working group on technical and operational matters that could make it easier to implement the principle of accessing private letter boxes in buildings with the parties concerned (operators, building manager representatives) before initiating a public consultation on the subject.

**Specialised advisory boards.** The Advisory Board on Electronic Communication Networks and Services (CCRSCE) and the Radio Communications Consultative Commission (CCR), both of which are advisory boards close to the minister responsible for electronic communications and ARCEP under the law of 26 July 1996, are forums for institutional consultation in the telecommunications field. A decree determines the membership, responsibilities and operating conditions of these two boards for which ARCEP provides the secretariat. Their members are representatives of service providers and service users, as well as highly qualified prominent figures, who are appointed by the minister for three years. These boards are specifically responsible for examining draft regulatory texts concerned with both mobile telephony and electronic communication networks and services. They are consulted by the minister for electronic communications or by ARCEP on any subject within their remit.

The Committee for Inter-connection and Access consists of representatives of network operators, active in the market for inter-connection services, as well as service providers and consumer associations, all appointed on the basis of a decision by ARCEP. The president of the Authority chairs the Committee and ARCEP provides its secretariat. The Committee is a forum for discussion and dialogue between players in the sector on topical subjects relating to fixed or mobile inter-connection.

The Committee of Public Initiative Networks (CRIP), set up by the Authority at the end of 2004, is a discussion forum which brings together the territorial authorities, operators and players involved in digital planning and development throughout the country. Public and private players come together in technical groups and sub-groups which meet regularly throughout the year. Once a year, a plenary

session provides an opportunity for interested elected representatives and the Authority to appraise the work carried out and fix the work programme for the year ahead.

The Consumers' Committee is a body engaging in work, dialogue and discussion, which was set up at the end of 2007, to find suitable approaches to issues affecting consumers within ARCEP's terms of reference. This Committee includes consumer associations and public institutions (INC, DGCCRF, DGE, the electronic communications mediator). Operators may be invited to join it, depending on the subject concerned. The Committee meets once a year in plenary session to report on its activity and fix the general focus of the work programme for the following year. Activities are carried out by groups and sub-groups which meet regularly throughout the year.

## *Access to the law*

### *Publication of laws and decrees*

Governmental and ministerial laws and regulatory measures are centralised and published in the Official Gazette which has been available in its entirety on line since 1990. As French law does not put a time limit on the validity of laws, the management of the Official Gazettes updated a database which included old laws published before 1943, which went back to the end of the 18th century, some of which are still partially in force.<sup>16</sup> The Gazette (the *Journal officiel*) is published by the Directorate of Legal and Administrative Information (DILA)<sup>17</sup> which also edits about 700 titles including works organised by topic and about fifty codes or collective agreements (agreements between unions and employers which have regulatory force relating to employment relations when they are agreed). As well as the Official Gazette, these editors also publish various economic and financial bulletins (Official Bulletin of civil and commercial announcements, Bulletin of compulsory legal announcements, Bulletin of public markets' announcements).<sup>18</sup>

The publication of regulatory acts is less significant in determining their legality as such than their enforceability against those to whom the regulation is directed. The law of 17 July 1978 on administrative transparency obliges governments to publish directives, instructions, circulars, ministerial notes and replies which include an interpretation of positive law or a description of administrative procedures. The most important documents are published in the Official Gazette of the French Republic, while the remainder appear in an official ministry bulletin.<sup>19</sup>

### *Publication of circulars*

A decree from the prime minister in 2008<sup>20</sup> made it mandatory to publish on a website circulars and instructions sent by ministers to state departments and institutions, failing which they would not be applicable. Circulars and instructions already signed before the website came on line are regarded as repealed if they are not included on it.<sup>21</sup> The dedicated website,<sup>22</sup> opened in May 2009, thus lists all applicable circulars by date and by topic, which also remain included in the official bulletins of ministries. The launch of this website is intended to promote consistency in the action taken by administrative authorities, through regular updating of its content and the repeal of outdated circulars. Its legal impact for ordinary citizens is however limited in that their rights and obligations derive from legislative and regulatory measures and not from circulars which consist of comments and interpretations of them. Circulars are only enforceable before the administrative judge if they contain a mandatory requirement, which in practice applies only to the tax area (see Chapter 4).

## *Transmission of the law and legal information over the Internet*

### The *Légifrance* website

General transmission of the law over the Internet is via the *Légifrance* website, which offers free access to the entire body of public law that can be viewed on line in France (Box 3.7). The website contains all texts published in the Official Gazette of the French Republic, whose electronic version is legally binding, and an extensive range of other data of a purely informative nature. This includes the consolidated texts and judicial, administrative and constitutional case law. The website also provides links to national institutional judicial websites, the official bulletins of ministries, and websites concerned with European and international law. Since access to *Légifrance* became free of charge (in 2002), it has attracted visitors in continually increasing numbers, with the total rising from 31 million visits in 2005 to 47 million in 2008.

The *Warsmann* report emphasised how it would be well worth developing the *Légifrance* website further (*new ambitions for Légifrance*). It proposed expanding the information available and placing on the website the decisions of the independent administrative authorities. The report also proposed the provision of easier access to territorial administrative law. It pointed to the ineffectiveness in practice of publishing the entire collection of administrative acts (RAA), which constitutes a chronological stack of textual material (the “territorial administrative records, whether those of the territorial authorities or the geographically decentralised administrative authorities, do not seem to comply with the minimum requirements of ready accessibility”). It advocated placing local law on line with subject-based access and the development of Department-based or regional websites. A debate is under way as to how local law might be made electronically available, with possible support from *Légifrance*.

#### **Box 3.7. *Légifrance***

The *légifrance* site ([www.Légifrance.gouv.fr](http://www.Légifrance.gouv.fr)), governed by decree N° 2002-1064 of 7 August 2002, displays all public law that is accessible on line in France. It replaced the *Jurifrance* website introduced in January 1998 which charged for access to its main data (the Official Gazette, legal codes and main laws). *Légifrance* differs from it in covering a far broader range of information with free access to its content.

The *Légifrance* website is placed under the authority of the prime minister’s office. In managing this public service, the prime minister relies on the Committee of the Public Service for the Transmission of Law over the Internet, whose members include representatives of businesses specialising in the field of legal publishing. The annual report of this Committee is available on the *Légifrance* website.

The main features of *Légifrance* are as follows:

- It makes available to the public free of charge most prescriptive acts in force (the Constitution, codes, laws, regulatory acts issued by the state authorities, and acts that stem from France’s international commitments, including directives and regulations published in the *Official Journal* of the European Union), set out in the form resulting from their successive amendments. Around a dozen codes are available in English and Spanish. The website also provides access to collective labour agreements in force and to the official bulletins of ministries.

- It provides access to several foundations of case law, be this constitutional, judicial, administrative or European case law; website users can subscribe daily free of charge to an electronic version of the Official Gazette of the French Republic via email messaging.
- The website provides information on the production of legal norms: “Guide for Drafting Legislation and Regulations”, monitoring of the application of laws, statistics on the production of laws, orders and decrees.
- The design of the website has relied on associating databases organised as far as possible with a view to providing for easy searches on *Légifrance*; the site also serves as a portal to other authoritative public websites, such as those of the parliamentary chambers, and includes private judicial website references.

Licences to reuse the material contained in the public websites are awarded free of charge to people who wish to make use of these data as part of their work whether it is commercial or not.

### The Vie Publique and Service Public portals

The *Légifrance* website is supplemented by information portals for the general public, which are administered by the DILA. The *vie-publique.fr* portal contains information for the general public on ongoing reforms and the development of regulation, with for example fact sheets on laws nearing adoption under the *panorama des lois* (“overview of laws”) heading.<sup>23</sup> It is supplemented by the *service-public.fr* portal for private individuals and businesses, which provides easier access to various public bodies and online services, and lists all administrative formalities in accordance with the subjects of concern to individuals (600 of which can be performed on line). In 2007, the average number of visitors stood at 2.1 million a month.

### Websites for businesses

Several other public websites have sections on law governing businesses and/or of interest to them, especially at the Ministry for Economic Affairs and the Ministry of Labour, as well as the chambers of commerce and industry (Box 3.8).

#### Box 3.8. Public websites with information for businesses

The website of the Ministry for Economic Affairs, Industry and Employment (*www.minefe.gouv.fr*) includes sections on the world of business, including business accountancy, training in the working environment, new business formation, the development of businesses, and standardisation or, again, competitive clusters and government procurement. Each section is further subdivided into sub-categories containing, as appropriate, guides and practical information sheets such as *Le Guide du créateur d'entreprise* (“The Guide for Starting a Business”). Furthermore, the section entitled “*professionnels*” at *www.impots.gouv.fr* provides help for businesses with completing certain tax formalities (for example, company tax, VAT or professional tax) but also as regards information and the rights of businesses in the area of tax.

The Minister of Labour, Social Relations, the Family, Solidarity, and Towns and Cities has placed on line all forms needed for the social activity of businesses, as well as practical information sheets covering many areas of labour law (such as holidays and employee absence from work, employment contracts, vocational training, dismissal, etc.) and health and safety regulations (*www.travail.gouv.fr*).

The *www.pme.service-public.fr* website run by the Documentation française, offers a variety of help and practical advice aimed at facilitating and, where appropriate, supporting SME entrepreneurs with the formalities that are part and parcel of their business activity. The website has various sections

informing them about both the formation and the takeover of an SME and about management (certification, kinds of authorisation and obligations related to the activity, financial support, the environment, tax issues, administration, accountancy, litigation, logistics, human resources), but also about development and innovation, and finally the transfer and termination of activity.

The chambers of commerce and industry ([www.cci.fr](http://www.cci.fr)) provide a variety of information on the activity of businesses. More specifically, the online business formality centre at [www.cfenet.cci.fr](http://www.cfenet.cci.fr) provides help concerning the main formalities relevant to businesses and their activity. The [www.enviroveille.fr](http://www.enviroveille.fr) website, for its part, sets out the regulations and case law pertaining to environmental, health and safety legislation. The *Sémaphore* system of the chambers of commerce and industry ([www.semaphore.cci.fr](http://www.semaphore.cci.fr)) contains on a single website all kinds of financial and technical assistance concerning every issue in the life of businesses (formation, transfer – takeover, employment, innovation, international aspects, the environment, location – property, etc.). Finally, the network of chambers of commerce and industry has a “portal on business transfer and takeover” seeking not just to list offers and advertisements but additionally to provide resources and advice facilitating the transfer and takeover of craft and trade businesses.

### *Common dates for entry into force*

As in most other countries of the European Union, France does not use common dates for entry into force of legislative and regulatory documents. The rules governing the entry into force of legislative and regulatory texts derive from the first article of the civil code. They leave scope for mechanisms for delayed enforcement, which are commonplace, especially in complying with the principle of legal certainty when taking account of the period needed by recipients of the regulation to adjust to the newly approved rules.

## Notes

1. Procedures for rule-making (Chapter 4); codification (Chapter 5); appeals (Chapter 6).
2. The Economic, Social and Environmental Council has 231 members, who are appointed for a five-year period in two ways: 163 of them are designated by the organisations they represent (representative trade union organisations, professional organisations, bodies for co-operation and mutual benefit schemes, family associations); 68 others are appointed by the government (some of them at the proposal of other bodies).
3. Decree N° 2006-672 of 8 June 2006 concerning the establishment, composition and activity of administrative boards of an advisory nature. The provisions applicable to administrative boards which mandatorily have to be consulted were already laid down in a decree of 28 November 1983 (rescinded on 1 July 2007).
4. [www.legifrance.gouv.fr/html/Guide\\_legistique\\_2/212.htm](http://www.legifrance.gouv.fr/html/Guide_legistique_2/212.htm).
5. Reply by France to the questionnaire.

6. Decree N° 2009-613 of 4 June 2009 amending decree N° 2006-672 of 8 June 2006 concerning the establishment, composition and activity of administrative boards of an advisory nature. Each ministry has established by decree the list of confirmed boards, giving the reference of the decree or regulation which governs them.
7. Order N° 2004-637 of 1 July 2004 concerning simplification of the composition and activity of the administrative boards and the decrease in their number.
8. Decree N° 2006-665 of 7 June 2006 concerning the simplification of the composition of various administrative boards and the decrease in their number.
9. By way of example, one may cite a forum on the future of the retirement system in April-May 2008, and a forum concerning the digital dividend in May-June 2008.
10. [www.forum.gouv.fr](http://www.forum.gouv.fr).
11. “Active Solidarity Income” is a social provision initially introduced experimentally between 2007 and 2009, and then extended on a general basis in June 2009, in order to lessen the complexity of the minimum social criteria system, reduce the proportion of poor workers and increase work incentives.
12. [www.premier-ministre.gouv.fr/IMG/pdf/livre\\_vert.pdf](http://www.premier-ministre.gouv.fr/IMG/pdf/livre_vert.pdf).
13. The term *Grenelle* refers to the *Grenelle* agreements (negotiated and signed in 1968 at the Ministry of Labour in the rue de *Grenelle*, Paris).
14. "*Pour une modernisation du dialogue social*" (“for modernisation of the social dialogue”), a report submitted to the Prime Minister in 2006 by Mr. Dominique-Jean Chertier. Taking its cue from the Community (EU) model of social dialogue, as well as from foreign examples, the report regretted the lack of a “common language” between the State and the social partners, as well as the rapid increase and lack of clarity in consultative bodies. It made many proposals, including the preparation of a reform agenda which would be shared by all players and familiar to all, and then regularly re-examined and updated. For carrying out the reform, it also recommended that time should be planned specifically for consultation, and possible negotiation, and that support should be sought from modernised and accountable bodies such as the Economic and Social Council.
15. Authorities responsible for regulating sectors such as telecommunications and other network sectors, as well as other sectors of an economic nature such as the financial sector.
18. Text of 1566 on the inalienable nature of the royal domain.
17. The Directorate of Legal and Administrative Information (DILA) is a central administrative directorate of the Prime Minister’s office, which was set up in January 2010. It is the result of a merger between the managements of the *Documentation française* and the Official Gazettes, It falls under the authority of the General Secretariat of the Government.
18. With regard to bills and legal proposals, it may also be noted that debates in the parliamentary chambers (the National Assembly and Senate) are published in the official journal of parliamentary debates. The documents containing bills

and legal proposals, reports and opinions from the parliamentary committees are also published and may be accessed on the websites of both chambers: [www.senat.fr](http://www.senat.fr); [www.assemblee-nationale.fr](http://www.assemblee-nationale.fr).

19. See Articles 7 and 9 of Law N° 78-753 of 17 July 1978 as amended on various provisions to improve relations between the administrative authorities and the public, and decree N° 2005-1755 of 30 December 2005 resulting from its application.
20. Decree N° 2008-1281 of 8 December 2008 concerning the conditions for publication of instructions and circulars.
21. Decree N° 2009-471 of 28 April 2009 concerning the conditions for publication of instructions and circulars introduced an exception: “The measures [...] do not apply to circulars and instructions published before 1 May 2009 which the law enables a citizen to invoke”. These are primarily fiscal instructions. Where this is so, the texts will remain effective against the administrative authorities but not enforceable by them. This decree was approved to protect the rights of taxpayers, which have been based on fiscal instructions.
22. [www.circulaires.gouv.fr](http://www.circulaires.gouv.fr).
23. [www.vie-publique.fr/actualite/panorama/](http://www.vie-publique.fr/actualite/panorama/).



## Chapter 4

### The development of new regulations

Predictable and systematic procedures for making regulations improve the transparency of the regulatory system and the quality of decisions. These include forward planning (the periodic listing of forthcoming regulations), administrative procedures for the management of rule-making, and procedures to secure the legal quality of new regulations (including training and guidance for legal drafting, plain language drafting, and oversight by expert bodies).

*Ex ante* impact assessment of new regulations is one of the most important regulatory tools available to governments. Its aim is to assist policy makers in adopting the most efficient and effective regulatory options (including the “no regulation” option), using evidence-based techniques to justify the best option and identify the trade-offs involved when pursuing different policy objectives. The costs of regulations should not exceed their benefits, and alternatives should also be examined. However, the deployment of impact assessment is often resisted or poorly applied, for a variety of reasons, ranging from a political concern that it may substitute for policy making (not true- impact assessment is a tool that helps to ensure a policy which has already been identified and agreed is supported by effective regulations, if they are needed), to the demands that it makes on already hard pressed officials. There is no single remedy to these issues. However experience around the OECD shows that a strong and coherent focal point with adequate resourcing helps to ensure that impact assessment finds an appropriate and timely place in the policy and rule making process, and helps to raise the quality of assessments.

Effective consultation needs to be an integral part of impact assessment. Impact assessment processes have – or should have – a close link with general consultation processes for the development of new regulations. There is also an important potential link with the measurement of administrative burdens (use of the Standard Cost Model technique can contribute to the benefit-cost analysis for an effective impact assessment).

The use of a wide range of mechanisms, not just traditional “command and control” regulation, for meeting policy goals helps to ensure that the most efficient and effective approaches are used. Experience shows that governments must lead strongly on this to overcome inbuilt inertia and risk aversion. The first response to a problem is often still to regulate. The range of alternative approaches is broad, from voluntary agreements, standardisation, conformity assessment, to self regulation in sectors such as corporate governance, financial markets and professional services such as accounting. At the same time care must be taken when deciding to use “soft” approaches such as self regulation, to ensure that regulatory quality is maintained.

An issue that is attracting increasing attention for the development of new regulations is risk management. Regulation is a fundamental tool for managing the risks present in society and the economy, and can help to reduce the incidence of hazardous events and their severity. A few countries have started to explore how rule-making can better reflect the need to assess and manage risks appropriately.

## Assessment and recommendations

### *General context*

*There is a broad consensus in France which is critical of regulatory inflation.* This issue, raised in numerous government reports (including the 2009 report by the *Council of State* and the *Warsmann* report published in January 2009), arose very frequently in the OECD team's interviews with both representatives of the administration and external stakeholders. The production of too many regulations within very short periods of time was considered to be a source of legal insecurity. Regulatory inflation also weighs upon local and regional governments, which must implement the regulations. Although a number of EU countries show regular growth in the volume of regulations produced each year, France stands out because of the attention paid to this problem which specifically translates into significant efforts to measure the volume of regulatory production. This concern has contributed greatly to the efforts made to control the flow of regulatory output. The analysis is based essentially on precise statistics on the production of regulation. It would be useful to develop a more strategic analysis of the effects of production (e.g. on a particular production sector or on SMEs).

### *Procedures for producing regulations*

*Since 2004, steps have been taken to strengthen rule-making processes.* The government's work programme, drawn up every six months, establishes the government's overall orientation, containing the list of bills, orders and decrees. It remains an internal government document which enables the government to schedule the business of the *Council of State*, the Council of Ministers and manage parliament's agenda for the part belonging to the government.

*Reduction in the time limits for implementing enabling decrees for legislation.* The length of time between the promulgation of a law and the entry into effect of enabling decrees has, in the past, posed a major problem for the correct implementation of the law. The government has reinforced the monitoring system, which has led to a significant improvement compared to comparison to 2004 (Box 4.1). *The rate of implementation of laws enacted since the start of the current legislative period (June 2007) stood at 84% at 31 December 2009, compared with 60% at 30 June 2008.* The provisions of the framework law also require a provisional list of enabling application texts to be drawn up when the impact study is carried out.

*Development of an application to create a fully virtual regulatory production chain.* This chain ensures the real-time transmission of bills from the initiating ministry to the managers of the Official Journals in which they are published. It has reduced transmission times and heightened security.

*Strengthening of tools used to help draft regulation.* The rules for drafting regulatory texts have been compiled in a "good legislation guide". This voluminous guide (500 pages) focuses on the drafting of legislation and does not adopt an overall approach to the production of regulations. It has not yet been incorporated into on-line regulation production tools. The good legislation guide has helped to ensure that greater account is taken of the requirements regarding to the drafting of regulations. The need to strengthen the capacity for drafting legislation in the various ministries was frequently stressed the OECD interviews, notably to achieve clearer and more easily accessible texts.

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**Recommendation 4.1. Continue to reinforce basic processes for making new regulations. Further develop online tools, in particular by integrating the *legistic* guide and developing training programmes in parallel. Continue to focus on monitoring delays for issuing secondary regulations necessary for the implementation of laws and for transposing directives. Publish the government programme to increase its visibility.**

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*Attention needs to be paid to draft legislation proposed by the parliament.* The potentially greater initiative given to parliament under the constitutional revision of 2008 raises the issue of the need to improve the procedures ensuring the quality of bills proposed by legislators, including with regard to impact studies. The risk often mentioned is that of providing a “short-cut” procedure by passing governmental initiatives through the parliamentary procedure. See also impact studies below.

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**Recommendation 4.2. Encourage strengthening of procedures for making new regulations when they are initiated by members of parliament.**

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#### **Box 4.1. Excerpts from the 2004 OECD report: Access to the law and enabling decrees**

##### **Access to the law**

Despite the major efforts being made to ensure de jure transparency and the indisputable technical investment, the fact remains that the large number of regulations actually prevents the general public and small businesses from understanding the regulatory framework and analysing the nature of their obligations. De facto, access to the law for the non-specialist is trickier than it at first appears. The need for the style of writing to be clear and accessible has only very recently been made official and a number of legal documents remain dense and highly technical.

##### **Enabling decrees**

##### **Recommendation**

##### ***Improve legal certainty by enhancing the transparency of the procedures to implement the law***

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

##### **Evaluation**

Normally, the SGG ensures that decrees for implementing laws are published within a time frame that must not exceed 6 months after the enactment of the law. The ministry responsible for the bill must provide a provisional timetable listing the implementing decrees envisaged and a file setting out the basic provisions of these texts. Sometimes, however, the implementing decrees are never enacted, preventing the law from being implemented and creating an ambiguous legal situation. Thus, according to the available figures, the growing number of laws is generating bottlenecks, with some 21 laws

passed since 1981 that still remain unimplemented and 169 laws that have been partially implemented. At the same time, there is no particular rule relating to the preparation of subsidiary legislation other than the general directives on the preparation of regulations distributed to the administration by the prime minister's office. This situation does not therefore promote transparency for citizens.

The official procedures governing the preparation of regulatory texts in France only concern the wording of most important laws and to some extent decrees, which are subject to a mandatory opinion of the *Council of State*. However, in France the difficulty arises because of the multitude of lower-ranking regulations, which mean that the citizens affected by the regulations do not always know how the processes involved work.

Source: OECD (2004).

### ***Ex ante impact assessment of new regulations***

*The new impact studies system introduced by France places it at the forefront in Europe, at least in principle.* Since 1 September 2009, impact studies have been a constitutional requirement, which is a “first” in relation to other countries. Under the new provisions, an impact study must be attached to bills sent by the Government to parliament, failing which the Speakers of either of the two assemblies may refuse to place it on the agenda, including if they find it inadequate. If there is a disagreement between parliament and the prime minister, the matter is referred to the *Constitutional Council*. The impact study must also describe “accurately” how the bill fits in with Community law and domestic legislation, the status of implementation of the law in the fields concerned by the bill and the procedures for implementing texts. This extensive system does not exist so clearly in many other EU countries.

*A very stringent requirement and one which seems credible.* Recourse to a constitutional, framework text underscored the difficulty of making headway on impact assessment in the rule-making process without imposing a substantial constraint. Earlier efforts (based on prime ministerial circulars) did not succeed in making impact assessment a part of ministries' practice and culture. They also failed because of a lack of rigour and penalties. In the current system, three elements should be of help: the system results from a review process in which all players (government, parliament, *Council of State*, administration) are engaged. The obligations and the practical details for control are laid down very precisely by a framework law, and may not therefore be easily changed. Substantial penalties may be incurred if an assessment turns out to be inadequate (*Council of State* comments, refusal to put the draft regulation on the parliament's agenda, which may subsequently be endorsed by the *Constitutional Council*).

*The first months of the new regime are encouraging.* The provisions were legally applied on 1 September but had been introduced ahead of time in April 2009. Draft laws brought before the parliament now have a wide-ranging impact assessment which is published on the *Légifrance* site. The SGG has developed methodologies and reference materials, while leaving each ministry room for manoeuvre to adapt the impact assessment's structure and content to its field of activity. The initial months show that impact assessment dossiers have started to be used as arguments during the parliamentary debate, and are also taken into consideration in the broader public debate. The report by the National Assembly Committee of Evaluation of Public Policy, issued in November 2009, which draws up an overview of the application of the impact studies since April 2009, highlighted the improvement in the quality of the studies over time,

while noting the preponderance accorded to legal considerations in comparison to economic analyses.

*The current interest in impact studies must be maintained over time and various types of pressure must be resisted.* Commitment – at the policy and administrative level – of the various stakeholders, starting with the prime minister, the *Council of State* and the Law Committee of the National Assembly, has been a key factor in implementing the system. It is essential that the government and parliament continue to give a high policy priority to impact studies in the future if the threat of sanctions is remain credible.

*The system does not clearly incorporate public consultation procedures and does not sufficiently draw attention to the option of maintaining the status quo.* To ensure that impact studies are a genuine decision-making tool, it is essential that they are accompanied by a public consultation process to gather the elements required for good decision-making. The studies' publication (and the important comments received) should contribute to the tool's quality. For the tool to be useful in practice, it is essential to summarise the main conclusions in a short version which enables the various options to be easily compared. During the interviews, many respondents highlighted the pressure that existed to produce legislation quickly without necessarily considering the need to have recourse to a regulation first of all. The impact study should enable the question of the need for the law to be very clearly posed during the process. This requires that studies start sufficiently far upstream of the reform project.

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**Recommendation 4.3. Define a policy for consultation regarding impact assessment. Clearly integrate the “zero option” into the initial phase of the impact assessment process.**

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*The methodological tools must be strengthened.* Developing impact assessment requires the methodology to be updated and developed in greater detail, particularly for the economic analysis and the cost calculations (so far as possible), a point raised by several interviewees. With regard to calculating the cost of administrative information obligations, the *Oscar* tool must continue to be developed and updated so that it remains relevant. The effort to determine what statistics need to be collected must also continue. Particular attention should be given to the impacts on France's competitiveness internationally.

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**Recommendation 4.4. Strengthen the methodological tools, including quantification of costs as far as possible. Establish an adequate framework and sufficient resources for the maintenance of the *Oscar* database.**

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*The right balance must be struck when determining the system's scope and the proportionality of the effort devoted to impact assessment.* Many agree in saying that impact studies should be targeted if the system is to be made operational. The concern for proportionality should not, however, lead to important projects being left to one side. The current system is mandatory for all bills brought by the government and does not include bills brought by the parliament. Nor does the obligation of an impact study apply to draft decrees, even if the government considers carrying out a complementary study when drawing up enabling texts to be good practice. No details are given as to the updating of the impact study to take account of amendments to a draft law. The impact study should be seen as an incremental process which ends with the adoption of the law. It would also be useful to initiate deliberation on the content and degree of accuracy of the study on the

basis of the importance of the draft text, to determine the appropriate scale of efforts (see the United Kingdom, for example). “Common sense” should prevail.

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**Recommendation 4.5. Consider extending impact assessment to draft decrees. Encourage a similar development for draft laws initiated by members of Parliament as well as for parliamentary amendments.**

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*An ambitious reform has been initiated, and institutional capacities need to match this ambition.* The SGG must ensure that impact assessments are undertaken from the start of the drafting process, that a methodology is developed, and that support tools are put in place. The quality and the reliability of the current impact assessments depend to a large degree on individual ministries. It is important to improve economic skills so that economic aspects are better taken into account, both in the SGG and in the ministries. Calling on consultants would not be the right way to solve this problem. One of the main reasons for impact studies is to encourage the administration to initiate deliberation on the various options open. If the studied is prepared externally, this opportunity is lost. What is therefore required is investment aimed at strengthening assessment capacities within the administration. It is also important to strengthen the *Council of State's* capacities to evaluate impact assessments.

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**Recommendation 4.6. Integrate economists into the teams in charge of impact assessment. Set up a common training programme across ministries to promote culture change.**

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*Evaluation is a key element in ensuring the robustness and effectiveness of impact studies.* It is already predictable that impact studies will be subject to a thorough examination by the government’s Secretariat General, the *Council of State*, the parliament and (if consulted) the *Constitutional Council*. Regular evaluation of the system is essential to ensure not only that the impact studies are indeed carried out, but also that they constitute high-quality aids to decision-making and provide the support required for the optimal drafting of rules. It may also be that with hindsight, the studies may not have accurately targeted the effects of a law. The evaluation must also enable the system to be adapted (*e.g.* extension of its scope, development of quantification methods and tools). The system should be sufficiently accurate and visible.

*There is currently no time limit scheduled for regular evaluation of the system.* Three bodies are or may be called upon to carry out this evaluation. Firstly, the National Assembly Committee of Evaluation of Public Policy, recently established following the constitutional reform, is already responsible for analysing the quality of special impact studies and could provide overall monitoring of the system. Its report of November 2009 on the control criteria of impact studies constitutes a step in this direction. Secondly, the *Council of State*, in the section of its annual report devoted to its consultative role, could also be called upon to draw up a report on the application and effectiveness of the system. Thirdly, the *Cour des comptes* could also intervene to evaluate the system over a longer cycle, notably by evaluating the quality of forecasts on the basis of what actually happened in practice and by assessing, in a more global fashion, the policies of regulatory governance (as the European Union Court of Auditors has just done).

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**Recommendation 4.7. Evaluate the implementation of impact assessment in a regular and detailed way. Publish these evaluations. This could be integrated into the annual report proposed.**

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*The new system must dovetail into the broader scope of regulatory governance; it is a tool for collecting the stock and throughput which may enable a “virtuous circle” to be created.* Impact studies, as important as they are, are only part of the scope of regulatory governance. The studies must serve as a support for the other actions carried out by the government. It is an excellent tool for evaluating every draft rule taken individually, but it must also serve to provide an overall view of the evolution of regulation (what is on-going, to what extent the various sectors, the different areas in the country, companies, etc., have been affected by regulatory burdens). For example, if it proves that one sector of activity has been particularly affected over the previous year, this could provide potential ways forward in deliberating about the measures to be taken subsequently. This overall view would be completed by a regrouping with the simplification initiatives.

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**Recommendation 4.8. Highlight possible ways of integrating *ex ante* impact assessment and *ex post* simplification.**

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**Box 4.2. Excerpts from the 2004 OECD report: *Ex ante* impact studies**

**Recommendation**

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

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

**Evaluation**

At present, assessment of French practice remains difficult. An assessment of the impact studies performed in 2002 revealed that, while the formalities were observed, the contents of the document produced were of uneven depth and quality and did not sufficiently clarify the decision in question. The shortcomings noted during the analysis and observed by the *Council of State* have not really been rectified. According to the *Mandelkern* report of 2002, and the analysis of the *Council of State* of 2002 on a sample of impact studies, these documents remain a formality, drawn up only as a result of the obligation imposed by the *Council of State* and the Government Office of Secretary General. However, this does not mean that the *ex ante* assessment is not carried out, but that it is done differently, outside

this framework.

Integrating the RIAs with the policy-making process, by starting at as early a stage as possible, should bring to the policy making process the discipline of systematic assessment of costs and benefits, provide for identifying alternatives and seeking the best policy option. France's deviation from this principle has effectively rendered impact studies meaningless: usually the study is carried out late, *ex post*, on average 48 hours after the decision has been brokered, and it amounts essentially to a summary justifying the legislation in question. This necessarily prevents the impact study from being an overview tool contributing to the decision. It is therefore just a formality and an additional administrative cost.

### **Political support over time**

The use of the RIA must be supported by the highest levels of government. Despite a clear political commitment in 1995-96, when the practice was begun, it has to be pointed out that with the end of the State Reform Commission in 1997, the whole impetus was no longer the same and there was strong scepticism among most of the government departments and senior officials. The document recommending the impact studies, which is a circular, does not have much force of law within the French administrative legal system. Because, apart from the political sphere, the idea had no permanent champion within the government, it fell into abeyance as political support weakened.

### **Consultation**

In France, the impact study is made public, but only at the end when it is submitted to the Council of Ministers, which in fact prevents any involvement of the public beforehand. The publication of the RIAs as early as possible should encourage those responsible to improve their draft analysis, as it will be made public.

### **Methodology**

In France, the content of impact studies is of uneven depth and quality, insufficient to clarify the decision. This does not mean that decisions are not analysed, but analyses do not use a general framework for taking into account the costs and benefits in terms of social and economic externalities. The difficulty of measuring social benefits, and the absence of any structured and systematic approach severely reduces the usefulness of the impact study approach for supporting decision-making.

Data collection strategies exist within the economic studies and statistics analysis departments of the ministries, and the INSEE (French National Institute of Economic and Statistical Information). Where data exists, a quantitative analysis may be carried out. Where it does not exist, RIA requirements are not currently sufficient to orient the production of the statistics system, which is being carried out over the long term using powerful tools.

### **Targeting**

RIA efforts should be targeted at regulations with the greatest impact and greatest likelihood of improving results. However, in France, impact studies have been required for all legislation and decrees in *Council of State*, being based on the legal importance of the legislation and not its economic impact. In the United States, RIA requirements are subject to an economic impact threshold of USD 100 million, or where the rules might generate costs for a specific sector or region, or adversely affect competition, employment, investment, productivity or innovation.<sup>1</sup> Consequently, the enforcement of the impact study becomes too significant in relation to the technical resources available in the ministries, and is only observed from a formal perspective. For legislation prepared with a sufficiently long time frame, these studies are particularly detailed and of high quality. Thus, the examples quoted for universal health insurance and bio-ethics, in fact, follow an important inter-departmental preparatory document within the framework of the Planning Agency for the former, and with an experts advisory authority for the latter.



### **Responsibilities and capacities**

In order to involve the regulatory authorities, while assuring quality control and consistency, responsibility for the RIA should be shared between the regulatory authorities and the central body in charge of quality. However, in France, the official responsibility of the central unit, the General Secretariat of the Government, is to ensure that there is an impact study, not to control its quality. In doing so, the General Secretariat of the Government conforms to its role of Statutory Office, ensuring that procedures are followed in terms of the official and legal environment framework, but not the intrinsic substantive contents of the legislation. The *Council of State* examines the legislation from a legal perspective, but as such, impact studies have no legal effect, and the *Council of State* has no legal means to control their economic content.

The officials drafting the legislation should have the necessary training to prepare the RIAs in order to assess the quality of the regulation, and to understand the methodological pre-requisites and data collection strategies. Training is necessary for the RIA to be perceived as a vehicle for structural change within the actual government departments. In France, the high quality of the initial training does not, however, leave any room specifically for the preparation of impact studies. This is also related to the lack of a methodological framework for impact studies.

*Source:* OECD (2004).

### ***Alternatives to regulation***

*Seeking alternative instruments to regulation is poorly integrated into French administrative and political culture.* It is often said that recourse to legislation is seen as the immediate response to a given problem. Rules are preferred to other alternative instruments. A subject not much mentioned during the interviews.<sup>2</sup> Impact studies can play a major role in moving this culture forward by posing two key questions:

- Does legislation exist already and, if so, is it applied (effective implementation might be an alternative solution)?
- Is the adoption of a law necessary to achieve the given objective?

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**Recommendation 4.9. Ensure that impact studies fully integrate the analysis of alternatives to regulation (including the option of the maintaining the legal status quo – see Recommendation 4.3.**

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### **Box 4.3. Excerpt from the 2004 OECD report: Alternatives to regulation**

Seeking alternatives to regulation is not a key feature of the French system. This is due to both the centralised practice of a country with written Roman law, and to the role of the European framework. However, there is concern on a political level: a government directive of May 2002 requires ministers to try to prevent excessive legislation and regulation and to seek alternative solutions to enacting laws. Nevertheless, these directives have no legal value and are not supported by a systematic approach aimed at questioning the necessity of any new regulation.

*Source:* OECD (2004).

## Background

### *The legislative and regulatory structure in France*

The power to introduce legislation is vested in the prime minister, deputies and senators. Bills can be introduced by the prime minister (government bills) and by Members of Parliament (parliamentary bills). The vast majority of texts passed by parliament are government bills (almost 90% at the last session of parliament in 2007 to 2008). There are substantially more parliamentary bills put before the parliamentary assemblies than government bills.<sup>3</sup> Legislative initiatives by Members of Parliament have become much more frequent since October 1995, when monthly sittings were reserved for an agenda tabled by the assembly. This trend is set to intensify as the constitutional revision of 23 July 2008 introduced a shared agenda for each of the assemblies and the executive (effective since March 2009). Another significant change in procedure is that debates on bills as a general rule now focus on the texts adopted by the Commission.

Normative instruments are ranked according to whether they are legislative or regulatory instruments. Article 34 of the 1958 Constitution restrictively defines subjects pertaining to the legislative domain following specific criteria, which are neither organic (dependent on parliament) nor procedural (the legislative procedure).<sup>4</sup> If a text is not considered a law, then it belongs by default to the “regulatory” domain. Most regulatory documents (decrees and orders) are designed to stipulate conditions under which a law will be applied.

#### **Box 4.4. The legislative and regulatory structure in France**

It should be noted that all of the great French jurisdictions (the *Council of State*, the *Constitutional Council* and the *Court of Cassation*) as well as most of the supreme courts of European Union member states have found that international treaties, particularly EU treaties have greater force than law, but less force than the Constitution, which is the highest of the laws of the land. Nevertheless, the supremacy of the Constitution must take into account requirements relating to France’s membership of the European Community.

#### **Legislative texts**

Other than “simple” or “ordinary” laws, passed by parliament on the legislative subjects stipulated in the Constitution, there are two special categories of law.

- *Constitutional laws* revise the constitution in accordance with a procedure set out in Article 89 of the Constitution. A bill must be voted on the same terms by both assemblies. The revision is final once approved by referendum. However, in the case of a prime minister’s Bill, the President of the Republic may decide not to submit it to referendum and instead submit it to parliament meeting in Congress (both assemblies meet) where it can be passed by a majority of three-fifths.
- *Organic laws*, according to Article 46 of the constitution, are primarily intended to clarify the workings of public authorities and to a strict constitutionality check and special voting procedures. Before being enacted, they are routinely subject to a constitutionality check by the *Constitutional Council* and, if the two assemblies disagree, they can be passed only by an absolute majority at the final reading in the national Assembly.
- *Budget laws*. These are subject to specific rules of procedure (*i.e.* brought before the national Assembly first, 70-day period beyond which the provisions can be implemented by

ordinances).

- *Social Security Budget Laws.* Are subject to special rules of procedure, based on the rules for Budget Laws.
- *Expenditure planning laws* set out government policy objectives in a given area and the resources it plans to devote to them over a period of several years.
- *Laws authorising the ratification of international commitments.* They represent between a quarter and a third of annual output. They are government initiatives and are not amended.
- *Enabling laws.* The government may ask parliament to authorise the taking of measures that are normally in the domain of statute law by means of ordinances (Article 38 of the Constitution). The authorisation is granted under a law stipulating the time limit for the authorisation, its purpose and the field in which the government intends to implement the measures. The ordinances are adopted by the Council of Ministers after consultations with the *Council of State* and are effective immediately but lapse if the ratification Bill is not presented within the time limit set by the enabling law. This mechanism is used for highly technical subjects (administrative simplification). It has sometimes been used for highly sensitive reforms (1996 Social Security Reforms).

#### **Regulatory texts (decrees, orders, circulars)**

Regulatory texts are intended to stipulate the conditions under which the law will be applied.

- *Decrees.* These are regulatory acts normally signed by the prime minister, who, according to the Constitution, has standard regulatory authority. Certain decrees are however discussed in the Council of Ministers, and therefore signed by the President of the Republic, who presides over the Council of ministers, either because a text of higher level stipulates so, or because the government thinks that the text deserves such process. The laws often stipulate that certain decrees which are necessary to their implementation, will be taken according to the *Council of State*, in order to better guarantee their legal quality. The decrees taken after advice of the *Council of State* and those taken after a discussion in the Council of Ministers (a decree can have both), can only be amended following a decree taken under the same circumstances as the original.
- *Orders.* These are acts lower in rank than decrees, emanating from a lower administrative authority than the President of the Republic or the prime minister: ministers, prefects, mayors, presidents of departmental or regional councils. They form part of the subsidiary regulatory power that ministers have to ensure that the services under their authority operate properly. They can also enact regulatory measures in matters where a legislative or regulatory bill has given them this power. Apart from these cases, ministers do not have any regulatory power. The order, like the decree, includes both introductions that refer to previous regulations and enacting clauses specifying the contents of the document and its legal effects. The orders can be of a regulatory nature when they set down a general rule, (e.g., a municipal order prohibiting parking) or an individual order (e.g., appointment).
- *Circulars.* These are instructions sent by the prime minister to his ministers or by superior administrative authorities (ministers, chancellors, prefects, etc.) to their subordinates. Circulars may include clarifications on the interpretation of a law or a decree, as well as instructions on what to do to implement it. Over 10 000 circulars are drafted by the different ministries each year. The public can file for judicial review of a circular especially if it contains compulsory provisions [SB34]. Judicial review of the legality of circulars centres mainly on the correct interpretation of the decree in force.

- Used mainly in the fiscal field, *advance rulings* allow the administration to take a stance on a (fiscal) situation ahead of time (prior consultation by a member of the public). Advance rulings can be a means of simplifying things and increasing legal certainty for citizens. They can be upheld before the courts, but their scope of application is limited inasmuch as a given advance ruling can only apply (and be upheld) to situations that are strictly identical.
- Some *authorities* have regulatory power, which consists in organising a sector of activity by establishing rules. This regulatory power, which is vested in the prime minister or the President of the Republic in principle, is exceptionally granted to arm's length agencies. It is by no means an autonomous regulatory power: it applies only to limited measures and remains subordinate to laws and decrees. In some independent administrative authorities, this practice extends to issuing sometimes detailed general regulations (see, for instance, the general regulations of the Financial Market Authority) and powers of "recommendation". Even though these frameworks are not legally binding, they are applicable *de facto* to the vast majority of operators. These non-binding regulations (soft law) tend to be especially important for independent administrative authorities which act as arbitrators in a competitive system, as the preferred consensus-based mode of regulation.
- Decisions of *competent professional bodies* regarding self-regulation and devolution of a derived regulatory power.

### *Soft laws*

In theory, France's institutional framework leaves very little room for the "soft law" system. In practice, complex laws and laconic wording make interpretive texts necessary. These interpretations can sometimes exceed their strictly non-mandatory role and take on a regulatory character, although judicial review by the *Council of State* keeps this process in check. In actual fact, this "soft law" system has a major impact, even though no restrictive drafting rules necessarily apply and the economic impact may not necessarily have been properly assessed. Together, these circulars and instructions could form a sort of "underground legislation" (Warsmann, 2009).

### *Trends in regulatory output*

Regulatory inflation, as evidenced by the increasing volume and complexity of substantive law, is regularly condemned in France as giving rise to legal uncertainty, to indirect costs for the economy and society and to doubts about the credibility of public policy. The issue is very much to the fore in a number of reports published on regulatory quality over the past few years, including the 2002 *Mandelkern* report, the 2006 report by the *Council of State*<sup>5</sup> and indeed the 2000 *Warsmann* report. It was highlighted in the 2004 OECD report (Box 4.11) and was raised by practically all of those interviewed (government departments and stakeholders) by the OECD team in 2009. While several EU countries are reporting a steady increase in the number of regulations produced each year, what makes France different is the attention it gives to the problem.

#### **Box 4.5 2004 OECD report: Regulatory inflation in France**

The costs of regulatory inflation gradually became obvious: growing economic and social intervention by the state generated massive reliance on regulation. In thirty years, the average number of laws rose each year by 35%. This data underestimates the true facts because laws are only one part of the regulatory system alongside decrees, orders and circulars of all sorts. For instance, there were 82 000 decrees in force in 1991, and annual output at the time was 670 decrees per year. Production has

greatly increased over the last few years with more than 11 000 additional decrees issued between 1995 and 2002. Moreover, the average length of such texts increased from 93 lines for a law in 1950 to 220 lines in the 1990s. The official gazette was 2.4 times as large in 1990 as in 1976. These data are for flows, since there is no statistical instrument for systematically measuring the existing regulatory stock. However, some analysts estimate the stock at 8 000 laws and 400 000 various regulatory documents including decrees, orders and circulars.

As in other OECD Member countries, one reason for the increasing complexity of the law is the increasing number of sources, particularly international and community law and new areas of intervention. Another is what the *Council of State* termed “regulatory excesses” or the *Warsmann* report, the “French malady” *i.e.* using norms as a means of communication and response to crises, professional lobbying, and public opinion in favour of new laws and the symbolic force of the law which still permeates French legal culture (*Conseil d’État*, 2006). Those interviewed by the OECD, referred to France as a “country of regulation”.

Efforts to gauge regulatory output reflect this concern. The SGG keeps a count of the legislative and regulatory texts available on the *Légifrance* website. According to its count, the volume of laws and decrees measured in number of pages of the official gazette increased by 30% from 1970 to 1990 and by a further 30% since 1990. The number of new laws and ordinances rose from 410 over the period 1994 to 2000 to 535 over the period 2001 to 2007, while the number of new decrees rose from around 8 500 to close on 10 700. As of 1 July 2008, the number of legislative texts stood at 2 619 (of which 20% were ordinances) and the number of regulatory texts stood at 22 883 decrees (as of 1 July 2007).

**Table 4.1. New texts produced, 2001 to 2007**

	2001	2002	2003	2004	2005	2006	2007	Total period
Laws	40	34	56	40	50	45	40	305
Ordinances	19	12	18	53	85	28	15	230
Total legislative texts	59	46	74	93	135	73	55	535
Council of Ministers decrees	44	77	42	54	67	65	70	419
<i>Council of State</i> decrees	496	638	504	562	707	765	792	4 464
Decrees	790	890	758	864	919	955	1 029	6 205
Total decrees	1 286	1 528	1 262	1 426	1 626	1 720	1 821	10 669

*Notes:*

- Laws authorising the ratification of international treaties or agreements are not counted.
- Joint *Council of State* and Council of Ministers Decrees are included under the heading “Council of Ministers Decrees”.

Source: [www.Légifrance.gouv.fr](http://www.Légifrance.gouv.fr).

### ***The development of legislation***

#### *The process of drafting new legislation*

When drafting legislation or regulations, the government must comply with a certain number of legal mechanisms, the content of which may not be avoided but which may vary depending on the category of the legislation. The various stages in drafting legislation (Annex B) depend above all on the type of text involved (government-initiated

bill, parliament-initiated bill, order, decree). Specific provisions are in place for the transposition of European directives (see Chapter 7). There is no such detailed preparation circuit for orders and circulars as for laws and decrees and they may be signed by one or more ministers (or by the director of a central administration under the aegis of the minister) before being published in the official gazette.

#### Box 4.6. The stages in the legislative process

##### 1. The initiative

The initiative for a law lies both with government and members of parliament (members of the lower and upper houses). Both the government and members of parliament may introduce bills.

The *Council of State* must be consulted on any draft legislation prior to its being put before any Council of Ministers meeting. The procedure for drafting a bill includes other consultative obligations which must be accompanied upstream by the examination of the draft legislation by the *Council of State*.

Inter-ministerial consultation generally gives rise to one or more *ad hoc* meetings chaired by the prime minister or by a member of his cabinet in order to clarify the terms of the decision and to try to obtain a solution based on consensus. There are more than 1 000 inter-ministerial meetings per year, the purpose of which is to finalise a draft law or decree. Framework legislation relating to overseas affairs calls for consultation of the territorial assemblies for draft legislation relating to them (or which include at least specific adaptation provisions). Similarly, draft laws or decrees containing provisions specific to Corsica must be submitted to the Corsican Assembly for preliminary consideration.

Consultation of external stakeholders occurs via consultative bodies within central administrations and which include representatives of the various parties involved. This consultation may have a mandatory or optional character (see Chapter 3).

European Community regulations contain obligations to notify the European Commission in advance in certain areas (government aid, technical regulations, broadcasting regulations, new essential requirements for exercising a service activity).

##### 2. Submission of legislation

Government- and parliament-initiated draft legislation must be examined by both houses of parliament which exercises the legislative power (adoption of law and checks on executive power). In France, the parliament is composed of two chambers: the National Assembly and the Senate. A bill may be submitted indifferently (with certain exceptions) either to the Bureau of the National Assembly or that of the Senate. A parliament-initiated bill must, however, be submitted to the Bureau of the assembly in which the member of parliament who introduced the bill sits.

##### 3. Examination by the first assembly

Draft legislation is first examined by the parliamentary commission competent in the areas concerned by the bill. The commission nominates a *rapporteur* who studies the text and writes a report. The *rapporteur* may, just like the other members of the commission, propose amendments to the text of the future legislation. The report is then adopted by the commission.

##### 4. The vote by the first assembly

The draft law, once introduced on to the agenda, may be examined by the first assembly before which it was brought (National Assembly or Senate). Depending on the case, deputies or senators vote first on each article and amendment, before voting on the whole text. Once adopted, the draft legislation is sent to the second assembly (Senate or National Assembly).

### 5. The shuttle

The second assembly examines the bill according to the same rules. Amendments may also be voted upon. The draft legislation must then go back to the first assembly to be re-examined. This is known as the shuttle. During this phase only modified articles are studied.

### 6. Adoption

The draft or bill is adopted under the same terms by the two assemblies. In the event of disagreement, the Government may convene a mixed parity commission. It is composed of 7 deputies and 7 senators who must propose a joint bill voted subsequently by each assembly. Should this fail, the bill is re-examined in both assemblies and the Government may ask the National Assembly to have the final say.

### 7. Promulgation

The bill is then promulgated by the President of the Republic within 15 days. During this time the President may request a re-examination of the bill and the *Constitutional Council* may be called upon to check that it is not contrary to the Constitution. The promulgated bill enters into force after being published in the Official Journal of the French Republic in which the laws and regulations and application decrees are published.

The procedure for drafting bills and decrees (initiated by the executive) is characterised by the following factors:

- The initiative for and drafting of legislation are decentralised within each government department, which chooses its own internal organisation. Draft bills are drawn up by the department administrators (and not by specialised legal teams) who are also responsible for carrying out any impact assessments necessary.
- Preparation of draft bills and decrees includes various formal obligations relating to inter-ministerial consultations and consultative committees (Box 3.2). Draft parliamentary-initiated legislation is not subject to the same obligations.
- The *Council of State* must examine all draft laws and orders (once the inter-ministerial consultation and consultative committee stages have been completed) before they are submitted to the Council of Ministers, as well as the most important draft decrees, known in law as “*Council of State* decrees” (Box 4.7).
- The prime minister supervises legislative production emanating from the various government departments and arbitrates in the event of disagreement between ministers. It is to him, constitutionally, that the initiative for new law falls, concurrently with members of parliament (Article 39 of the Constitution) and it is his duty to ensure that the laws are executed (Article 21 of the Constitution).<sup>6</sup> Draft bills or decrees must have the formal approval of the prime minister before being submitted to the *Council of State* and to the Council of Ministers.
- The General Secretariat of the Government (in close co-operation with the prime minister’s cabinet) plays a co-ordinating and monitoring role in drafting new legislation. It is informed at an early stage of the draft legislation. It formally intervenes when the draft law or decree is introduced into the government’s working programme. It determines, with the minister carrying the bill, the impact assessment and intervenes in settling any inter-ministerial disputes. It is present at

all the main stages of the process, such as requesting the *Council of State's* opinion, entering in the Council of Ministers' meeting agenda and when the bill is presented in Parliament (Box 4.7).

In application of Article 61 of the Constitution, laws definitively adopted by parliament may be challenged, within a certain time frame preceding their promulgation, in the *Constitutional Council*, which has one month to give its verdict (eight days if the government activates the emergency procedure). This right applies to the President of the Republic, the prime minister, the National Assembly speaker, the Senate speaker or to 60 members of the lower or upper house. A provision which is declared unconstitutional on the basis of Article 61 may be neither promulgated nor applied. Regulatory decrees issued by the government may be contested in the *Council of State* within two months of their publication.

#### **Box 4.7. The role of the General Secretariat of the Government and of the *Council of State* in the process of drafting legislation**

The General Secretariat of the Government plays an important role as “checkpoint guard” in monitoring the preparation of legislation and regulations. In addition to its role far upstream in the scheduling of government work, it intervenes at decisive stages in the drafting of legislation. In certain cases the legislation and law quality department (within the Government Secretariat General) may contribute to the first stages of drafting legislation by providing expertise, for example on a legal problem or on the impact assessment. In any event, the department intervenes in the final stages of preparation of the text, before the text is passed on to the *Council of State*. It provides its expertise to the prime minister's cabinet in arbitration at the stage of inter-ministerial validation of legislative or regulatory draft bills. It also intervenes before regulations (decrees and orders) are presented for signature by the prime minister or by the President of the Republic prior to publication in the Official Journal. This check relates both to the legality of the draft law and to the editorial quality of the legislation. It prepares the six-monthly schedule for the government's work, on the basis of ministerial proposals, and the scheduling of the enabling texts. It ensures the validity and quality of the draft legislation presented at Council of Ministers meetings and thus carries out an upstream check on the check done by the *Council of State*.

The *Council of State* issues a recommendation on the validity of the legislation. More specifically, when it examines draft legislation, it gives its opinion on:

- the presentation, ensuring that draft legislation is well-written;
- the validity, checking that competence rules are complied with and, in respect of content, compliance with hierarchically superior legislation; and
- the expediency, drawing up an assessment of the advantages and disadvantages of the legislation. This does not mean political expediency.

The government is not obliged to follow the advice of the *Council of State* but it may only enact the bill adopted by the *Council of State* or the draft in its initial state. However, if it decides not to pay any attention to an irregularity pointed out by the *Council of State* it runs a greater risk of litigation.<sup>8</sup> Even if the *Council of State* recommendation in its consultative form does not include its contentious parts, it is very rare for the core analysis to be different. The government has the option of consulting it for a recommendation on any other regulatory legislation. The *Council of State's* recommendation is secret but the government may make it public and the annual report of the Council may refer to mention certain *ex post* recommendations.



### *Scheduling new legislation*

#### The government's programme of work

The government's programme of work (PGT), which details the main orientations of the government, field by field, is set out every six months. This enables a political will to be expressed and priorities adapted by checking that government policies are consistent. It includes the list of draft legislation that the government intends to submit to a vote in parliament, the list of draft ordinances and decrees for which introduction into the agenda of the Council of Ministers' meeting will be proposed, and the list of matters that are to be the subject of a communication in the Council of Ministers (oral presentation by ministers of their action within a field under their charge). The programme of work is therefore an instrument for organising legislative and regulatory activity, allowing the forward planning and timely scheduling of the business of the *Council of State*, the Council of Ministers and the parliamentary agenda for the government's part. Since the programme of work is simply indicative, if necessary it can be modified to take account of new requirements arising from current events (economic recovery plan following the financial crisis, for example).

The themes included in the work programme are subject to proposals made by each member of the government. These proposals are collected by the SGG, which puts them into a uniform format. They are all then submitted to arbitration by the prime minister. The government's programme of work is not made public, without necessarily being classed as being in any way confidential. Special provisions apply to the programming of the transposition of Community legislation (see Chapter 7).

#### The programming of enabling decrees

The prime minister oversees the drafting of new legislation emanating from the various ministries. In the case of disagreement, it is the prime minister who arbitrates. In matters other than those relating to the law, but also in order to take the implementing measures required, he has regulatory power under the ordinary law, subject to the President of the Republic's own powers. Ministers themselves only possess a subsidiary regulatory power, in order to determine, by means of an order, the terms of technical implementation, when a text of higher value so provides, and to determine organisational rules for the departments placed under their authority.

The full effect of legislative reforms depends upon rapid publication of the necessary implementing measures (decrees and orders). Delays, or the absence of publication of decrees regarding the implementation of laws have succeeded in rendering legislation totally or partially inapplicable in certain cases, such as those noted in the 2004 OECD report. A circular from the prime minister issued on 29 February 2008 defines an obligation of result for each member of the government in order to ratify the implementing legislation within a maximum period of six months from promulgation of the legislation. It establishes a follow-up system comprising three principal elements.

- Each minister must designate within his central administration a structure charged with co-ordinating the work of implementing laws and reporting to the prime minister's private office and to the SGG.<sup>9</sup>
- An inter-ministerial scheduling meeting is organised following promulgation of every law. A provisional schedule of the necessary enabling decrees is drawn up,

communicated to parliament and published on the *Légifrance* website (where they are updated as and when the expected legislation is published).<sup>10</sup>

- A report on the implementation of legislation is made every six months with regard to every government department and published on the Internet.<sup>11</sup> The obligation to take action before implementation measures are published is also included in the impact assessment (see below).

The circular of 29 February 2008 is based on or around several systems for the oversight of the application of laws by parliament:

- Under National Assembly rules,<sup>12</sup> the *rapporteur* of a law or, by default, another deputy designated by the competent commission, presents a report to the latter on implementation of the law six months after its entry into force. If the necessary regulatory draft legislation has not been adopted, the commission hears its *rapporteur* after a further six-month period.
- In the Senate, a report on the implementation of legislation summarising the observations of the standing committees has been presented every year since 2005 to the Conference of Speakers and is published.<sup>13</sup>
- Article 67 of the Legal Simplification Act N° 2004-1343 of 9 December 2004 provides henceforth for the presentation by the government of a report on the implementation of every item of legislation after a six-month period following its entry into force.

The rate of implementation of legislation (*i.e.* enacting of implementing regulations) has increased in recent times. Efforts have specifically concerned the implementation of newly-adopted laws. The six-monthly assessment at the end of 2009 demonstrated that the enforcement rate of laws promulgated between the start of the legislative period (1 July 2007) and mid-2009 was 84%, compared with 60% at 30 June 2008.<sup>14</sup> This rate takes account of the total number of provisions requiring an implementing text (which varies widely from one law to another).<sup>15</sup> The Senate's annual reports on the implementation of legislation indicate that the proportion of laws voted since 2001 awaiting regulatory follow-up has remained around 16% since 2004.<sup>16</sup>

### *Verifying legal quality*

The *Constitutional Council*, in its case law, has stressed the problem of the quality of legislation and regulations. In a 1999 decision, the *Constitutional Council* recognised the accessibility and intelligibility of the law as an objective of constitutional value,<sup>17</sup> which it reiterated in several rulings (see also Chapter 3). The principle is to be found applied in a law from 2000 relating to citizens' relations with government which states: "Administrative authorities are required to organise simple access to the rules of law that they enact. The making available and distribution of texts of law constitute a public service mission, the correct achievement of which is the responsibility of the administrative authorities". In a decision dating from 2003,<sup>18</sup> it was specifically considered that: "equality before the law [...] and the guarantee of rights [...] would not be effective if citizens did not have sufficient knowledge of the rules applicable to them if these rules presented unnecessary complexity.

In addition to accessibility to legislation, the accessibility of the law in France also requires a major to be made to present the law in force in a coherent and intelligible way,

which is the aim of the codification programme (see Chapter 5) and the promotion of good legislation rules. It is backed up by widespread use of information and communication technologies. France, moreover, sought to promote access to the law by information technologies as an element in its own right of the European Union's "Legislating Better" programme during its presidency of the European Union in the second half of 2008. For a decade or so, greater attention has been paid to the implementation of a precise methodology for producing legislation/regulations. It reflects a traditionally important consideration given to the drafting of legislation and a concern (expressed by several of the people who spoke to the OECD mission) to raise the level of quality of drafting of legislation and to harmonise drafting rules in a context in which legislative output is spread far and wide across the various government departments.<sup>19</sup>

The rules for drawing up new legislation, which were until now regularly cited in circulars from the prime minister, have been collected in the *Guide for drafting legislation (Guide pour l'élaboration des textes législatifs and réglementaires)*, often referred to as the "guide de legistic" (Box 4.8). This guide is considered by its originators (*Council of State* and SGG) as a key element in improving quality. It is used as an aid to organised training, notably at the initiative of several government departments and often with the help of members of the *Council of State*, for their own writers. Its wide distribution has, according to several people who spoke to the OECD mission, significantly contributed to a better understanding of quality requirements when drafting legislation by the various draftsmen throughout the administration. It is difficult to appreciate its reach precisely in the work of drafters of legislation. It is possible, however, to note that the guide, which is conventional in form, as well as hefty (550 pages), focuses on drafting legislation and does not include the entire process of preparing legislation.

#### Box 4.8. The good legislation guide

Drafted jointly by the *Council of State* and the General Secretariat of the Government, the good legislation guide was first published in 2004, then reprinted in a supplemented version in February 2008. It is available on the *Légifrance* site ([www.Légifrance.gouv.fr](http://www.Légifrance.gouv.fr)).

The work is presented in the form of topic-based datasheets which detail the rules for drawing up legislation (laws and orders) and regulations via theoretical considerations and practical application cases. The guide contains around one hundred datasheets compiled into the following sections:

- Preparation of legislation: this introductory section, which includes several reminders about the hierarchy of legislation and the various categories of legislation, aims above all to incite authors of draft legislation to question, first and foremost, the usefulness and efficacy of their draft legislation.
- Stages in the drafting of legislation: this section deals with questions of procedure by reproducing a large portion of the instructions of the prime minister.
- Preparing draft legislation: good practice or rules as solutions to problems posed when drafting have been listed and organised around ten or so topics.
- Rules specific to international and European Community legislation and to individual measures: it appeared necessary to develop specifically questions related to the preparation, monitoring and introduction into domestic law of international and EC legislation and to present the procedural specificities of individual decisions, combined with a reminder of the rules of competence in the area.

Flowcharts and practical examples: several charts are proposed in order to summarise responses to the main questions (relating to content, form and procedure) that government must ask itself when drawing up a text. For text categories – or sections of texts – which occur very frequently, datasheets present a *vade-mecum*: legal considerations, questions to be resolved and, insofar as possible, drafting models.

The deployment of an application since mid-2007 has enabled the legislation preparation chain to be made entirely virtual, from initiating government departments, via the *Council of State* where necessary, via the Government Secretariat General, up to the management of the Official Journals for publication.<sup>20</sup> It organises real-time transparent communications between the various stages of the process, enabling it to be speeded up and ensuring a high level of security. In this area it seems that France is above the average of EU countries.<sup>21</sup>

The *Warsmann* report proposed undertaking a comprehensive examination of the drafting of regulations in order to further reinforce legal quality. Several possible ways forward could be taken from this work: reinforcing the ability to draft legislation (better training, constituting teams of legal experts within ministries, as is the case in the British system, for example) and developing on-line tools to help those responsible for drafting. The report states that if legal teams are separate, the discussion is not centred solely on the drafting of a text. It is only in a subsequent stage that specialists raise questions which are truly based on law such as where to insert the new provisions and “is it a legislative or regulatory issue?”

### *The role of parliament*

The constitutional revision of 23 July 2008 (Annex D) made significant amendments to parliament’s role in respect of legislation. The difficulties encountered by governments during the Fourth Republic in getting their bills approved inspired a series of provisions aimed at ensuring control over legislative work by the government. The reform of July 2008 alleviated these constraints, notably with the institution of a sharing of the meeting agenda between the government and parliament (the agenda until then was under government control). The reach of parliamentary initiatives remains severely restricted by Article 40 of the constitution which prevents draft legislation which would reduce public resources or increase expenditure. The potentially greater portion left to parliamentary initiative following the constitutional revision raises the question of whether the procedures ensuring the quality of legislation proposed by members of parliament, including in the area of impact studies, needed to be strengthened. The risk often mentioned is that of offering a “shortened” procedure by dealing with government initiatives under the parliamentary initiative procedure.

### *Ex ante impact studies*<sup>22</sup>

#### *The policy in relation to impact studies*

#### The practice of impact studies until 2008

The introduction of impact studies in France dates back to the second half of the 1990s (to the 1970s for environmental impact studies). Until 2008, this was done via circulars from the prime minister to members of the government.

- A circular dated 26 July 1995 provided for impact studies for draft legislation and the main draft decrees to be carried out from 1 January 1996 onwards.
- Following an trial phase and its evaluation, a new circular from the prime minister dated 26 January 1998 made the performance of impact studies mandatory. The field of analysis chosen was quite broad at the outset: legal, administrative impact, impact on employment and on “general interest other than employment”, financial and budgetary effects.
- Two circulars from the prime minister, dated 26 August 2003 and 30 September, introduced greater flexibility into the system by recommending a more selective obligation in order to focus efforts on a quality-led approach capable of truly influencing the orientations of projects. They provided for the organisation of inter-ministerial scheduling meetings aimed at verifying the expediency<sup>23</sup> of the draft laws and decrees, studying alternatives to legislation and deciding on the need to carry out an impact assessment and the conditions under which it would be carried out.
- From 2006 onwards, the selection of draft bills calling for a detailed impact assessment was made at six-monthly government work scheduling meetings. In 2008, the government initiated impact studies for around one third of draft legislation, excluding laws authorising ratification of an international agreement or laws validating orders.

Successive reports devoted to the practice of impact studies unanimously highlighted the difficulty of ensuring that government departments exercised the necessary discipline. In 2002, the *Mandelkern* report stressed that the “exercise remains formal and tardy, the content is of unequal density and quality” (Mandelkern, 2002). The OECD 2004 report and the *Lasserre* report to the prime minister came to similar conclusions. In 2006 in its annual report, the *Council of State* acknowledged some progress in the organisation of ministerial departments but concluded: “The vast majority of *Council of State* draft legislation continues to be prefaced by a simple summary of the reasoning, which in effect is a justification, with varying degrees of argumentation, of the draft legislation by the department which drew it up. A step backwards has even been observed in this respect: after having remained purely formal, impact studies have been implicitly abandoned” (*Council of State*, 2006).

The discussions on impact studies demonstrated the need for a more constraining obligation. Ministerial departments have complied unequally with the instructions of successive circulars. As in many OECD countries, the difficulties of implementing impact studies stem from the accelerating pace at which draft legislation is prepared and, above all, from the lack of adaptation of the administrative culture and organisation. Another factor of difficulty has arisen from the absence of any real legal or political sanction in the event of non-application of the circulars on impact studies. The *Council of State* considered in its public report for 2006 “that it was now necessary to question the expediency of turning to a legal instrument higher up in the hierarchy of norms and designed to set out some procedural obligations, in particular to make the submission of a draft bill to both houses contingent on being accompanied by a prior evaluation of the impact of the reform”. It consequently proposed including such an obligation in a Framework Act, which implied that the Constitution itself referred to this beforehand.

### Fundamental review: Framework Act 15 April 2009

Following deliberations initiated in 2006, the constitutional revision of summer 2008 led to the instigation of the obligation for the government to accompany the submission of draft legislation to an impact assessment from 1 September 2009 onwards. Following the adoption by the two houses (upper and lower) of the Constitutional Act of 23 July 2008, Article 39 of the Constitution provided for a Framework Act to determine the conditions under which draft legislation is submitted to the National Assembly and the Senate and provided for the possibility of delaying the introduction of a bill into parliament's agenda, or consulting the *Constitutional Council*, should knowledge of these conditions be poor.

The Framework Act of 15 April 2009 defined these conditions, stipulating that “Draft legislation shall be the subject of an impact assessment” and defining precisely the basic content of the impact assessment (Box 4.15). The obligation does not limit itself to the existence of an impact assessment but covers all conditions determining the quality of this study. The impact assessment must cover the economic, financial, employment relations and environmental consequences and must include a “cost-benefit analysis expected from the envisaged provisions”. The impact assessment must also “accurately” explain how the draft legislation fits in with EC law and national law, the status of application of the law in the areas concerned by the project and the conditions under which the legislation is applied. Lastly, the Framework Act opens up the possibility for internal regulations within the assemblies to provide for the conditions under which government amendments must be subject to an impact assessment.

### Scope of application of the new mechanism

The Framework Act does not extend the obligation to carry out an impact assessment to all legislative output. In addition to parliament-initiated draft legislation, draft constitutional legislation, finance scheduling legislation and draft legislation bills extending states of emergency are totally exonerated. Bills to obtain authorisation for ratifying or approving international treaties or agreements, in application of Article 53 of the Constitution, enter the field of prior evaluation as provided for by the draft Framework Act in a form adapted to their specific character. Draft law provisions under which the government asks parliament for authority to take certain measures within the area of legislation by way of orders and also draft bills aimed at obtaining parliamentary ratification of orders approved by the President of the Republic are subject to the obligation to produce the key elements for prior evaluation, as provided for by the Framework Act.

Nor does the obligation apply to draft decrees, even if the government considers that carrying out an additional study is good practice in drawing up implementing legislation. The *Warsmann* report (January, 2009) had recommended including the main implementation decrees for laws and to provide for a gradual extension of scope to all new legislation (Warsmann, 2009). The decision was made to limit this to government draft bills to avoid the trap of falling back into the formalism that had been widespread until then. Moreover, the government considers that the prior evaluation of implementation legislation may be carried out upstream when drawing up a draft law by envisaging, in advance, the conditions of application which will later be specified.

## Local authorities

Although there is no binding obligation for an impact assessment to be carried out for draft government legislation concerning local authorities, a specific consultative body has been set up to assess the financial impact on local authorities of draft regulations that concern them. The Consultative Commission for evaluating legislation (CCEN), officially inaugurated in September 2008, is composed of two-thirds local elected members and one-third representatives of government departments. It is mandatorily called upon to act by ministers on the financial impact of regulatory draft texts (decrees and orders) concerning local authorities and by the General Secretary for European Affairs on the financial impact of EC draft legislation which impacts local authorities either technically or financially. The government must communicate the draft to it with a presentation report and a financial impact datasheet which must enable the direct and indirect financial effects of the measures proposed to be assessed for the various local authority levels (see Chapter 8 for more details).

### Box 4.9. Legislation relating to impact assessment obligations

#### Excerpt from the Constitution

Art. 39. – [...]

Entry into force under the conditions laid down in law and Framework Acts necessary for their application (Article 46-I of the Constitutional Act N° 2008-724 of 23 July 2008).

The presentation of the draft laws brought before the National Assembly or the Senate shall comply with the conditions laid down by a Framework Act.

Draft laws may not be placed on the agenda if the Conference of Speakers of the first assembly observes that the rules set by the Framework Act are not well-understood. In the event of disagreement between the Conference of Speakers and the Government, the speaker of the assembly concerned or the prime minister may call upon the *Constitutional Council* for its opinion, which it gives within eight days.

Under the conditions provided for in law, the speaker of one assembly may submit a draft law brought by one of the members of this assembly, for its recommendation, to the *Council of State*, before its examination by the commission, unless this is opposed by the Council.

#### Excerpt from Framework Act N° 2009-403 of 15 April 2009 relative to the implementation of Articles 34-1, 39 and 44 of the Constitution

Article 8

Bills are subject to an impact assessment. Documents detailing this impact assessment are appended to the draft legislation as soon as it is communicated to the *Council of State*. They are submitted to the bureau of the first assembly called upon to give its opinion at the same time as the bill to which they relate. These documents lay down the objectives pursued by the bill, list the possible options, excluding the intervention of new legal regulations, and present the justification for recourse to new legislation. They specifically detail:

- the way the bill dovetails with European legislation in force or being prepared, and its impact on the domestic legal system;
- the status of application of the law at national level in the area(s) covered by the bill;
- the conditions of application over time of the envisaged provisions, the legislative and regulatory texts to be abrogated and the transient measures proposed;

- the conditions of application of the envisaged provisions in the local authorities governed by Articles 73 and 74 of the Constitution, in New Caledonia and in the French South Seas and Antarctic Territories, justifying, where applicable, the adaptations proposed and the absence of application of the provisions to some of these authorities;
- the evaluation of the economic, financial, employment and environmental impact and the financial costs and benefits expected from the provisions envisaged for each category of public administration and natural and legal persons concerned, indicating the calculation method used;
- the evaluation of the consequences of the provisions on public-sector employment;
- the consultations carried out prior to the *Council of State* being called upon; and
- the provisional list of implementation legislation necessary.

#### Article 9

The Conference of Speakers of the assembly to the bureau of which the draft bill has been submitted, has ten days following submission to determine any non-compliance with the rules set out in the present. If parliament is not in session, this deadline is suspended until the tenth day preceding the start of the following session.

#### Article 15

The regulations of the assemblies may determine the conditions under which amendments by members of parliament, at the request of their author, or amendments by the commission called upon to give a ruling on the content may be subject to a previous evaluation communicated to the assembly before their discussion in session.

### *Institutional framework*

#### Role of principal stakeholders

The impact studies system applicable since 1 September 2009 applies several levels of control to the quality of impact studies and provides for a high level of political, or possibly legal, sanction.

- *The General Secretariat of the government.* Insofar as the impact studies are the responsibility of the entire government, just like the draft bills preceding them, they are submitted for comment to the other ministries concerned, under the aegis of the government's General Secretariat. The legislation and quality of law department within the Secretariat plays a co-ordinating and support role and in practice is significantly involved in this mechanism. It submits to the government departments a certain number of documents and tools for preparing impact assessments (impact assessment *vade-mecum*, map of existing resources for carrying out the impact studies). When work starts on a reform it also sets out, with the government department putting forward the reform, specifications for drawing up the impact assessment and identifies the contributions that could be asked of other government departments. The legislation department is thus also often called upon to give its assessment of the quality of impact studies on an informal basis. A team of 5 people is devoted to impact assessments.
- *The Council of State.* The government must append the impact assessment to preliminary draft bills submitted to the *Council of State* for an advisory opinion (mandatory for all draft bills). In its examination the *Council of State* is, then, called



upon to assess the quality of the impact assessment in respect of the requirements of the Framework Act.

- *Parliament.* When submitting a bill to parliament, the Conference of Speakers of the first assembly called upon may refuse to add it to the agenda on the grounds of non-compliance with the requirements of the Framework Act. When reforming its regulation in May 2009, the National Assembly set up the Committee for Evaluating and Controlling Public Policies, which may be called upon by the Speaker of the National Assembly or by the speaker of a standing committee to give its opinion on an impact study. The committee may also be called upon to carry out the preliminary evaluation of an amendment by a deputy or of an amendment by the commission called upon to express its opinion on the content.
- *The Constitutional Council.* Should there be disagreement between the prime minister and parliament as to the quality of impact studies in respect of the Framework Act, the prime minister and speaker of the assembly consulted may call upon the *Constitutional Council* to resolve the conflict.

The control and sanction mechanism primarily rests on the threat of referral to the *Constitutional Council*. The *Council of State* also plays a major role, based on referral to the *Constitutional Council*. Its opinion is merely indicative, but will be communicated to the *Constitutional Council* should the latter be consulted. All those whom the OECD team spoke to stressed that this mechanism constitutes a credible threat. The active participation of the *Council of State* and the parliament (and in particular the chairman of the Laws Commission) in discussions on impact studies over the past few years corroborates this view. Likewise, the opinion that the government Secretariat General gives may carry even greater weight insofar as it aims to prevent problems raised by the *Council of State*. The success of the mechanism also relies on the capacities and resources of parliament and the *Council of State* to control the quality of the impact studies. The National Assembly committee for the evaluation and oversight of public policies presented an initial evaluation report on the impact studies which confirms the level of requirement of the parliamentarians on the content of the impact studies and underlines the need for the National Assembly to adapt its internal organisation (National Assembly, 2009).

### Support and training

The SGG (legislation and law quality department) and strategic analysis centre (prime minister's department) are charged with providing methodological support to the ministries to carry out impact studies or to set up study teams, as necessary. The SGAE may also provide its support for matters relating to the transposition of EU directives. Provision has been made for additional training.

### *Methodology and procedures*

The reference methodology for carrying out impact studies has been revised over the last few years, in particular in 2006 following recommendations in the *Council of State's* public report. An impact study extranet has been set up. The latest edition of the good legislation guide (October 2007) includes guidelines for carrying out impact studies<sup>22</sup>, and government departments have a reference checklist for conducting impact studies (available on the impact studies extranet). The good legislation guide recommends that

specifications are drafted in conjunction with the other government departments concerned and the SGG so that a precise framework for evaluation can be drawn up.<sup>25</sup> These effects are described in general terms (for example, impact is not specified in terms of administrative costs nor is the effect on competition). It should also be noted that the guide is presented in a “literary” format and that there are no pre-established forms or checklists for the impact study.

The constitutional revision of 23 July 2008 and the Framework Act of 15 April 2009 should lead to significant changes in the methodology and, consequently, revision of the guide. The Framework Act imposes precise conditions, notably for quantifying impacts. It indicates that the evaluation of the economic, financial, employment and environmental consequences and the costs and benefits for each category of public administration and of physical and legal persons concerned must be done “accurately” and that the impact study must indicate the calculation method used.

The SGG has developed a *vade-mecum* (guide) which aims to help ministries make progress in terms of their analysis and to promote a standard format for the presentation of impact studies submitted to parliament. However, it was felt individual ministries should be left room for manoeuvre and to propose a reference tool which could be adapted to their own particularities (Annex C). A review of the methodology was started under the aegis of the SGG. In particular, the *Oscar* tool was developed to measure the cost impact of new regulations on the administrative burden of firms and government departments, based on the Standard Cost Model (SCM). This is a web application made available to ministries on the inter-ministerial intranet (Box 4.10). The SGG considers that systematic quantification is not feasible on a monetary basis, but that the quantification of types of impact is possible in physical or material terms, or even via a detailed description of the effects.

The DGME (French State Modernisation Agency) has drawn up a detailed guide to using the *Oscar* measuring tool, along with training aids. It helps ministries carry out measurement studies and to use *Oscar*. In 2009, when developing the tool, it was used to carry out five impact studies with the economy, budget and foreign affairs ministries. It also was used with the State Secretariat for Tourism in connection with law of the development and modernisation of tourism services and with the Ministry of Foreign and European Affairs in connection with a draft bill on government foreign action.

#### **Box 4.10. *Oscar*: Simulation tool for the administrative cost of new legislation**

The aim of *Oscar* is to enable the calculation, by simulation, of the administrative burden induced by new regulations on companies and government administrations for the civil service and has currently reached “the operational qualification phase”. The aim is to present it in the form of a web application accessible on line from the inter-ministerial intranet.

The aim of *Oscar* is to enable the calculation, by simulation, of the administrative burden induced by new regulations on companies and government administrations, thus helping determine its economic and financial impact (cost/benefit). The aim of *Oscar* is to obtain an idea of the scale of the administrative impact caused by new legislation.

It is presented in the form of a spreadsheet. It guides the user “step-by-step” through the calculations, providing a structured frame of reference and reference data to complete the study in question. A detailed user’s guide has been drawn up by the DGME along with training aids for users.

The method is based on the modelling of administrative costs of a new provision, divided into three phases:

- *Preparation*: this phase starts when the initiating department has a preliminary draft bill and finishes with the publication of the implementing legislation. In practice, this phase may not be taken into consideration due to its limited weight in the evaluation.
- *Initial deployment*: this phase lists all investments that the administration will have to make to transform the new provision into reality (training, modification of information systems, and distribution of forms).
- *Recurrent application*: this phase enables the administrative costs of implementation of the legislative and regulatory provisions to be calculated year-on-year for government and for companies.

*Oscar* uses reference data collected from DGAFP (*Direction générale de l'administration et de la fonction publique*), the INSEE statistics office and the Budget Directorate on the hourly costs of civil servants and the cost of company employees for each socio-professional category and sector of activity. Furthermore, the database resulting from the work of the MRCA (Measure to reduce the Administrative Burden) provides preliminary information on the default values in *Oscar* for the “initial deployment” phase and the additional learning cost and indicates reference values for the recurrent application phase to the user.

### *Public consultation and publication*

The Framework Act of 15 April 2009 provides that impact studies should accurately detail the consultations held before referral to the *Council of State*. How consultations will be integrated into the process of preparing impact studies has not yet been determined, however. The internal regulations of the National Assembly, following their reform in 2009, state that the impact study must be made available electronically “in order to collect all comments that may be made”.<sup>24</sup> This provision thus offers a possibility of opening up impact studies to public consultation, although this particular consultation takes place late in the regulation process.

Whereas to date, impact studies have remained internal government documents, publishing them became the norm on 1 September 2009. In fact, the prime minister took the decision to put impact studies on line on *Légifrance* when submitting draft bills to the parliament bureau. However, the government impact studies were not intended, as a general rule, to be published before a draft bill had been approved. The government does not exclude publication of the impact study prior to submitting a draft bill to the parliamentary bureau (a practice used for the law generalising active solidarity income), but has not as yet set out any precise policies in this area. It should be noted that, under the Act of 17 July 1978 on access to administrative documents, while the opinions issued by the *Council of State* with regard to draft bills are not documents that can be freely released to the general public, since 1976 numerous opinions have been published in its annual report with the consent of the government.

*Evaluation: Progress achieved*

Over the last few years, the impact study mechanism has been subject to numerous evaluations via *ad hoc* studies commissioned by the government and *Council of State* reports. These reports have made a significant contribution to the reform implemented with the constitutional revision of 23 July 2008 and the Framework Act of 15 April 2009.

The report of the National Assembly Committee of Evaluation of Public Policy, presented in November 2009, assessed the application of impact studies since April 2009. During the transitional period (April to September 2009), some twenty or so impact studies were submitted to the Parliamentary Assemblies. The Committee noted that greater weight was given to legal considerations than to studying the alternative options and the quantification of impacts. It stressed, however, that the quality of studies had improved over time. The committee analysed three impact studies carried out since 1 September 2009 and proposed a certain number of recommendations aimed at improving their presentation, content and procedures. It specifically demonstrated a level of requirement in respect of the evaluation of consequences and their quantification.

A major reflection on how to secure a closer alignment between initiatives aimed at controlling legislative throughput and stock was recently initiated.<sup>25</sup> The aim is not to think in terms of simple measures (one law repealed for every law adopted), but to reflect on implementing a series of mechanisms based on common objectives, *i.e.* managing regulatory output, improving the quality of the law and evaluating the effects on the economy.

***Ex post evaluation of regulations***

Several organisations monitor the correct implementation of regulation and supply information for evaluating regulations once they have been implemented:

- *The general inspectorates in the ministries monitor their respective administrations, and have a status which guarantees the objectivity and technical quality of their work.*<sup>26</sup> Their reports call upon the administration to react and are addressed to the minister. They can formulate proposals for reform. These reports are generally not published unless authorised by the minister.
- *The Council of State, the Cour des Comptes, and the Cour de Cassation publish an annual report which plays an important role in evaluating and advising on the application of regulations.*
- *The National Assembly Law Commission publishes a yearly report on the implementation of approved laws and an overall assessment for each legislature. It examines the ability of the government to implement the law using enabling decrees (on the monitoring of the publication of the enabling decrees).*

***Alternatives to legislation****Taking account of alternatives when drafting legislation*

The impact study undertaking during the drafting of legislation provides for analysis of several options, including the option of not legislating or regulating in response to the problem posed. For any draft bill, the Framework Act of 15 April 2009 requires the government to integrate possible alternatives to legislation into the impact study and to

describe the justification for recourse to new legislation. The good legislation guide proposes a list of alternatives to be considered.<sup>27</sup> It should be noted that the reflection on impact studies which preceded the 2009 reform, dealt with the question of alternatives to legislation in a relatively marginal way. The *Warsmann* report, for example, does not mention it in any detailed fashion in its proposal for a strategy towards better quality legislation.

## Principal forms of alternatives to legislation

### Self-regulation

The legal powers granted to private citizens to issue regulations or an impersonal and general nature is relatively limited in French law. Although self-regulation is practised in certain professions, the idea that firms can be trusted to propose rules and accept self-discipline and that the market can be trusted to sanction practices contrary to these rules is not very widespread in France. Where the area is of a technical nature and requires the association of professionals for legislation to appear legitimate, the law may entrust regulatory power to a body within the profession and, in most cases, subject to ministerial approval. Private authorities holding limited regulatory power may exercise it only insofar as the law allows them to do so and subject to control by the administrative courts. With regard to these authorities, minister and their departments exercise various types and degree of prerogatives depending upon the bodies involved: power to appoint leaders, presence of a government representative in the management structures, power to approve regulations.

The two principal examples of the delegation of regulatory powers are professional bodies and sporting federations.

- Eleven professions have professional bodies,<sup>28</sup> which enjoy various prerogatives of public power with a regulatory power granted to them by law. The responsibilities of these bodies are limited (organisation and internal functioning of bodies, drafting of essential clauses for model contracts for the profession). Ethical codes are prepared by the body but are implemented under a decree issued by the *Council of State*. The administrative judge has fairly wide-ranging competence with regard to professional bodies. Any unilateral administrative decisions taken by such bodies in the performance of their public service mission may be referred to the judge, whether such acts are of a regulatory or individual nature. The *Council of State* can also overturn jurisdictional decisions taken by bodies in the exercise of their disciplinary powers. The decisions taken by professional bodies can also give rise to actions for liability referred to the administrative judge.
- Sports federations, which are private-law associations, as part of the public service mission entrusted to them, take decisions of which some may be of a general, and therefore regulatory, nature and which apply to all associations or committees under their responsibility.

### Regulations negotiated as part of a contract

The use of contractual means is increasingly frequent, as noted by the *Council of State* in its public report for 2008 (*Council of State*, 2008). This is a variation on, rather than an alternative to, regulations in to the extent that the contract does not replace the regulation: extension or approval orders are always needed to make agreements reached

with professional bodies applicable to all (*erga omnes*). Traditionally used in the area of labour law (collective agreements), the use of contracts has developed in several areas, notably in relations between government and civil servants (agreement protocols) as well as with state-run companies (programme contracts) and local authorities (conditions for transfer of competences). The movement towards use of contracts also reflects the emergence of a concerted economic right and authorisation or sanction procedures that are quasi-negotiated, notably by independent authorities. The use of contracts has spread to new fields such as social security (agreements on objectives with social security bodies), the fight against social exclusion (return to employment contract) and tax legislation.

The Act of 31 January 2007 regarding the modernisation of social dialogue may increase the role of collective bargaining agreements compared with regulation in respect of employment relations. It provides that any government project involving reforms in the field of employment relations, employment or occupational training must first comprise a phase of discussion with the social partners (employee and employer inter-professional union organisations acknowledged at national level) aimed at providing a basis on which to open negotiations. These negotiations are based on proposals previously established by the government (“guideline documentation”) detailing its diagnosis, its aims and, where appropriate, the negotiating procedures envisaged. The social partners must inform public bodies should they wish to negotiate and what period they deem necessary so to do.

The use of a contract negotiated between the social partners may make the negotiated regulation more acceptable and ensure that it is properly implemented, although there is a risk that this might lead to a loss of general interest and the signing of “insider” agreements. It should be noted, however, that the government and the legislator remain in control of the final decisions as the laws adopted may differ from the agreement between the social partners if the government considers the latter to be insufficient. The agreements signed following the Act of 2007 on the modernisation of social dialogue provide contrasting examples. The rejection of the single draft work contract shows the limits of a reform strategy founded on negotiations between social partners. The new unemployment insurance agreement, which provides notably for a reduction from six to four months in time that a worker must be registered before being entitled to benefit offers an example of an agreement between social partners which improves the situation for “outsiders” (OECD, 2009).

#### Use of alternative economic instruments

Over and above the traditional alternatives to self-regulation and contracts, the environmental domain, as in other OECD countries, has illustrated the possibility of recourse to incentive-based economic instruments as an alternative to traditional prescriptive regulation. A broad range of economic instruments is used for environmental policy, such as the negotiable permit market and planning instruments (state-region contracts). Taxation is used very widely as an alternative instrument to regulation and the draft bills of the *Grenelle* Environment forum make taxation a key instrument in protecting the environment. Voluntary agreements are another interesting alternative for limiting economic losses related to public intervention, and were used by as early as 1975-76 to reduce pollution in classified facilities. Since then, voluntary agreements have been signed by certain companies in the automobile, glass production, aluminium and certain heavy chemicals industries. The agreements, however, require credible sanctions for non-compliance with the undertakings entered into and, until now, their legal value has not been acknowledged by the *Council of State*.<sup>29</sup>

### *Taking account of risk*

France has reorganised the way uncertainty and risk are integrated into regulatory output and, more generally, public policies, but according to a specific approach based on the general principle of “precaution”. According to this approach, taking risk into account implies that the public decision may result in “reversible measures” only, the implementation of which leave room for evaluation and enable the decision-maker to take control back at any time. The precaution principle thus provides transient risk management in relation to public service decisions. This approach is different from that developed by other countries such as the United Kingdom where the emphasis is placed on gaining a better understanding of risk factors in the very earliest stages of policy design, notably through innovative forms of consultation.

Food and environmental risk management (in particular following the food crises in the 1990s) has led to three distinct activities being singled out within the risk management model: evaluation of risk via scientific expertise, risk management *per se* and communication to/information of the public.<sup>30</sup> The food crises demonstrated the opacity often characterising the relationship between experts and public decision-makers in risk management mechanisms. The area of “expertise” has developed in committees, enabling risk evaluation and management to be separated. New structures have been created such as the Food Agency (Agence française de la sécurité sanitaire des aliments) and the Pharmaceuticals Agency (Agence française de la sécurité sanitaire des produits de santé). The government has also implemented preliminary information and consultation tools for the public, aimed at reducing potential risks that may arise out of lack of public understanding or the opacity of the system. This is the case, for example, with consultations relating to waste burial projects (within the framework of the CNDP), the promotion of the figure of the user and, on a more daily basis, the sounding-out of citizens’ expectations with regard to radio frequencies.<sup>31</sup>

## Notes

1. This means that the OMB administration examines around 600 regulations each year, *i.e.* 15 to 17% of the rules published (OECD 2002, “From Interventionism to Regulatory Governance”).
2. Several of those interviewed described France as a “country of regulations”.
3. From 1 October 2007 to 30 September 2008, 127 government bills and 436 parliamentary bills were brought before the National Assembly or the Senate. Over the same period, 89 government bills and 14 parliamentary bills were passed. *Source: Statistiques de l’activité parlementaire à l’Assemblée nationale* ([www.assemblee-nationale.fr/13/seance/statistiques-13leg.asp](http://www.assemblee-nationale.fr/13/seance/statistiques-13leg.asp); accessed 22 January 2010).
4. Organic laws are intended to clarify the workings of public authorities and are subject to a strict constitutionality check and special voting procedures (OECD 2004).
5. The general considerations of which were entitled “Legal security and complexity of law”.
6. In topics other than those in the area of law, but also to ratify the necessary application measures, the Prime Minister has regulatory power under the ordinary law, subject to the President’s own power. Ministers only have a subsidiary regulatory power to determine the conditions of technical application if higher value legislation so provides and to determine organisational rules for departments placed under their authority.
7. Note that new Article 61-1 of the Constitution, resulting from the constitutional reform of summer 2008, forms the basis of a constitutionality check by way of exception. See chapter 6.
8. The government may also not follow a recommendation given by the Council of State if the latter is founded not on criteria of legality or constitutionality but on a criterion of administrative expediency, but this remains the exception.
9. Circular of 30 September 2003. A leading civil servant in charge of the quality of regulation is appointed in every government department in which there is also a regulation quality charter.
10. [www.legifrance.gouv.fr/html/application\\_des\\_lois/liste\\_lois\\_13eme.html](http://www.legifrance.gouv.fr/html/application_des_lois/liste_lois_13eme.html).
11. [www.legifrance.gouv.fr/html/application\\_des\\_lois/accueil.html](http://www.legifrance.gouv.fr/html/application_des_lois/accueil.html).
12. In application of Article 86 of the National Assembly rules as modified by resolution N° 256 of 12 February 2004.
13. [www.senat.fr/doctrav.rapports\\_annuels.html#rapport](http://www.senat.fr/doctrav.rapports_annuels.html#rapport).
14. *Source: www.legifrance.gouv.fr.*



15. The enforcement rate is the number of provisions having been applied as a percentage of the number of provisions requiring an implementing decree.
16. Latest data available September 2008.
17. With the decision of the Constitutional Council N° 99 421 on the Codification Act.
18. Decision N° 2003-473 DS of 26 June 2003.
19. The *Warsmann* report noted a drop in quality. The Council of State noted that laws are increasingly detailed. For others, this can be summarised by “overly abundant, illegible legislation”.
20. *SOLON* application (online legislation operations organisation system).
21. Their checks may be legal or financial, concern the functioning of services, technical aspects or more generally the implementation of ministerial policy.
22. “Recourse to agreement-based solutions, incentives in the form of specific assistance or communication or training measures, reinforcement of the effectiveness of the law in force (enhancing monitoring or inspections, adjusting sanctions), developing mediation, introducing self-regulation possibly supported by public authority recommendations, or sending directives to services in order to establish a uniform approach while reserving the option to diverge from it to take account of the diversity of situations in the field”.
23. Doctors, midwives, dentists, lawyers, surveyors, accountants, architects, pharmacists, vets, physiotherapists and chiropractors.
24. AJDA 1985.
25. General Plan Commission. *La Décision publique...*, *op.cit.* p. 139.
26. [www.afsset.fr](http://www.afsset.fr) page accessed on 17 September 2008.



## *Chapter 5*

### **The management and rationalisation of existing regulation**

This chapter covers two areas of regulatory policy. The first is simplification of regulations. The large stock of regulations and administrative formalities accumulated over time needs regular review and updating to remove obsolete or inefficient material. Approaches vary from consolidation, codification, recasting, repeal, ad hoc reviews of the regulations covering specific sectors, and sunset mechanisms for the automatic review or cancellation of regulations past a certain date.

The second area concerns the reduction of administrative burdens and has gained considerable momentum over the last few years. Government formalities are important tools to support public policies, and can help businesses by setting a level playing field for commercial activity. But they may also represent an administrative burden as well as an irritation factor for business and citizens, and one which tends to grow over time. Difficult areas include employment regulations, environmental standards, tax regulations, and planning regulations. Permits and licences can also be a major potential burden on businesses, especially small to medium-sized enterprises. A lack of clear information about the sources of and extent of administrative burdens is the first issue for most countries. Burden measurement has been improved with the application by a growing number of countries of variants on the standard cost model (SCM) analysis to information obligations imposed by laws, which also helps to sustain political momentum for regulatory reform by quantifying the burden.

A number of governments have started to consider the issue of administrative burdens inside government, with the aim of improving the quality and efficiency of internal regulation in order to reduce costs and free up resources for improved public service delivery. Regulation inside government refers to the regulations imposed by the state on its own administrators and public service providers (for example, government agencies or local government service providers). Fiscal restraints may preclude the allocation of increased resources to the bureaucracy, and a better approach is to improve the efficiency and effectiveness of the regulations imposed on administrators and public service providers.

The effective deployment of e-Government is of increasing importance as a tool for reducing the costs and burdens of regulation on businesses and citizens, as well as inside government.

## Assessment and recommendations

### Box 5.1. 2004 OECD report: Simplification

#### Assessment

The example of current progress on reforms made by the Ministry of Finance, which was brought about by the development of a modern work environment rather than by an overhaul of ministry structures, shows that new technology and e-Government can be powerful vehicles of regulatory modernisation. This is particularly true in countries such as France where certain direct structural reforms are sometimes difficult to carry out.

Administrative simplification policies have allowed France to preserve the cohesion and functionality of a highly complex administrative and regulatory apparatus. In some areas, such as codification, the lead given by France has been exemplary and in others, such as the use of electronic tools to lighten the regulatory burden, it currently has highly active policies. On the other hand, there is no automatic *sunsetting* or periodic review programme for legislation. Moreover, simplification initiatives are being deployed without any quantitative measurement to guide them. They also tend to have been developed from the internal standpoint of the government departments concerned and would stand to gain from being more open to the needs of users.

Business representatives thought that any impact was still modest. Furthermore, the very insular nature of the Commission for Administrative Simplification (COSA), which was made up entirely of representatives of government departments, gave it a very introverted focus on the internal problems of those departments and the ease with which they themselves could propose simplification measures, partly with the aim of simplifying the running of the departments. The lack of private sector representatives gave rise to criticism.

An important point to be noted is that despite the clear policy lead, these attempts at administrative simplification are being deployed without any quantitative data on the impact of the administrative burden. Apart from the inventory carried out by COSA, which is the exception, there is no statistical apparatus in France for measuring the economic cost of regulation. Yet, this could serve as a guide for policy, enabling better priority targeting, which would make simplification initiatives more effective.

#### *Simplification of regulations*

*The French government has made substantial and sustained efforts over time to codify the law, which sets France apart from most other European countries. This traditional legal practice in France has been reinstated, notably through the Higher Codification Commission. Today, more than 40% of the laws in force are grouped into almost 70 codes. Codification is widely recognised as a key instrument for making the law more visible and accessible and as a remedy for the proliferation of regulations.*

*The experience of the past few years shows that codification has reached its limits and must now be more clearly associated with control over regulatory output. Not all legislation can be codified and, given the volume of new or amended regulations, maintaining existing codes calls for major resources. Codification should not be solely an *a posteriori* cure for the proliferation of legislation; it should be an integral part of upstream efforts to control the flow of legislation and regulations, primarily through impact studies (Chapter 4). Firstly, taking account of the option not to legislate can keep the output of regulations down to what is necessary. Secondly, the impact study must allow new planned provisions to be integrated into the existing legal structure at an early stage in the regulatory drafting process.*

Since 2003, annual simplification laws have embedded simplification in the French political landscape. These laws have helped to simplify the legal stock in a large number of domains and also made it possible to reduce administrative burdens on businesses and citizens. The regular use of simplification laws has raised the visibility of administrative simplification policy. This approach can however, lead to a proliferation of measures, thereby undermining clarity.

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**Recommendation 5.1. Evaluate the contribution of codification to regulatory governance and more particularly its capacity to control regulatory inflation.**

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**Box 5.2. Excerpts from the 2004 OECD report: Management of existing regulations**

**Recommendation**

*Pursuing and extending the move towards simplification by introducing sunset clauses, extending the use of one-stop shops, and introducing instruments to measure and monitor the simplification process.*

France has undertaken a major move towards administrative simplification, which goes beyond previous codification efforts. The experience of many OECD countries shows that administrative simplification is key to improving the cost-effectiveness of regulation. However, the initiatives taken up to now in France have not been systematic. They need to consider the whole of existing regulations in order to reduce the cumulated cost of the total stock. Certain techniques can be very useful in the context of administrative simplification, such as introducing one-stop shops targeting certain groups of clients. These one-stop shops have been introduced in France for setting up a business, or for large enterprises in their dealings with the Ministry of Finance. This move could be extended in the social field, and also for the small and medium business and individual citizens. Automatic *sunsetting* clauses are another type of tool which could be used. This would force the administration to systematically review texts, under the threat that they would no longer be valid beyond a certain date, which would be the opposite of the current system. It is true that such a tool is very far from the French legal tradition. However, an education drive on the benefits expected from this approach could help to change the situation. Finally, a statistical effort to measure the economic deadweight generated by the regulatory burden could help to steer the current simplification efforts towards maximising economic benefits and fix clear objectives for the future. The assessment of the impact of simplifying declarations which was made by the COSA shows that such an approach is feasible in France.

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Certain techniques can be very useful in the context of administrative simplification, such as introducing one-stop shops targeting certain groups of clients. These one-stop shops have been introduced in France for setting up a business, or for large businesses in their dealings with the Ministry of Finance. This move could be extended in the social field, and also for the small and medium business and individual citizens.

Automatic *sunsetting* clauses are another type of tool which could be used. This would force the administration to systematically review texts, under the threat that they would no longer be valid beyond a certain date, which would be the opposite of the current system. It is true that such a tool is very far from the French legal tradition. However, an education drive on the benefits expected from this approach could help to change the situation.

Finally, a statistical effort to measure the economic deadweight generated by the regulatory burden – whether an individual measure or a whole complex set of regulations – could help steer the current simplification efforts towards maximising economic benefits and setting clear objectives for the future. COSA's experience with assessing the impact of simplifying declaration forms shows that such an approach is feasible in France.

*Source:* OECD (2004).

### ***Administrative burden reduction for businesses***

*Since the OECD review of 2004, the French government has developed a distinctly more active policy towards reducing administrative burdens. A major element was the programme to "measure the reduction of the administrative burden" (MRCA), rooted in France's commitment, announced at the end of 2007, to reduce the administrative burden on businesses by 25%. Substantial progress has been made, including a mapping of the information requirements burdening businesses, the quantitative measurement of almost 800 of these obligations, the development of a methodology (based on the SCM), and a data base (Oscar). This has been accompanied by the adoption of a more open approach to businesses by the administration. This greater openness is recognised by the representatives of businesses, particularly with regard to e-Government and in relations between users and administrations (closer attention paid to users and greater account taken of their expectations). Many people questioned stressed that there are substantial potential gains to be made in this area.*

*Since 2008, the government has moved its administrative simplification policy forward in a new direction, which led to the development of a plan comprising 15 measures in the autumn of 2009. The DGME informed the OECD team that this plan should be followed by with waves of similar measures "designed with the same aim of focusing on a small number of measures with great potential". It has therefore been decided to re-focus efforts on a smaller number of measures (irritants) and to base this selection on an analysis of life events. In doing so, the emphasis has been placed on listening more closely to firms and to what they propose should be targeted.*

*This new policy includes a number of major points on which less emphasis had been placed previously. It has not been possible to make a detailed assessment of this new simplification plan for the purposes of this report. However, it should be noted that this change in orientation underscores a willingness to respond better to priorities as expressed by users of the administration, including businesses, and to communicate better in order to encourage and sustain interest (political, in the administration, among users).*

*However, it not been clearly established how this policy meshes with work undertaken under the MRCA programme. In particular, this change occurred without the measurement work carried out within the scope of the MRCA being subject to an *ex post* and detailed assessment of the whole. Furthermore, no plans have been made to update Oscar, which in the long run runs the risk of devaluing the capital invested at the point when this tool could be used to help strengthen impact assessments.*

*From a more fundamental and strategic standpoint, the policy to reduce administrative burdens is not clearly linked to economic policy objectives. Above all, it is incorporated into the wider state modernisation programme (RGPP), in which the main objective is to make the state more effective. In so doing, business competitiveness, even if it is mentioned and is the subject of specific initiatives (such as the simplification of*

business creation procedures), is not a prime objective. In the current context of the emergence of the world economy (and that of France) from one of the more serious crises in its history, it would be timely to create a more direct and closer link between the policy on reducing administrative burdens and boosting the economy. This could go beyond pure and simple communication to study the possibilities of steering some of the effort towards economic sectors or actors held to be important for economic growth (for example medium-sized enterprises).

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**Recommendation 5.2. Make a clear connection between administrative simplification policies and economic challenges.**

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Several points in the current programme require special attention:

*The objectives to be attained have not been clearly determined or assigned.* The aim at present is basically to simplify the most irritating administrative procedures. The announced 25% reduction (set by the Council for the Modernisation of Public Policies on 12 December 2007) was a step towards a more quantitative and specific approach, which can be found in the MRCA programme. This objective was set globally, without taking into account the flow of new regulations and without setting detailed objectives by ministry. With the move towards life events, it is even more important to stay on course with regard to clearly determined objectives. However, if the 25% reduction objective is not to be officially abandoned, it is not clear, in the absence of properly-defined quantitative monitoring, how progress made towards achieving this objective can be assessed.

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**Recommendation 5.3. Set up clear objectives on administrative simplification and processes for allocating objectives to the various bodies in charge of conducting simplification. These bodies should be made accountable for the implementation of policies in a detailed and public way. Do not abandon quantification.**

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*There is a need for more information on progress.* Until recently, no detailed information was provided at regular intervals on the progress of the administrative burden reduction programme, so much so that this policy has remained relatively invisible both to external stakeholders and to the rest of the administration. The publication in February 2010 of a follow-up sheet on the 15 simplification measures is a step in the right direction.

- *The project must continue to integrate local and regional authorities.* The idea was to “propagate” good practices and make use of the development of *e-Government*. The 15 measures announced in autumn 2009 are a step forward in that several of these measures require co-operation with local and regional authorities (3 out of the 15 measures require their assistance).
- *Programme follow-up has been relatively light to date.* A traffic light system shows progress on the major headings of the RGPP and is the administration’s internal monitoring mechanism.

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**Recommendation 5.4. Prepare and publish scoreboards on the effective implementation and specific results of simplification initiatives, for both government and external stakeholders, in addition to general communication on RGPP.**

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*Regular ex post evaluations are important if the programme is to meet its objectives. A distinction needs to be made between follow-up and evaluation. An evaluation takes stock from a strategic standpoint, and preferably at arm's length, in order to remain objective.*

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**Recommendation 5.5. Establish a schedule for regular evaluations. Identify the body which is best placed to carry out these evaluations (see Chapters 1 and 4).**

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### ***Reducing the administrative burden on citizens***

*The current administrative burden reduction programme includes measures that apply to citizens. Until recently, the main advances were closely linked to the development of e-Government. Half of the 15-measure plan adopted in autumn 2009 applies to citizens. It is also worth noting that there are specific measures aimed at associations.*

### ***Reducing the administrative burden on the administration***

*The policy on administrative burden reduction takes account of the burden on government, but does not actually set out a specific plan for internal simplification within the administration. The Oscar methodology for measuring businesses' information obligations, for instance, includes an element measuring the burden on government. As quantification has been abandoned, it is important to maintain a watch on this issue.*

## **Background**

### ***General background: The aims of administrative simplification in France***

For French simplification policy, reducing the administrative burden and simplifying the legislation are closely connected; these are often dealt with as two separate issues in other countries in the European Union. By focusing on “the user” (a term which refers, first, to business and citizens as a whole, but also covers subnational levels and associations), it is taking a global approach as its basis. This policy is focused partly on conformance with the Lisbon Strategy. It seeks to achieve four specific objectives. These are to:

- streamline overly complex formalities and do away with obsolete or redundant formalities;
- strengthen the certainty of existing law and its consistency (by repealing provisions that are redundant, obsolete or no longer relevant, redrafting any that are not readily comprehensible or badly co-ordinated);
- develop one-stop shops and *e-Government*; and
- continue to further codify the law in order to make it more accessible.



## *Simplifying the law*

### *Codification, repeal and revision*

Codification – the work of rationalising and producing a systematic inventory of the law – has resumed over the past 20 years, partly with the aim of curbing legislative inflation. According to a 1999 Decision of the *Constitutional Council*, codification also served “the objective of accessibility and intelligibility of the law, which has constitutional force”.<sup>1</sup> The operative principle, as stated in a 1996 prime minister’s Circular,<sup>2</sup> is the codification of the law as it stands, by means of which earlier texts are expressly repealed or redrafted, but their contents are included in the code in a new and orderly structure, with the exception of obsolete texts. This is the principle set forth in the prime minister’s Circular of 30 May 1996 on the codification of legislative and regulatory texts, which describes codification as a first step towards the effort to simplify the legislation that it is helping to prepare.<sup>3</sup>

The work of codification is conducted within the framework of a national programme established by the High Commission on Codification. The government set up the High Commission in 1989 in order to lend new momentum to the consolidation trend, which was flagging at the time.<sup>4</sup> The High Commission was given responsibility for scheduling the work of codification, establishing the methodology and monitoring progress. The work itself, under the supervision of the High Commission, is left to the ministries. The High Commission published an annual report, which is available on the *Légifrance*<sup>5</sup> website. Since it was first set up, the Commission has gone on to produce 10 or so new codes in addition to recasting existing codes.<sup>6</sup> There are currently almost 70 codes in all, containing more than 40% of the legislation in force.

Codification requires ensuring that all of the legislation produced is consistent. It also gives legal drafters a thorough schooling in drafting any legal text, not just codes. This was a point mentioned during OECD team interviews with ministries’ legal directors. The last few years’ experience with codification shows that it contributes to legislative quality, but that complete codification will never be possible, so it can only ever be part of the response to the problems of quality and accessibility. It does not eliminate legal or regulatory uncertainty (10% of the articles of a code are amended on average every year (Bergeal, 2008) and it is not in itself a guarantee that the final text will be intelligible. Codification makes texts more accessible, but the impact it could have is undermined and, in practice, reduced by the constant rush to update codes in a period of high regulatory uncertainty.

Codification appears to have gone as far as it can. In its 2008 annual report, the High Commission on Codification noted that work on new code projects was starting to tail off and that there might to some extent be a decreasing return from new codes: “The more the codification of French law progresses, the more the drafting of new codes comes up against practical difficulties, particularly regarding where to insert provisions”.<sup>7</sup> Moreover, some of the “major” laws are more like mini-codes in their own right. From now on, the priority will be to maintain existing codes.

### *Review and sunset rules*

Some laws have built-in clauses providing for the compulsory submission of reports on their implementation status to parliament. Subsequent to these reports, the legislation may be reviewed. Sunset clauses are not used extensively. They have chiefly been used to wind up Advisory Boards (see Chapter 3).

### *Reducing the administrative burden*

Preliminary remark: recent changes to administrative simplification and the DGME programme could not be reviewed specifically by the OECD team, as these changes occurred after the OECD review.

#### *Main developments in policy to reduce administrative burdens*

Regulatory simplification policy began at a very early stage in France. As far back as 1953, the executive issued a decree<sup>8</sup> acknowledging the need to simplify administrative formalities. Several programmes were set up and measures implemented over the years to streamline formalities for businesses and citizens (Box 5.3).

#### **Box 5.3. Main stages in regulatory simplification in France**

1953: Decree of 26 September on the simplification of administrative formalities.

1966: Creation of an Administrative Forms Registration Centre (CERFA), responsible for compiling a register and controlling the publication of forms by government departments.

1981: Business Formalities Centres (CFEs) set up under Chambers of Commerce and Industry.

1983: Commission for the Simplification of Formalities for Business (COSIFORM) set up; its responsibilities were extended to all users in 1990.

1995: Commission for State Reform set up with responsibility for administrative simplification.

1997-98: New administrative simplification programme, decentralised to the ministries and coordinated by a new body, the Commission for Administrative Simplification (COSA), attached to the prime minister's Office.

2002: Launch of the business simplification initiative (MISSE) in the Ministry for the Economy, Finance and Industry.

2003: First simplification law (Law N° 2003-591 of 2 July 2003 giving the government powers to simplify legislation).

2004: Launch of the Administrative Burden Measurement and Reduction Programme (MRCA programme).

- Second simplification law (Law N° 2004-1343 of 9 December 2004 on the Simplification of the law).

2005: Directorate General for State Modernisation (DGME) set up.

2007: MRCA programme included as one of four priority area in the General Review of Public Policies (RGPP) (June) and France commits to reducing the administrative burden by 25% at the meeting of the Council on Public Policy Modernisation (12 December).

- Third simplification law (Law N° 2007-1787 of 20 December 2007 on Simplifying the Law and Streamlining Procedures).

2008: DGME reorganised.

- Fourth simplification law (Law N° 2008-776 of 4 August 2008 on Economic Modernisation).

2009: Fifth simplification law (Law N° 2009-526 of 19 May 2009 on simplifying and streamlining procedures).

- Ministry of Budget announces a 15-measure programme to simplify administrative procedures.

2010: Publication of the report “Improving digital relation to users” (12 February 2010), drawing on the work of the “digital experts” group set up in October 2009.

As of 2003-04, the government adopted a more systematic approach, largely geared towards business. This policy hinged on the following elements:

- *Simplification laws* including measures to modernise the operation of government and simplify the law as well as simplifying administrative procedures and formalities.
- *E-Government*. Administrative simplification was closely linked to the development of e-Government (for both business and the public in general).
- *The “Administrative Burden Measurement and Reduction Programme”* (MRCA programme). This programme, set up as of 2004, established more systematic methods of simplifying life for business. Its aim was to find out more about the costs induced by administrative obligations by measuring and then reducing them. It was also part of the broader European vision mapped out by the Lisbon Strategy. The MRCA programme did not necessarily include all of the simplification measures launched by the ministries in 2007-08 (such as the establishment of a regime of auto-entrepreneur by the economy modernisation law of 4 August 2008). Some of these measure were implemented by the simplification laws.
- *Life events*. New departure since 2008. After a period of inventorying and measuring the administrative burden on business and government, the strategy followed since 2008 has been extended to all user categories (members of the public, business, subnational levels and associations) and is based on a new method of selecting areas for simplification, based on “life events”.

### *Simplification laws*

Enacting simplification laws (some of which originated in parliament) is the first key step in the process of simplifying the law. After a first law in 2003, three more were passed in 2004, 2007 (originating in parliament) and 2008. A Bill is currently under review (Box 5.4). Simplification measures can also lead to legislative or regulatory texts independently of these simplification laws. The recurrence of these simplification laws have helped to make simplification part of the governmental and parliamentary landscape, but the end result of an overload of different measures can be to make those measures more difficult to understand.

#### **Box 5.4. Examples of simplifying the law for businesses**

Laws of 2 July 2003, 9 December 2004 and 20 December 2007:

- trial introduction of a simplified single employment form;
- changed conditions for setting up in business in certain regulated occupations such as travelling sales representatives or travel agents;

- modernisation of public procurement in order to ensure a better partnership with the private sector;
- collection of training tax reorganised;
- introduction of a social security scheme for the self-employed; and
- introduction of an electronic payslip for businesses.

Law of 4 August 2008 on Economic Modernisation:

- creation of simplified “sole trader” (*auto-entrepreneur*) status;
- invoice payment times reduced;
- simplification of company law;
- extension of advance ruling on social security contributions;<sup>9</sup>
- made it simpler to take over and transfer businesses;
- mentoring for first-time job seekers and job seekers who set up a or take over a business was also made easier;
- employment made simpler for VSEs;
- annual declaration of income to social security dispensed with for the self-employed for very small and micro-enterprises (VSME);
- introduction of a simplified, streamlined planning applications procedure for businesses (reform of urban planning regulations for business premises); and
- simpler employment and salary formalities for businesses with no more than nine employees (merging VSE employment cheques and enterprise employment vouchers (*titre emploi entreprise, TEE*) into one cheque, the enterprise service employment cheque “*titre emploi service entreprise, TESE*”).

Simplification law of 2009 (Law N° 2009-526 of 12 May 2009):

- possibility to send employees their pay slips in electronic format;
- digital display of local government decisions;
- simplification of condominium operating rules;
- modification of rules relating to the sale of jointly owned property, such as the possibility for two thirds of the owners to sell even if the third partner refuses to do so; and
- simplification of tax collection procedures to avoid taxpayers being asked to pay even if he/she holds a tax credit for an equivalent or larger amount.

### *The role of e-Government*

As in other EU Member States, administrative simplification went hand in hand with the development of *e-Government*. Paperless administrative procedures for members of the public and businesses were one of the main thrusts of the strategic plan for the development of *e-Government*, particularly in the area of taxation and business creation. The development of online government websites was initially aimed at allowing users to search for information from a distance (in order, for example, to identify the relevant department, the papers that need to be provided, or even to simulate entitlement to assistance or obligations with regard to the user’s own personal circumstances, such as the right to a student grant or simulation of taxes payable). It is now increasingly aimed at all allowing services to be made completely paperless, thereby eliminating the need for visits to be made in person, reducing the time needed to process application and allowing financial transactions to be carried out on line. Lastly, the administration is trying to promote a standard of digital quality by developing sites which respect ergonomic

burdens and shared references. Box 5.5 presents some examples of online government services.

One of the current objectives is to make the *www.service-public.fr* website, created in 2001, the one-stop shop for online administrative procedures.<sup>10</sup> Since the end of 2009, *mon-service.public*, allows users to create a personal account on line (almost 400 000 user accounts had been created by February 2010), providing access to all websites and a confidential area for storing information. The range of online services is gradually growing through extension of the network to partners outside central government (notably social protection bodies)<sup>11</sup> and the development of new online procedures. The DGME's programme "My online procedure" is aimed at "industrialising" the production of new online services and at responding to users' life events such as marriage, loss of identify papers or the death of a family member (see below).

In October 2009, the Budget Minister mandated a group of experts in digital relationships to draw up an inventory of the state of *e-Government* and propose a strategy for the development of e-services by government departments. The report was submitted in February 2010 and suggested that government policy towards *e-Government* be based on a three-fold approach: (i) provide clear, simple and coherent access to online government services; (ii) offer more services tailored to individual needs which best meet user expectations; and (iii) allow users their say in how to improve online public services and innovate (Riester, 2010). The DGME's mission is to draw up a detailed programme work of work with the ministries concerned by June 2010.

#### **Box 5.5. Administrative simplification and e-Government: Examples of e-services**

- Applications for birth certificates: with over 7 000 applications per day, this is one of services most used by the French public. In response to user expectations, it will be extended before the end of 2009 to all other civil status certificates.
- On line change of address: with just a few clicks, users can inform a dozen or so public services of a change of address through this service. With 1.25 million changes of address entered since the launch of the site in May 2005, nearly 30% of households changing address use this site to forward their new contact details to public bodies that are partners of this service.
- Almost 30% of the French public now pay their taxes on line, compared with 15 % two years ago.
- Online tax declarations: approximately 9 million tax declarations were collected on line following the 2008 campaign for the declaration of income of physical persons.
- Introduction of the "Vitale" card used for the processing of health insurance forms (1 billion forms submitted every year).
- For businesses, the *Télé TVA* site for online VAT payment was an instant success and was even made compulsory for payments over a certain amount.
- In the specific case of Business Formalities Centres (CFEs – single access points for setting up, changing or closing down businesses), online completion and return of forms has been possible since the end of April 2007. Procedures are totally "paperless": formalities can be

completed, and supporting documents and payments can be sent on line (see: [www.cfenet.cci.fr/](http://www.cfenet.cci.fr/)). This measure genuinely simplified procedures since the CFE formally checks<sup>2</sup> all of the paperwork on behalf of the various bodies concerned: tax and, social security services as well as the legally required public register(s). It also contacts INSEE for a unique company identification number. CFEs receive the single declaration and send the information, legal documents and/or supporting documents to every addressee required by the regulations via Electronic Data Interchange (EDI). This procedure avoids duplicate checks.

- Opening in January 2010 of the paperless one-stop shop for new business start-ups, which allows users to set up their own business on line in any non-regulated activity.
- Website operational since December 2009 where firms bidding for public procurement contracts can download their tax statements (12 000 requests received in the first month of operation).

*Notes:*

1. An application form for aid for setting up or taking over a business (ACCRE) can also be completed on line.
2. Consistency check (*i.e.* checks that all the paperwork is there). The addressees carry out legality checks.

*Source:* DGME.

*“Administrative Burden Measurement and Reduction Programme” (MRCA programme)*

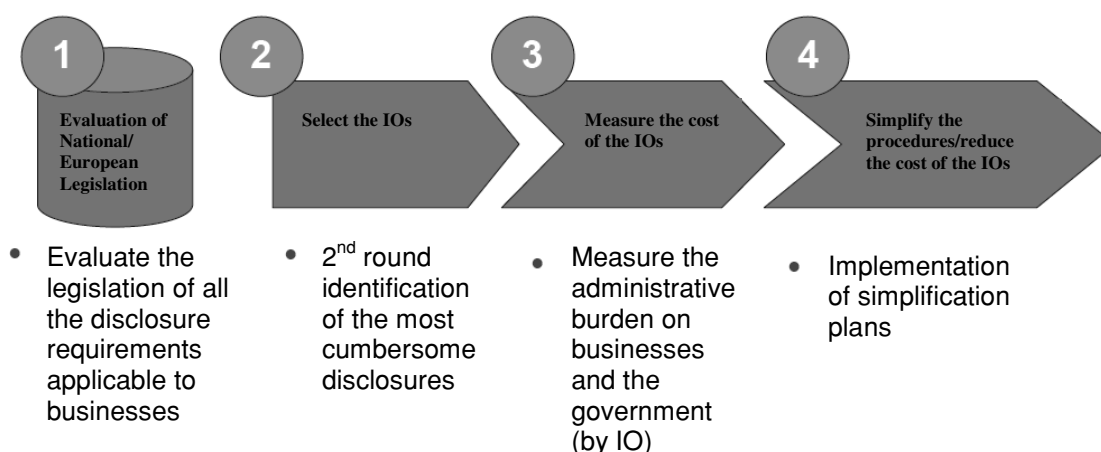
The MRCA programme initially centred on four consecutive steps (Figure 5.1):

- *A full and systematic inventory of legal obligations to provide information.* The MRCA programme entailed a stage of systematic measurement, which was based on the Standard Cost Model (SCM) and targeted on the cost burden for business. The analysis, carried out from 2006 to March 2008, focused on European and national legislation. For European legislation, the focus was on legislation in the 13 priority areas that had been identified by the European Commission. For national legislation, 49 codes (both legislative and regulatory sections) and approximately 600 non-codified texts were examined. A grand total of more than 10 000 information obligations were identified, of which 800 were quantified. This work put the total cost of the administrative burden for businesses at an estimated EUR 60 billion. The current DGME programme does not provide for a specific date or methodology for updating this baseline estimate.
- *Selection of obligations to be measured.* Over the period 2007-08, the information obligations to be quantified were selected from the inventory already made. Various sources were used to identify priorities (the *Camdessus* and *Attali* reports, consultations with trade organisations and ministries, existing ministry plans). Five areas were identified as priorities: taxation, social security formalities, exports, public procurement and company law.
- *Measurement of the obligations selected.* In 2007-08, the DGME measured the impact on business of obligations in the five priority areas using the SCM method. Measurements were made on five batches of obligations in succession and an estimate of the potential savings to be made from simplification measures obtained. The DGME adapted the SCM method to measure the burden on

government and include the cost to business of the time spent waiting for government decisions. The DGME put in place a database to record all of these measurements. A point that should also be noted is that the *Oscar* database for measuring the administrative burden imposed by new regulations was developed as part of the MRCA programme (see Chapter 4).

- *Implementation of action plans.* Simplification measures are implemented through action plans, which are rolled out in successive stages (each stage covers around 200 information obligations). These action plans were implemented by the ministries in liaison with the DGME.

Figure 5.1. The MRCA process



Note: IO = information obligation.

Source: DGME (2008), *Reduction of administrative burden for business: MRCA presentation (in French)* [www.thematiques.modernisation.gouv.fr/UserFiles/File/MRCA\\_Evenement%208%20avril%20\\_Presentation%20MRCA\\_france\\_europe.pdf](http://www.thematiques.modernisation.gouv.fr/UserFiles/File/MRCA_Evenement%208%20avril%20_Presentation%20MRCA_france_europe.pdf).

### Recent Progress: Life events

The DGME no longer uses the SCM to measure the administrative burden. It is seeking to develop a simpler, less systematic measurement method in order to focus its efforts on transforming the processes under review. The action plans are no longer aimed at simplifying administrative procedures on the basis of the SCM measurement of information obligations, but on the findings of user surveys. These surveys are based on life events which generate administrative procedures (*e.g.* birth of a child, setting up a business) and must make it possible to identify the most complicated, frequent and/or irritating administrative formalities for different categories of user (members of the public, firms, associations). The approach therefore changes from one that is basically top down to one that is bottom up, and the emphasis has squarely been placed on “listening to users”.

For each of these life events, the DGME analysed the procedures users had to follow and, using the findings of sample satisfaction surveys, identified points along the way where procedures could be improved. Since October 2008, the DGME conducted studies,

working closely with a specialised institute, to gain an understanding of what users expected (users were divided up into four target groups: members of the public, businesses, subnational levels and associations). The surveys were aimed at identifying both problems encountered in the course of administrative procedures and users' expectations as regards the procedures to be simplified (how easy/complicated the user perceived them to be for a given life event).

After the surveys had been completed and their findings analysed, the DGME established lines of approach to simplification in collaboration with different ministries and identified 15 areas of work or measures to be pursued by the ministries. These 15 work areas or measures constitute the simplification plan announced in October 2009 (Box 5.6). The DGME identified a lead ministry (or inter-ministerial body as the case may be) and prospective head of project for each area of work. The monitoring of progress in each work area is part of the overall process of monitoring the RGPP programme. Indeed, the DGME published an initial report on the progress made with each of the 15 measures in February 2010 (Annex A).

The aim is to put in place “seamless” and beginning to end *e-Government* services in different areas. The initial situation was one in which life events generally required the completion of administrative formalities involving several different bodies, with all the complexity and risk of omitting certain formalities which that entailed. The information systems must take care of all this complexity. From the user's standpoint, online procedures are completed in two stages. Firstly, an online conversation in the form of a series of questions and answers allows the user's personal situation and need to be determined. The system then transmits the information collected to the different departments involved in the procedure.

#### **Box 5.6. 2009 Administrative Procedures Simplification Plan**

On 19 October, Eric Woerth, Minister for the Budget, Public Accounts, the Civil Service and State Reform, announced 15 measures to simplify administrative procedures, namely:

- allow citizens to register on electoral rolls;
- allow all young French citizens 16 years of age to carry out citizen census formalities on the Internet;
- allow firms selected as part of a public procurement tendering process to obtain a paperless tax certificate;
- simplify the life of entrepreneurs;
- improve the processing of claims;
- simplify the procedure for transferring the registered offices of an enterprise and allowing the procedure to be completed on line;
- allow associations to file their subsidy application on line;
- allow users to declare the loss of administrative papers at the same time as they apply for them to be replaced;
- allow urban planning procedures to be made paperless;
- simplify the declaration prior to hiring and experimenting with a simplified declaration by telephone;



- remove the obligation to produce official records relating to civil status, or copies of such records, as documentary proof for certain procedures;
- avoid the need for associations to provide the same information several times over every time they apply for an approval;
- simplify the granting and renewal of the entitlement of handicapped persons to given benefits;
- on the death of a family member, avoid the need for the family to supply the same information several times to different administrations; and
- avoid firms having to supply the same basic information (turnover, number of employees, etc.) several times to government departments.

Source: DGME.

### ***Institutional framework, assistance and support***

#### **Co-ordination**

The Directorate General for State Modernisation (DGME) has responsibility for co-ordinating administrative simplification projects developed by the different ministries. The Directorate is attached to the Ministry for the Budget, Public Accounts and the Civil Service, which is itself responsible for state reform. The *Projects* service is more specifically responsible for major inter-ministerial administrative simplification and *e-Government* projects. The service includes a small team responsible for the Administrative Burden Measurement and Reduction Programme (MRCA programme). (See Box 5.7).

#### **Box 5.7. Structure of the DGME**

The DGME comprises three departments:

- The “Projects” department (which leads inter-ministerial streamlining projects) is responsible for major inter-ministerial administrative simplification and *e-Government* projects. It includes a small team responsible for the Administrative Burden Measurement and Reductions Programme (MRCA programme).
- The “Innovation” department (user services strategy) is a “foresight think-tank”, tasked with predicting what the government of tomorrow will be like, setting priorities for action in line with user demands and keeping a watch on good practice in France and abroad particularly in the area of simplification. It establishes “transformation” mandates, which the “Projects” service is then responsible for carrying out, rather in the way a marketing division and production directorate would operate.
- The “Advisory” department (implementation of RGPP-related decisions) provides assistance to the ministries in implementing decisions taken by the Council for Public Policy Modernisation (optimising organisations, processes, and information systems).

Its staff are 46% contract staff (*i.e.* not civil servants), 30% from the Ministry of Finance and 24% from other ministries (DGME brochure).

In each of the ministries, modernisation contacts designated by the Secretaries-General liaise with DGME and are its contact points for inter-ministerial co-ordination of simplification projects and for modernisation projects in general. The DGME also works with a network of territorial correspondents set up jointly with the Ministry of the Interior, Overseas France and Local Authorities.

The DGME ensures co-ordination with the European Union's project on administrative burden reduction. It acts as the EU's Single Point of Contact (SPOC), which involves: i) informing the General Secretariat for European Affairs of progress on the EU project; ii) obtaining the reactions of ministries to simplification proposals put forward by the European Commission and passing on the reactions of the French public to the General Directorate for Enterprise and Industry through the General Secretariat for European Affairs; and iii) informing the European Commission of progress on the national project.

### *Monitoring the programme*

One of the DGME's duties is to monitor ministerial action plans. Monitoring these plans comes under the broader scope of the RGPP for which a traffic-light system was set up to show progress against a set schedule.<sup>12</sup>

As part of the development of action plans based on life events, the lines of approach to administrative simplification identified through listening to users are then incorporated into the programme and then validated at the inter-ministerial level. Each decision is then steered by the minister concerned or by an inter-ministerial body (RGPP monitoring committee) in cases where it concerns several ministries. The DGME stresses that to ensure decisions have a real impact and rapid results, the implementation of each decision is monitored by committees set up to monitor the progress of the RGPP. The DGME hopes to develop support services it can supply to ministries to assist with initial work on priority simplification measures that are particularly challenging or complex.

### *Methodology and process*

The methodology used for administrative burden reduction has changed recently. The MRCA programme started with a comprehensive approach (inventorying obligations) and used the SCM method. The DGME is now basing simplification initiatives on the analysis of life events. The *Oscar* database (see Chapter 4) was developed in order to take account of the administrative burden of new regulations, which implies a "net" target.

According to the DGME, the current strategy is based on listening to users, which is an approach that is clearly distinct from the systematic measurement of the administrative burden. This choice of methodological approach does not exclude, however, the occasional *ex ante* or *ex post* use of quantification, notably to check that the life events identified represent major challenges. The overall approach makes it possible to establish, in collaboration with the different ministries, areas where administrative procedures could be simplified. The suggested areas for simplification are drawn up on the basis of an upstream study that takes account of elements relating to a "return on investment" for both users and government departments.

### ***Public consultation and communication***

The DGME has put a consultation process in place to identify users' expectations as regards simplification which has identified several suggested areas for simplification (for public consultation policies, see Chapter 3). The process consisted of the following:

- Open consultation via the Internet, with a dedicated consultation webpage in web 2.0 mode on the site *www.modernisation.gouv.fr*. The first round of consultations was for members of the public, while the two subsequent rounds in April and July 2008 were for business.
- Three events targeting business were held in 2008. The first (in April) brought together around 100 business representatives and business owners and addressed issues such as public procurement, company law, taxation, customs procedures, the work environment, statistics and the environment. It was followed by a round table which brought together businesses and government (April) and further discussions (October) with business federations and a significant number of firms in order to continue the work of consultation and identifying priority needs.
- “Let’s simplify together” days were held (6 October and 18 December 2008) including members of the public, business and subnational levels of government and organised in the form of workshops on different themes: the life of the citizen, identity papers, family life, tax and social security issues, as well as starting a business.

As well as this, the DGME consults business through the “Entrepreneurs’ Council”, which was established in July 2007 under the Secretary of State to the Minister of the Economy, Finance and Employment, responsible for enterprise and external trade. The Council is an official body, which is tasked with promoting dialogue and discussion between business and government. One of the main areas of its work is “simplifying the business environment”. Three expert groups composed of active members of the business community (certified accountants, lawyers, tradesmen, notaries, bankers, etc.) were set up to address this theme. In all, twelve professional and consular organisations and orders of the professions took part in this work. Each group worked on simplification in a specific field: simplifying regulations, tax or social security. In September 2007, the Council put forward thirty or so proposals, several of which have already been incorporated into the Law on Economic Modernisation (LME) of 4 August 2008 (sole-trader status and advance rulings on taxation for instance).<sup>13</sup>

The creation in 2009 of a standing panel made up of 5 600 members of the public and 2 400 firms is, according to the DGME, a new starting point for consultation aimed at avoiding “life event” simplification measures being based on an “anecdotal” approach. As this system was put in place after the mission carried out by the OECD team, it has not been possible to evaluate it, although the fact that it is a standing panel and the number of participants should ensure that the administration can take good measure of major projects. Given that a number of other EU countries have also moved towards a “life events” approach, it would be helpful to take stock of the approaches adopted by these other countries in order to share and take note of good practices in this area.

The DGME has not published any detailed information on progress with action plans relating to the MRCA, either on an overall or a ministry-by-ministry basis. The DGME website has information on the various projects under way as part of the programme for

the general review of public policies (RGPP). For example, the RGPP stage report includes information on the MRCA. In contrast, a table was published in February 2010 (Annex A) presenting the progress that has been made with the 15-measure administration procedures simplification programme announced in October. In addition, the DGME notes that regular announcements are made as soon as new measures are decided, while they are being implemented and once they have met their objective.

*Assessment: Progress made, outlook*

The DGME thinks that the potential annual savings (savings on total hours spent on procedures by businesses, converted to the equivalent in money) from simplification could total over EUR 1 billion, in addition to the savings of EUR 1 billion already recorded in previous years. A whole range of measures has been implemented, particularly in the area of *e-Government* (Box 5.5). However, the data do not allow measurement of actual progress towards the reduction target of 25 % of the administrative burden.

**Table 5.1. Results of simplifying information obligations**

	Batch 1	Batch 2	Batch 3	Batch 4	Batch 5	Total
Period	2007	2008	2008	2008-09	2008-09	
Number of IO measured	30	216	189	NA	NA	780
Cost (EUR million)		2 100		NA	NA	NA
Estimated savings (EUR million)	17	575	400 to 700	NA	NA	NA
% gain	18 %	28 %	> 25 %	NA	NA	NA

IO: information obligations, NA: Not Available.

Source: DGME.

Stakeholders outside government have stressed the progress made on relations between government and business (single tax contact, for instance), on paperless procedures and *e-Government* in general (with the *monservicpublic.fr* website, for example). They also noted that government was taking more account of needs and expectations through various consultation processes. However, progress was not always plain to see and communication was poor. Although e-Government projects were in the public eye, the projects and results of simplification initiatives and the MRCA programme, in particular, were not so well-known.

While progress is acknowledged, one thought widely shared – both inside and outside government – is that there are very substantial potential savings to be made, principally through faster government deployment, and that there is a need to move beyond simplifying procedures (the benefits of simplification were stressed), start taking overall costs into account and tackle the underlying problems. The 25% reduction target also met with strong reservations. The savings made did not necessarily mean a reduction in costs for business.

***Subnational levels of government***

Territorial authorities are starting to become involved in administrative simplification programmes. In the administrative procedures simplification programme, 3 out of the 15 measures require their collaboration (online registration on electoral rolls, Internet-based “citizen” census registration, and introduction of paperless urban planning procedures). The method consists in trialling the new procedure in a limited number of authorities, before giving thought to their wide-scale adoption by authorities who volunteer to do so.

There are two programmes that concern them more specifically:

- The Ministry of the Interior has put in place a technical facility called ACTES for the paperless transmission of local authority documents to the reviewing authority. Before this, hard-copy documents were sent to the *Prefecture*. From now on, subnational levels will be able to send these same documents in paperless form via a secure exchange system. The result has been a significant reduction in costs, as subnational levels can now save on printing and transport costs.
- The Joint Committee for the Evaluation of Regulations (*Commission Consultative d'Evaluation des Normes*, CCEN) was also set up in response to this concern with reducing the burden on subnational levels (Chapter 8).

### *Administrative burden reduction for businesses*

For businesses, the government made a commitment to reduce the administrative burden first by 20%, then by 25%, by the end of 2011. The administrative burden was defined as “the 1 000 most burdensome or irritating formalities for businesses”. This commitment, entered into at the meeting of the Council for Modernisation in December 2007, comes under the public policy modernisation programme (General Review of Public Policies, RGPP). The simplification initiatives are based on action plans defined ministry by ministry, in liaison with the DGME, and rolled out in successive stages. These initiatives may also be an outcome of simplification laws. The interviews conducted by the OECD appear to show that ministries are more proactive on simplification initiatives that they themselves have initiated and launched (for instance in the *e-Government* field) than on programmes co-ordinated by the DGME, such as the MRCA, which appear to be of secondary importance.

The shift towards a “life events approach” has a particular impact on policies to reduce the burden on business, since the MRCA programme was geared to business. Since this shift, the “measurement” part of the MRCA programme and the 25% quantitative reduction are becoming less important than a more qualitative analysis of the administrative burden which is focused on “irritating” obligations. This change in focus of the programme reflects DGME’s wish to redistribute the resources allocated to measurement work (highly resource-intensive) to the practical implementation of the action plans and to be more selective in the projects it chooses to concentrate its efforts on. According to the DGME, the life events approach is also more motivating for the ministries and easier to get across politically. This means that the reduction target applies only selectively to the administrative burden for business (some other EU countries have followed the same course and restricted the field of application).

Developing one-stop shops was another way of simplifying life for businesses. Business Formalities Centres (CFE) are single access points where vehicle registration applications can be filed and, change of business and business closures can be registered. These centres are the only place that businesses need to contact to file start-up declarations or get in touch with the government departments that deal with businesses on a day-to-day basis: principally tax and social service bodies. Via their online business case-files service they act as a clearing house for official documents and are responsible for forwarding them, after checking that they are in due form, to all of the bodies and government departments concerned with business start-ups. Since February 2009, the formalities for setting up a business can be totally paperless: electronic payment, supporting documents can be sent on line, formalities can be completed on line. At the

same time as the introduction of one-stop shops for business, ministries were restructured so that they would be able to provide support for the one-stop shop structure (structures have been streamlined and new directorates set up).

#### *Administrative burden reduction for citizens*

The life events approach is proceeding with closer attention to the administrative burden for members of the public. The initiatives taken to date relate mostly to facilitating paperless procedures. The 2009 simplification law contains a chapter on measures designed to reduce the burden on members of the public. To that end, it also includes provisions that amend family and consumer law.

#### *Administrative burden reduction for government*

Reducing the administrative burden for government itself is not a direct aim of the simplification measures. However, the burden for government was considered under the MRCA programme in that the measurement of the burden of information obligations for business included both the impact on business (using the SCM method) and the impact on government (using a methodology defined by the DGME). Rather than being simplification measures designed specifically for the civil service, the aim was to factor the costs to government into the analysis of administrative measures applicable to businesses.

The 2009 Simplification Law contains a chapter on subnational levels and public services. It partly recasts numerous rules on the organisation and operation of local institutions as well as amending certain provisions to do with local authority resources.

## Notes

1. In its Decision N° 2007-561 DC of 17 January 2008 on the law ratifying the Ordinance of 12 March 2007 on the Labour Code, France's Constitutional Council clarified the role of codification from the standpoint of the objectives of accessibility and intelligibility stating that 'codification serves the objective of intelligibility and accessibility of the law, which has constitutional force deriving from Articles 4, 5, 6 and 16 of the 1789 Declaration; that in effect equality before the law as set out in Article 6 of the Declaration and the "guarantee of rights " required under Article 16 might not be effective if citizens did not have sufficient knowledge of the rules applicable to them; that such knowledge is moreover necessary for the exercise of the rights and freedoms guaranteed under Article 4 of the Declaration, by virtue of which such exercise is bounded only by the Law and Article 5 thereof under which "nothing that is not forbidden by the Law may be hindered and non-one may be compelled to do what the Law does not ordain".
2. Prime Minister's Circular of 30 May 1996 on the codification of legislative and regulatory texts.
3. <http://legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000742705&dateTexte=>.
4. The composition and operation of the Commission (which took over from the Commission set up in 1948) were established by Decree N° 89-647 of 12 September 1989. The Commission is chaired by the prime minister and its permanent members are appointed by order of the prime minister.
5. [www.legifrance.gouv.fr/html/codification/codification\\_accueil.html](http://www.legifrance.gouv.fr/html/codification/codification_accueil.html).
6. Among the new codes are the Education Code, the Administrative Justice Code, the Research Code, the Heritage Code, the Code on Entry, Stay and Right of Asylum for Foreigners, the General Code on the Property of Public Bodies and the Monetary and Financial Code. Among existing codes that were recast are the Commercial Code, the Public Health Code and the Labour Code in 2008.
7. *Commission supérieure de codification*, 2008.
8. Decree N° 53-914 of 26 September 1953 simplifying administrative formalities.
9. For an explanation on advance rulings, see Chapter 4.
10. Declaration to the Council of Ministers by Mr. Eric Woerth, Minister for the Budget, Public Accounts, the Civil Service and State Reform on 9 December 2009.
11. The partners present since services were first introduced in December 2008 are as follows:

- portal for serving and retired civil servants (CNRACL, FSPOIE, *retraite des Mines*, IRCANTEC and RAFP);
- PAJE (allowance for caring for a young child) online service;
- CESU (universal service employment cheque) online service;
- *Mutualité sociale agricole* (MSA) portal;
- AMELI portal (general regime and various special regimes of the health insurance system);
- online services of the *Caisse nationale des allocations familiales* (CNAF);
- portal for retired workers proposed by the *Caisse nationale d'assurance vieillesse* (CNAV); and
- online services proposed on a trial basis by towns of Vandœuvre-lès-Nancy and Parthenay.

Furthermore, contacts have been made to prepare for the entry of new partners such as the *Pôle Emploi*, in order to increase the coverage of the system through voluntary membership. The DGME gives priority to seeking the adhesion of bodies offering services already widely used online in order to rapidly expand the range of potential services.

12. A green light for a reform project means that it is “proceeding satisfactorily and the expected results should be delivered on schedule”; an amber light is for projects that are under way but not proceeding totally according to schedule; a red light shows that a project is not yet underway.
13. [www.pacteforce5.fr/PacteForce5/pacte\\_force5.htm](http://www.pacteforce5.fr/PacteForce5/pacte_force5.htm).



## Chapter 6

### Compliance, enforcement, appeals

Whilst adoption and communication of a law sets the framework for achieving a policy objective, effective implementation, compliance and enforcement are essential for actually meeting the objective. An *ex ante* assessment of compliance and enforcement prospects is increasingly a part of the regulatory process in OECD countries. Within the EU's institutional context these processes include the correct transposition of EU rules into national legislation (this aspect will be considered in Chapter 7).

The issue of proportionality in enforcement, linked to risk assessment, is attracting growing attention. The aim is to ensure that resources for enforcement should be proportionately higher for those activities, actions or entities where the risks of regulatory failure are more damaging to society and the economy (and conversely, proportionately lower in situations assessed as lower risk).

Rule-makers must apply and enforce regulations systematically and fairly, and regulated citizens and businesses need access to administrative and judicial review procedures for raising issues related to the rules that bind them, as well as timely decisions on their appeals. Tools that may be deployed include administrative procedures acts, the use of independent and standardised appeals processes,<sup>1</sup> and the adoption of rules to promote responsiveness, such as “silence is consent”.<sup>2</sup> Access to review procedures ensures that rule-makers are held accountable.

Review by the judiciary of administrative decisions can also be an important instrument of quality control. For example, scrutiny by the judiciary may capture whether subordinate rules are consistent with the primary laws, and may help to assess whether rules are proportional to their objective.

#### Assessment and recommendations

##### *Compliance and enforcement*

*Enforcement activities are (rightly) moving towards increased consideration of risk and better co-ordination between inspection services. “Obligations based on results” have replaced “obligations of means” while risk analysis is increasingly used to target controls. The policy on state modernisation and application of EU regulations have also led to the regrouping of some services (which in France are primarily under the remit of central government) and to improve co-ordination of inspection bodies. Simplification and co-ordination of inspection and control activities are concerns raised by business representatives. There is as yet no comprehensive approach, but several important initiatives already exist, such as those taken in the context of the RGPP (General Review of Public Policies), and it would seem that there is a trend in this direction.*

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**Recommendation 6.1. Encourage co-ordination between inspection bodies, including through mergers if necessary.**

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## *Appeals*

*Alternatives to judicial proceedings have been developed, in particular, administrative appeals and mediator.* This meets the need to reduce the number of cases that come before administrative courts. Mediators offer a service that is becoming increasingly well-known and which fills in (or attempts to fill in) gaps in the formal system. An important improvement relates to the need for greater transparency in relation to information about appeals procedures, in particular time limits for referring a case which are often very short. Another difficulty lies in the time it takes to process cases as the number of cases continues to rise.

### **Box 6.1. Extract from the 2004 OECD report**

Administrative justice is a well-established practice in France with an easy, frequent appeals procedure against administrative laws. The appeals system is fairly liberal, which makes for easier access for the petitioner.

*Source:* OECD (2004).

### **Recommendation 6.2. Monitor the transparency of the different appeal processes for businesses and citizens, and time taken in processing appeals.**

## **Background**

### ***Compliance and enforcement***

It should be noted that the OECD team was not able, in its review, to identify all the provisions in place and/or in the process of reform. It nevertheless seemed helpful to give the examples, below.

#### *Monitoring the level of compliance with regulations*

There are no aggregate statistics at national level on the enforcement of regulations, something that is also true in other European countries. However, statistics broken down by type of regulation or by Ministry may be available.<sup>3</sup>

#### *Monitoring regulatory enforcement by inspection services*

#### **The authorities responsible for inspection**

Inspection services are attached essentially to Ministries. The Decentralisation Acts of 1982, 1983 and 2004 resulted in central government powers being transferred to regional authorities, but for the most part, responsibility for the enforcement of regulatory norms remained with central government. In most cases, the tasks involved are carried out at the level of regions and *départements* by officials of delegated government services, under the authority of Ministerial departments and *préfets*. For example, the Directorate-General for Competition, Consumption and the Prevention of Fraud (DGCCRF), within the Ministry for the Economy, is responsible for combating practices in restraint of competition and certain anti-competitive practices of enterprises, protecting consumers (implementation in particular of the Consumers' Code) and monitoring the quality and safety of foodstuffs, goods and services. Or again, the Regional Directorates for Industry, Research and the Environment (DRIRE), under the Ministry of the

Environment (MEEDAT), are responsible for the enforcement of environmental provisions with regard to most industrial installations. The staff of regional directorates support and monitor the activities of the directorates or entities of *départements* in which most inspectors work.

The general review of public policies (RGPP), conducted since 2007, has led to the reorganisation of a number of structures responsible for monitoring the enforcement of norms. The aim of the reforms is both to rationalise and reduce government operating expenditures and to improve public service quality. The reform of regional authorities included a consolidation of regional directorates as well as organisational simplification. Another reform carried out under the RGPP was the merger, on 1 January 2009, of three inspection services into a single labour inspectorate so as to create a single interlocutor for firms and employees.<sup>4</sup> This is a welcome development since one of the difficulties evoked by firms is the involvement of several Ministries in the same controls, with little co-ordination, which complicates the procedure, especially for SMEs. Some of those interviewed would like the reform to go further and, for instance, to establish inspection targets and then identify more effective ways of reaching them.

### Investigatory powers

Investigatory powers, which vary depending on inspection agencies involved and the regulations applied, generally include access to premises and the communication of reports and documents. When an inspector finds that an offence has been committed, he prepares a report which he submits to the Public Prosecutor's office. In some cases or when enforcing certain regulations, he may also impose administrative measures (such as an order to comply or to complete work) in the event of a risk to public health or consumer safety.

### Powers to impose sanctions

*Préfets* (officials who represent the state in the *départements* and regions) may in certain cases impose administrative sanctions after issuing a formal demand of performance or an informal letter. However, this does not apply to all fields of inspection. There is no provision for administrative sanctions in the Consumers' Code, for example, and any administrative measures imposed pursuant to Book II of the Code are not preceded by an order to comply. Administrative measures are separate from any criminal sanctions which might be pronounced by a court. Such sanctions are normally pronounced by a tribunal; the Public Prosecutor may decide to take measures other than criminal proceedings.

### Guiding principles for the enforcement of regulations

The various health scares and crises which occurred in the 1990s together with the modernisation of public services led to changes in inspection and control functions. The implementation of Community regulations<sup>5</sup> also resulted in the strengthening of procedures and the application of principles such as risk assessment. These trends are significant, for example, in the fields of food safety and environmental protection.

*Ex ante* risk assessment and prevention and *ex post* inspection were separated with the creation of agencies such as the French Food Safety Agency (AFSSA), the French Agency for the Safety of Health Products (AFSAPS<sup>6</sup>) or the French Agency for Environmental and Occupational Safety (AFSSET<sup>7</sup>). These agencies are responsible, in relation to the risks and benefits in their respective fields of action, for monitoring

developments, issuing warnings and making assessments by means of collective expertise. Thus, the AFSSA has issued a new methodological guide for global risk assessment. The agencies submit recommendations to policy-makers.<sup>8</sup> Inspection duties remain within the jurisdiction of Ministerial departments.

An obligation of result, rather than of means, has now been applied to the principle of control. Since 1993, the safety of foodstuffs has been based on the principle that manufacturers are responsible for the safety of the products they put on to the market. In addition to standardised procedures, they must issue their own norms and formulate a series of internal procedures to provide an *a priori* guarantee of safety. In addition to visits by inspectors, compliance is monitored by examining self-surveillance reports as well as studies carried out by operators and outside bodies.

At the same time, control services have prepared their own procedures and instructions for carrying out quality assurance inspections. This has led to an almost total standardisation of the methods and tools used by inspectors in controlling environmental norms, for example, since a manual setting out the instructions relating to the procedures involved is available to them.<sup>9</sup> Use is increasingly made of risk assessment, as in food safety inspections and the monitoring of classified installations subject to licensing. In this latter case, inspections are targeted on the basis of an analysis of a whole series of risk criteria such as the complexity of the installations and the previous history of the establishment. These targeted inspections are completed by unannounced visits by inspectors essentially to take samples and check the accuracy of the self-surveillance data.

#### Follow-up given to inspections

Some administrations have the power to address a formal demand of performance to economic actors. In the field of consumer protection, officials of the Directorate-General for Competition, Consumption and the Prevention of Fraud (DGCCRF) of the Ministry for the Economy can give a warning to offenders, reminding them of the regulations. Systematic internal procedures for following up such reminders also help ensure their effectiveness. Should operators fail to heed these warnings, criminal or administrative sanctions may be imposed.

The scope of the OECD review is insufficient for a detailed enough assessment of the application of these policies. Some regional or *départemental* directorates publish statistics on their inspection activities (data on inspections completed, outlook). There are reports in some fields which give an overall view of the work and performance of inspection services throughout France. Discussions with the authorities have nevertheless made it clear that the taking into account of risk varies depending on the field of activity and that co-operation protocols have been signed to ensure the co-ordination of controls and inspections (including between services from different Ministries) and thus help make these procedures less cumbersome for enterprises, in particular SMEs.<sup>10</sup> More generally, the administrative re-organisation carried out under the RGPP has resulted in officials from veterinary services being brought together within the same local structure as those from the DGCCRF or indeed, youth and sport. The purpose of this structural reform is to increase synergies and co-operation in order to ensure that interventions, inspections and other market monitoring measures are more effective, wider in application and better targeted.

## *Types of recourse against administrative decisions*

### *Background: Development of judicial review*

In France, there are two types of jurisdiction: the judicial one (civil and criminal cases), and the administrative one. Within these categories, tribunals and courts are organised in accordance with a pyramid structure (first instance, appeal, supreme appellate court). Studies are being carried out on the balance to be found between criminal sanctions, civil sanctions and administrative sanctions, on regulatory non-compliance and on how to co-ordinate these different types of judicial regulation.<sup>11</sup> One of the subjects being examined is commercial law<sup>12</sup> but much more is being studied in the context of the reformulation of the Criminal Code and the Code of Criminal Procedure. Thus, the Ordinances of 25 March 2004 on the Simplification of the Law and Formalities for Business, and of 25 June 2004 on Securities, decriminalised certain activities, making them subject instead to civil sanctions.

### *Types of appeal against administrative decisions*

In order to challenge an administrative decision, a citizen may submit a claim to the administration asking it to reconsider its position (administrative, non-judicial, appeal) or bring a case before the administrative courts (a judicial process). Proceedings in administrative courts can be brought in order to obtain the annulment of an administrative decision or to ask for compensation for any prejudice suffered. The option to bring such proceedings is open for a limited time only – normally two months from the publication or notification of the administrative decision being challenged – for reasons of legal certainty. An administrative appeal will extend the time limit for bringing proceedings which does not start to run until the administration has, either expressly or implicitly, rejected the appeal. Administrative proceedings begin with an application which does not suspend execution of the administrative decisions in question, unlike the summary injunction procedure. Whereas in the case of an administrative appeal, the administration may withdraw its decision for legal or policy reasons, administrative courts can only annul the decision contested and/or compensate the claimant for any prejudice caused, on legal grounds (Box 6.2). Administrative proceedings are fairly informal in nature which makes them reasonably user-friendly. Applicants do not need to engage a lawyer, and indeed do not do so in three-quarters of first instance cases and one-third of appeals, while the rules for formulating applications are straightforward.

#### **Box 6.2. Appeals against administrative decisions**

There are two types of appeal against administrative decisions: appeals to the administration which took the decision (administrative appeal), and appeals to administrative tribunals (judicial appeals). Submitting an administrative appeal extends the time limit for lodging a judicial appeal.

##### **Non-judicial appeals (administrative appeals)**

An administrative appeal consists of a claim addressed to the administration requesting it to reconsider its decision. It may take one of two forms:

- An appeal to a higher administrative authority: administrative control is normally carried out by an authority that is higher than the one which took the decision being challenged. The higher authority may repeal the decision of the lower one.
- An informal appeal: claimants may also directly contact the administration which took the decision, asking it to reconsider its position. The administration that took the decision may then revoke or withdraw it.

### **Judicial appeals**

The purpose of a judicial appeal is to ensure that the decision of the administration was taken lawfully, complying with the law and the public interest. The right of interested parties to bring a judicial appeal is a constitutional principle consecrated as a civil liberty. Administrative courts are competent both to defend the rights of citizens against the administration and to ensure that the administration complies with the law.

#### ***The structure of administrative courts***

There are three levels of administrative jurisdiction: administrative tribunals acting as courts of first instance in the ordinary law (40 administrative tribunals, of which 31 are in metropolitan France), administrative appeal courts (8 in number), and the *Council of State* (*Conseil d'État*) as the supreme appellate court.

Should the court of first instance reject his claim, an applicant has two months in which to appeal, the administrative appeal court re-examining the case in its entirety within the limits of the submissions and legal grounds invoked. Should this decision go against him, the claimant may refer his case to the *Council of State*, but only on the ground of irregularities in the procedure followed before the lower courts or of an alleged error of law on their part. This final appeal marks the end of the proceedings.

The *Council of State* acts as a court of first instance with regard to disputes of particular importance (Decrees, Ministerial regulations, decisions of collegiate bodies with national jurisdiction, individual measures affecting civil servants appointed by Decree of the President of the Republic) or the geographical scope of which exceeds the jurisdiction of an administrative tribunal. It also hears directly any dispute about elections to regional councils or the European Parliament. First instance cases represent 23% of the total number of cases heard by the *Council of State*. Its appellate jurisdiction has gradually been transferred to the administrative courts of appeal (set up by an Act of 31 December 1987) and is now limited to disputes concerning municipal or cantonal elections and referrals for a ruling on legality.

#### ***Types of administrative proceedings***

- The most common are appeals on grounds of *ultra vires*, whereby the applicant requests the court to review the legality of an administrative decision and, if appropriate, annul it. Such illegality may involve the powers of the signatory authority, the regularity of the procedure followed or non-compliance with higher rules or general principles applying to that authority.
- Appeals on grounds of *ultra vires* enable any natural or legal person with an interest to contest the validity of all unilateral administrative decisions, whether individual or regulatory in nature (Decrees of the prime minister or of the President of the Republic, Ministerial Orders, or regulations of other administrative authorities, as appropriate). The only exceptions relate to certain so-called “government” decisions affecting relations between constitutional authorities (Decree of Dissolution of the National Assembly, for example) or the conducting of France’s diplomatic relations, as well as certain decisions internal to the functioning of an establishment (internal rules of an educational establishment, for example). These two exceptions have been recently interpreted in an increasingly restrictive manner by the courts.

- Annulment of a decision produces retroactive *erga omnes* effects (the decision disappears retroactively from the legal system). According to recent case law, however, the courts may apply a time schedule with regard to the effects of an annulment when an *ab initio* annulment is likely to give rise to manifestly disproportionate consequences for the persons concerned or when the public interest requires such a solution (*Council of State*, Assembly, 11 May 2004 AC Association and others, Rec. p.197).
- Appeals on grounds of *ultra vires* are not complicated to bring. They are free, no lawyer is required and the rules for formulating such appeals have been simplified (name and address of the applicant, decision the annulment of which is being sought, reasons justifying the appeal, minimal stamp duty).
- Full jurisdiction proceedings (or full proceedings) differ from appeals on grounds of *ultra vires* in that the court is not limited to simply annulling or validating an administrative decision, but may also modify it. This category covers a wide range of appeals: contractual, involving liability, fiscal or electoral. Usually, lawyers are involved.
- Proceedings involving interpretation and a ruling on legality, in which administrative courts rule on the scope or legality of the administrative decision contested. These appeals normally arise when the ordinary courts, confronted with a question of the jurisdiction of administrative courts, invite the parties to apply to the latter for an interpretation or a ruling on the legality of a decision.
- Criminal-type proceedings under which administrative courts impose sanctions or fines. One example here are so-called contraventions de *grande voirie* (harm caused to the public interest, other than highways which fall under the jurisdiction of the ordinary courts).

### ***Interim injunction proceedings***

An appeal against an administrative decision does not suspend its legal effects. This fundamental rule of public law is intended, above all, to protect the actions of the government, which was originally one of the justifications for administrative action. Summary, or interim injunction proceedings exist, however, including several which are suspensive in nature, under which courts may order provisional measures aimed at preserving the rights of claimants. The Act of 30 June 2000 has changed the way urgent matters are dealt with by the administrative courts and strengthened their interim injunction powers.

There are three types of interim injunctions for which urgency is a necessary condition:

- *An interim ruling of adjournment* enables an adjournment to be obtained of execution of an administrative decision at the same time as a request for revocation. The need for urgency and serious doubts as to the legality of the decision in question must be established. The conditions for bringing such proceedings were made less strict by the reform of June 2000.
- *A protective interim ruling* enables the court to “order any useful measures” to protect the rights of the parties even before the administration has taken a decision.
- *A freedom interim ruling* enables the court to order any measures necessary to protect a basic liberty which is being seriously infringed. The time period for this judgment is two days.

“Ordinary” injunction proceedings (without the need for urgency) also exist, as do special injunction proceedings (such as fiscal injunctions, the suspension of administrative decisions in the

field of urban planning and the protection of nature and the environment).

### **Fines**

Legislation in 1980 and 1995 introduced a system for imposing fines on legal persons governed by public law who do not, within a time limit of four months, execute a court ruling. Such fines are over and above any damages and interest. Any public official whose behaviour gives rise to a public body being fined in this way may himself be fined.

### Extension of administrative appeals procedures

A report of the *Council of State* of 2008<sup>13</sup> recommended that mandatory prior administrative appeals procedures be extended without, however, proposing their systematic use, so as to reduce the number of first instance proceedings before administrative tribunals. An administrative appeal may indeed be a mandatory prerequisite for referring a case to the courts. These procedures have been extended in recent years. The *Council of State* has recorded 140 of them covering a wide range of subjects (public taxes and claims, administrative elections, teaching, decisions of sporting federations, refusal of an entry visa into France). Mandatory prior administrative appeals usually have a number of specific legal characteristics. The decision taken at the end of a mandatory prior administrative appeal in principle replaces the first decision, and the administrative authority hearing the appeal gives a ruling on the situation in fact and in law at the date of its ruling, not that of the decision being contested.

The procedures applicable nevertheless vary, whether with regard to time limits for referral and investigation or with regard to the authorities competent to give a ruling (same authority as that which took the initial decision, higher authority, specific collegiate body). The *Council of State* has emphasised the need to clarify and improve procedures. The persons interviewed by the OECD also stressed the need to enhance the transparency of existing procedures and improve the information given to applicants about the types of recourse available.

### Intervention of the ordinary courts in administrative decisions

According to the *Constitutional Council*, apart from matters reserved by their nature for the ordinary courts, only administrative courts are competent, in principle, to hear appeals for the annulment or amendment of a decision taken, in the exercise of public prerogatives, by authorities exercising their executive power, or by their agents, territorial authorities of the Republic or public bodies under their authority or control. The ordinary courts are competent in relation to private management activities of the administration (for example, industrial or commercial activities of public services), matters of individual liberty and private ownership, and in a number of specific cases (for example the status of persons, or fiscal disputes relating to indirect taxes apart from VAT).

The competent jurisdiction for matters relating to administrative authorities is normally administrative courts. The *Constitutional Council* has ruled that the right of appeal against acts of independent administrative authorities is, as with any administrative decision, constitutional.<sup>14</sup> Often, the law provides for unlimited jurisdiction on appeal which enables the court not only to annul but also to amend a decision referred to it.

With respect to the authorities competent to regulate the economy, on the other hand, parliament has extended the jurisdiction of the ordinary courts by making decisions of such authorities subject to review by the Paris Court of Appeal. The *Constitutional*



*Council* has authorised such transfers of jurisdiction when they have a specific limited purpose and are aimed at standardising proceedings, of a commercial nature, allocating them to the jurisdiction principally concerned. The decisions concerned by such transfers of jurisdiction are the following:

- decisions of the Competition Council, which became the Competition Authority on 2 March 2009;
- individual sanctions or measures – but not regulatory measures – taken by the Financial Markets Authority; and
- decisions taken by the Authority for regulating electronic communications and postal activities and by the Commission for regulating energy in the event of disputes between operators.

### Length of proceedings

The main problem with judicial appeals remains the time they take. The administrative courts are faced with an ever-increasing number of cases (there was a 50% increase in new first-instance cases between 2002 and 2007). In 2007, all levels taken together (*Council of State*, administrative appeals courts and administrative tribunals), 206 000 cases were referred to administrative courts which handed down 210 000 judgments. In 1997, there were 120 000 cases and 115 000 judgments. The average length of time for a judgment from an administrative tribunal, which for long had been over three years, was brought down to one year and three months in 2007, but to two years if cases with specific time limits for judgments and those settled by Ordinance are excluded.<sup>15</sup>

### Right of appeal to the Constitutional Council

Note should be taken of an innovation introduced by the Constitutional Act of 23 July 2008 which extended review of constitutionality by creating a “priority issue of constitutionality”. Before the Act, cases could be referred to the *Constitutional Council* only *ex ante* (before the legislation was promulgated). Now, when in a case being heard by a court it is alleged that a legislative provision adversely affects rights or liberties guaranteed under the Constitution, the *Constitutional Council* may, within a certain time limit, give a ruling on the question if it is referred by the *Council of State* or the Supreme Appeals Court.<sup>16</sup>

### *Mediator of the Republic*

The Mediator of the Republic provides citizens with another channel of appeal, notably for cases in which the excessive complexity of the law obliges the administration or the courts to take decisions which are clearly inappropriate, even if legally justified. The Mediator’s role as an observer means that he may suggest changes to laws or regulations when the investigation of claims shows the existence of iniquities or incoherence in the legislation. Thus, in 2008, the Mediator of the Republic formulated 28 new proposals for reform concerning various subjects.

### Box 6.3. Mediator of the Republic

The Mediator of the Republic is an independent authority created by an Act of 3 January 1973. He is appointed by Decree of the President of the Republic adopted in the Council of Ministers, for a period of six years which is not renewable. His general task is to improve relations between the French administration and citizens. He assists natural or legal persons who are challenging a decision or attitude of the French administration or public service delegation, and endeavours to find an amicable settlement between the parties. Referral to the Mediator of the Republic is not direct: in order to use his services, a case file has to be communicated through the intermediary of a Member of Parliament or Senator or of an agent of the Mediator of the Republic. The Mediator has a network of 275 agents throughout the country.

The Mediator of the Republic has no decision-making power, but does have investigative powers which enable him to obtain explanations from the administration. He also has a power of recommendation in order to end the dispute between the parties.

In December 2008, an *e-mediator* was set up in order to deal with appeals on line. Since its inception, the most common subjects dealt with have been: over-indebtedness; health; taxes; traffic offences and fines; problems with tenants/owners.

Every year, the Mediator of the Republic submits a report to the President of the Republic and to parliament. In 2008, 65 000 cases were referred to the Mediator, of which 7 000 were dealt with by the central services (the others being dealt with by agents).

The Constitutional Act of 23 July 2008 created the office of “Defender of Rights” who has taken over the powers of the Mediator of the Republic, the Defender of Children and the National Security Ethics Commission. The drafts of the Framework Act and the Defender of Rights Act were presented to the Council of Ministers in September 2009 for implementation of this reform.

## Notes

1. Administrative review by the regulatory enforcement body, administrative review by an independent body, judicial review, ombudsman.
2. Some of these aspects are covered elsewhere in the report.
3. Administrative appeal to inspection authorities or an independent body, judicial appeal, mediator.
4. Some of these aspects are addressed in other parts of the report.
5. For example, the DGCCRF has a computer application (*infocentre*) which makes it possible to monitor inspection activities and to see the number of anomalies detected out of a given number of inspections; this application helps assess the level of compliance with the regulations in a given professional sector and to take appropriate measures if this level is unsatisfactory.
6. The single labour inspectorate results from the merger, on 1 January 2009, of the Agricultural Workers' Inspectorate (ITEPSA), the Transport Workers' Inspectorate (ITT) and the Maritime Workers' Inspectorate and Labour Inspectorate (IT).
7. Such as the Food Law of 2002, new food safety legislation setting up, for example, the European Food Safety Authority, the "Hygiene Package" on 1 January 2006.
8. AFSSA also has inspection duties in relation to certain products, such as medicines for example.
9. AFSSA and AFSSET are to merge at the latest by 1 July 2010 into a new national agency responsible for food safety, the environment and labour.
10. [www.afssa.fr/Documents/SANT-Ra-MethodeRisque.pdf](http://www.afssa.fr/Documents/SANT-Ra-MethodeRisque.pdf).
11. OECD, 2009.
12. Thus, a tripartite protocol and structures (MISSA) have been set up to co-ordinate inspections and fields of intervention between the administrations concerned with food and animal feedstuffs. In the industrial products sector, the DGCCRF and the DGDDI signed a co-operation protocol in 2006 organising co-ordinated inspections. In the field of chemicals, several directorates-general (including the DGCCRF) have co-ordinated their actions since 2009 within the framework of an inter-ministerial circular on the control of chemical products. A protocol has also been signed by the DGCCRF and the Directorate-General for the Prevention of Risks concerning risks relating to chemicals (in implementation of the REACH regulations) and more generally environmental risks.

13. To avoid cases of double criminal/administrative sanctions in competition cases. *Les recours administratifs préalables obligatoires*, Study by the Council of State, 2008.
14. See the report: *La dépenalisation de la vie des affaires* presented to the Keeper of the Seals in January 2008 ([www.ladocumentationfrancaise.fr/rapports-publics/084000090/index.shtml](http://www.ladocumentationfrancaise.fr/rapports-publics/084000090/index.shtml)).
15. *Les recours administratifs préalables obligatoires*, Study by the Council of State, 2008.
16. Decisions of 18 September 1986 and 17 January 1989.

## Chapter 7

### The interface between member states and the European Union

An increasing proportion of national regulations originate at EU level. Whilst EU regulations<sup>1</sup> have direct application in member states and do not have to be transposed into national regulations, EU directives need to be transposed, raising the issue of how to ensure that the regulations implementing EU legislation are fully coherent with the underlying policy objectives, do not create new barriers to the smooth functioning of the EU Single Market and avoid “gold plating” and the placing of unnecessary burdens on business and citizens. Transposition also needs to be timely, to minimise the risk of uncertainty as regards the state of the law, especially for business.

The national (and subnational) perspective on how the production of regulations is managed in Brussels itself is important. Better Regulation policies, including impact assessment, have been put in place by the European Commission to improve the quality of EU law. The view from “below” on the effectiveness of these policies may be a valuable input to improving them further.

#### Assessment and recommendations

*Since the 2004 review, there has been a significant improvement in timely transposition.* France used to be a “poor performer” in the EU with regard to transposition. It has made up considerable ground in transposing directives and has achieved its policy goal of reducing its transposition deficit to below 1%. This can be put down to the introduction of rigorous planning and monitoring arrangements. The government has set up a system that monitors transposition very closely and shows quite clearly who is ahead or lagging behind within the framework of a contact group. The SGAE (General Secretariat for European Affairs) holds regular monitoring meetings, keeps a scoreboard and has a network of contacts drawn from both government departments and ministerial staff. The High-Level Group on Transposition enables the SGG and the SGAE to take stock of progress every quarter, prior to the deadlines. It is important to maintain the frequency of High-level Group meetings as well as political pressure via the European Inter-ministerial Committee.

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**Recommendation 7.1. Maintain pressure on the monitoring of the transposition of EU directives by ministries.**

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### Box 7.1. Comments from the 2004 OECD report: Transposition of EU directives

#### Recommendation

#### *Improving legal certainty by... making up for time lost in the transposition of Community directives.*

In recent years France has taken a considerable time to transpose European directives, with more than 90 directives that have not been transposed and more than a dozen that have not been dealt with after more than 2 years. The situation slightly improved recently. At the end of the first semester of 2003, France's rate of delay was ranking 10 out of 15 in Europe.

This situation is a source of legal uncertainty, because it can raise doubts as to the standard in force if there is a temporary contradiction between a European directive and national law. The reasons for these delays are difficult to understand but there are a great number of them. Apart from directives which have come up against internal resistance against their implementation for a long time, such as those relating to certain public services, it appears that implementing any new directive in France requires the whole existing regulatory system to be re-examined, which is very fraught. Business circles think that implementing directives gives rise to "goldplating", with increasingly improved regulations, whereas in some cases direct "*verbatim*" implementation could be all it needs.

*Source:* OECD (2004).

*Quality control needs to be stepped up.* In terms of transposition, the focus has been mainly on reducing delays (successfully). The main weakness of the current monitoring system is its failure to cover the quality of transposition (this is not unique to France). Quality control relies heavily on the European Commission, carried out at the end of the process. Enhancing the quality of transposition requires action at an earlier stage in the process (*i.e.* upstream, as soon as the negotiation starts) and the use of impact assessment by lead ministries. The interviews raised two specific issues, the first being goldplating and the other the transposition problems stemming from the quality of the actual directives.

*Transposition quality requires improvements to the impact assessment system, including consultation arrangements.* The simplified impact statement (*fiche d'impact simplifiée*, or FIS) is basically a legal analysis. It lists the domestic legislation to be drawn up or amended if the directive were adopted. It is based on a correlation table linking each provision in the directive to a piece of domestic legislation (to be drawn up or amended). France is to be commended for using such a table, as many other countries have less formal arrangements. However, it would be advisable to strengthen and broaden the implementation of the entire system. Drawing up an impact statement that is regularly updated throughout the negotiations makes it possible to assess the legislative changes entailed by a directive, in order to plan ahead for the transposition process and prevent (as far as possible) the adoption of a directive that would be hard to incorporate into the French legislative framework. It would also be advisable to tie in the work undertaken nationally with the impact assessments drawn up by the European Commission (one source of difficulty, highlighted by several OECD interviewees, is the legal quality of the directives themselves). Downstream, the impact statement could be more clearly integrated into the practical transposition exercise and used, for instance, to back up the impact studies required for proposed domestic legislation (Chapter 4). The discussions under way in the SGAE on a reform of the system are highly appropriate.

**Box 7.2. 2004 OECD report: Consultation and impact assessment for EU directives**

In France, prior public consultation and impact assessment of the proposed directives remain minimal. This does not make it any easier to understand the objectives of the European policy at an internal level, all the more so since European projects are often the means for national governments to overcome internal resistance and have legislation passed for difficult measures. It can then partly deny responsibility for them pleading that they are valid because of their supranational European context. However, formal consultation of parliament for matters which come under the law, following the *Council of State*'s recommendation, has meant that the situation has improved considerably.

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**Recommendation 7.2. Continue to reflect on the interaction between impact assessment undertaken at the European Commission level and the national level, and on integration of impact assessment in the transposition process.**

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*France should be more active in developing Better Regulation issues at the EU level.* It could take forward the major discussions launched during its Presidency of the Council of the European Union [importance of access to legislation in the work on “Regulatory Governance”, including the interface between EU and domestic legislation; interaction between the EU system of *ex ante* assessment (impact studies) and its counterparts in Member States; the interface between impact assessment and administrative simplification; and access to legislation via information technology as an element in its own right]. A lack of resources appears to be hindering the ability to follow up actively on these various issues at the EU level.

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**Recommendation 7.3. Reinforce France’s role in discussions on Better Regulation at the EU level. Consider how to secure adequate resources to support this objective.**

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## Background

### *General context*

#### *The weight of EU law*

As in the other EU Member States, the output of domestic regulations is substantially affected by the output of rules at the EU level. EU-origin regulations as a share of France’s regulatory stock have been estimated at over 50%.

The case law of both the *Constitutional Council* and the *Council of State* stresses the need to comply with transposition requirements, in terms of both deadlines and compliance with EU obligations. For instance, the *Constitutional Council* has inferred from the Amendment to the Constitution on 25 June 1992, specifically mentioning France’s membership of the European Communities and the European Union, that there is a “constitutional requirement” on the legislator to transpose directives into domestic law.<sup>2</sup> Similarly it reserves the right, following its decision of 27 July 2006 on copyright, to verify that a transposed act complies with the provisions of the relevant directive. As for the *Council of State*, after specifying in a 1984 Decree<sup>3</sup> that the Government could not introduce regulations that were inconsistent with the aims of a directive for which the transposition deadline had expired, it stated in a 1989 Decree (*Alitalia company*) that the

authorities could not retain in domestic legislation, beyond that same deadline, regulatory provisions that had become inconsistent with such aims.

### Leading trends in the arrangements for negotiating and transposing EU directives

Over the past few years, the French Government has reviewed the arrangements for negotiating and transposing directives in order to improve the transposition rate. This was because France had a substantial backlog in terms of transposing EU directives, as highlighted in the 2004 OECD report which listed numerous problems (Box 7.1). At the time, more than 90 directives had not been transposed and more than a dozen had not been dealt with after more than 2 years.

This review of the system was prompted largely by the Circular of 27 September 2004 from the prime minister,<sup>4</sup> setting out a procedure common to all ministries and based on an integrated approach, starting at the negotiating stage. There are four components to this procedure:

- better appraisal of the legal impact of European legislation, as far upstream as possible at the negotiation stage;
- better planning of the transposition workload;
- a new inter-ministerial network of contacts focusing on the transposition process; and
- monitoring arrangements, including the appointment of *chargés de mission*, reporting to the legal department of SGAE, to monitor transposition.

The experience gained from France's Presidency of the Council of the EU (second half of 2008) proved useful: ministries had to take a pro-active approach to projects on the president's agenda, and realised that involvement was advisable well upstream in the negotiating process. Several interviewees stressed the need to develop this kind of pro-active approach and use impact assessments to further "empower" the French delegation for the negotiations. It remains to be seen whether this effort will be maintained across all the ministries. The recent provisions of Article 260 of the Treaty on the Functioning of the European Union, based on the Treaty of Lisbon, are a new source of pressure and encouragement to act in that Member States may henceforth, as of the first referral to the Court of Justice of the European Union, be ordered to make a penalty payment for delayed transposition.

### *Negotiating EU regulations*

#### *Institutional framework and processes*

France's negotiating positions with regard to EU regulations are conveyed by the Permanent Representation once they have been subject to a process of inter-ministerial dialogue and finalised under the supervision of the General Secretariat for European Affairs (SGAE). This is to ensure that France speaks with a single voice in European fora. The SGAE appoints a lead ministry for the negotiations and centralises information to and from the European institutions. This includes forwarding government instructions to the Permanent Representative in Brussels and ensuring that the relevant ministries receive feedback throughout the negotiations. Another aspect of the SGAE's role is to follow European issues on a daily basis, including the work of the European Parliament. It has thus become a centre of expertise on European issues.



During preparations for the negotiating process, the SGAE harmonises the positions of French administrative authorities and, in the event of differences, arbitrates as necessary. Preparations for the negotiations are not confined to ministries alone. They may also include the relevant independent administrative authorities (such as ARCEP, the French Telecommunications and Posts regulator), which are in practice closely involved with specific ministries in negotiating European regulations in their own fields. In cases of disagreement between ministries on the more politically sensitive issues, the SGAE asks the prime minister to arbitrate, for instance by raising matters with members of the government within the Inter-ministerial Committee on Europe (CIE). This meets on a monthly basis and is chaired by the prime minister.

### *The role of parliament*

The procedures for consulting parliament were summarised in a circular on 22 November 2005, currently under revision to reflect the Amendment to the Constitution on 23 July 2008 and the Treaty of Lisbon. The government must forward to the Parliamentary Committees on European Affairs (Box 7.3) any proposals for or drafts of acts of the European Communities and the European Union as soon as they have been transmitted to the Council of the European Union. The Parliamentary Committees on European Affairs may decide to approve the drafts of or proposals for EU legislation or oppose their adoption in a resolution.

This disclosure requirement has been extended. Until the Amendment to the Constitution on 23 July 2008 it applied solely to acts containing provisions of a statutory nature as specified in the Constitution (see Chapter 4), but now the Government must also lay before parliament, on its own initiative or at the request of the Chair of the Committee on European Affairs, any “requisite document”, without further details. Some 500 European instruments are laid before parliament in this way every year. Since 2002, the SGAE has been attaching simplified impact statements (FIS) to the proposals for and drafts of European acts laid before parliament (see below).

#### **Box 7.3. Parliamentary committees on European affairs**

The National Assembly, like the Senate, has a Committee on European Affairs to monitor EU affairs under Article 88-4 of the Constitution. Established following the Amendment to the Constitution on 23 July 2008, these Committees have replaced the Delegations for the European Union.

The Committees have a mandate to provide information on and monitor EU work, on behalf of France’s Permanent Representation, by holding regular hearings (members of the government, European officials, key figures) and publishing information reports. They appraise all drafts of and proposals for EU legislation, and discuss proposed opinions of the Parliamentary Assemblies in terms of their conformity with the principle of subsidiarity. They may also give the European perspective on domestic Bills and proposed legislation in areas covered by the European Union. They also help to foster co-operation between Member State Parliaments and the European Parliament.

### *Ex ante impact assessment (negotiation stage)*

Since 2004, ministries have had to draw up a simplified impact statement (FIS) right from the drafting and negotiating stages of EU legislation. The Circular dated 27 September 2004 from the prime minister (*ibid.*) states that “*every draft act of the European institutions should give rise to an ex ante analysis of its legal, budgetary, technical or administrative impacts including, where necessary, its implications for local*

*authorities, as well as its consequences for the sector concerned*". To that end, the lead ministry must provide, at the invitation of the SGAE and within three weeks of European legislation being laid before both Assemblies, a simplified impact statement on that legislation. This FIS is required for draft directives and for framework regulations/decisions tabled by the European Council. The FIS is forwarded for validation to the SGAE, which then forwards it to parliament. If the draft has implications for local authorities, the SGAE also forwards the FIS to local authority associations. The 2004 Circular recommends that this initial analysis be fleshed out at each successive stage and adapted when significant amendments are made to the joint proposal adopted by the Council or following amendments proposed by the European Parliament.

The simplified impact statement is a basically a legal analysis. It lists the domestic legislation to be drawn up or amended if the directive were adopted. It is based on a correlation table linking each provision in the directive to a piece of domestic legislation (to be drawn up or amended). The statement sets out any transposition problems that have already been identified. These may be questions as to the choice of an appropriate level for the legislation in the hierarchy of domestic rules and regulations, or interpretation problems or possible inconsistencies with regard to domestic law that might arise from the proposed wording of the EU instrument. The FIS must include an initial assessment of implications other than those of a legal nature.

### ***Transposing EU directives***

#### *Institutional framework and processes*

The Circular of 27 September 2004 from the prime minister is the benchmark for ministries on transposing EU law into domestic legislation. The onus for preparing for that transposition is on ministries acting either alone or as lead ministries when a directive covers more than one policy area. In principle, the responsibility for transposition lies with the ministry that led the negotiation. The ministries forward the correlation tables to the European Commission when expressly required to do so by the directive but do not make them public. The SGAE monitors the transposition in liaison with the contacts appointed in each ministry, in liaison with the European Commission.

#### *Legal provisions and the role of parliament*

Parliament is involved in the transposition of directives that have statutory implications. The transposition then takes the form of a Bill laid before one of the two Assemblies, and follows the ordinary legislative process (see Chapter 4). Again, parliament will have been informed at the negotiating stage. There are no special transposition arrangements as in some other EU countries.<sup>5</sup>

#### *Ex ante impact assessment (transposition stage)*

The simplified impact statement, drawn up at the negotiating stage, must be updated as it goes through the transposition process. The Framework Act of 15 April 2009 makes it mandatory for ministries to conduct impact assessments and, in this regard, to look at whether their draft legislation is consistent with European law as a whole. Discussions are under way in the SGAE to reform these arrangements, particularly in terms of the changes made to impact assessments in 2009. Another question relates to the link between impact assessments by the European Commission and those conducted for transposition purposes.

There has been a marked increase in the output of simplified impact statements laid before parliament: 12 in 2005, 120 in 2006, 97 in 2007 and 102 in 2008. An FIS should include more than just legal analyses but, in practice, ministries confine them to a simple legal statement. Correlation tables are drawn up for around half of them. The *Warsmann* report in January 2009 pointed out that their quality can also vary markedly across ministries.

### *Monitoring transposition*

Transposition monitoring is based on inter-ministerial co-ordination schedules and arrangements. Each lead ministry provides input to the scoreboard drawn up by the SGAE, on at least a quarterly basis. The inter-ministerial network of contacts, drawn from government departments or ministerial staff, is known as the “High-level Group” and holds quarterly meetings under the auspices of the SGG and the SGAE. The aim is to identify potential problems and call on ministries to act by the deadlines set for transposition. Any problems or delays in transposition may be addressed at the political level, first in the monthly CIE meetings, then in the Council of Ministers which addresses such matters on a six-monthly basis.

Responsibility for checking the quality of transposed legislation lies with the legal directorates of the ministries concerned, the focus being mainly on the legal aspects. The SGAE may take part in this at the request of a ministry, or in the event of inter-ministerial disputes. However, it cannot conduct such verifications on a systematic basis. The emphasis appears to have been mainly on delays in transposition rather than quality. The EU Internal Market Scoreboard published by the European Commission in July 2009 ranks France fourth among the Member States for the number of internal market directives (23 in all) transposed incorrectly. A 2007 report by the *Council of State* entitled “Better integration of Community regulations into domestic law” included recommendations that the unconditional provisions of a directive be written directly into domestic law without amendment. These recommendations were taken up in the 2009 *Warsmann* report on the quality and simplification of the law.

### *Assessment: Progress*

The European Commission’s Internal Market Scoreboard<sup>6</sup>, published in December 2009, indicates that France has a transposition deficit of 0.7 % (below the 1% target set by the Commission), with 10 directives overdue for transposition (European Communities, 2010). The situation has improved considerably since the 2004 OECD report, when the deficit stood at 4.1%, or 62 directives overdue. As well as directives that had not been notified as implemented, there were 20 directives that had not been correctly transposed as of 1 November 2009. There were 83 infringement proceedings under way against France in May 2009 (compared with an average of 47 against Member States as a whole), 76% of them relating to directives.

### *Link with the European Commission’s policy on regulatory governance*

Both the SGG and the SGAE attend the High-level Group on Better Regulation which liaises with the European Commission and a range of international bodies working in the field of regulatory quality, including the OECD. The DGME acts as a Single Point of Contact (SPOC).<sup>7</sup>

During its EU Presidency (second half of 2008), France highlighted the potential importance of access to legislation in work on “Regulatory Governance”, including the

interface between EU and domestic law. Two other major aspects singled out for the next few years are, first, the linkages between the EU system of *ex ante* impact assessment and its counterparts in Member States and, second, the linkages between impact assessment and administrative simplification. France also seized the opportunity, during its EU Presidency, to promote access to legislation via information technologies as a separate component of its Better Regulation programme (endorsed by the Competitiveness Council in September 2008). Having completed its EU Presidency, France appears to be encountering problems in providing the resources required for more “forceful” follow-up of the dossiers it launched (taking into account the substantial resources made available by some other countries for the dossiers launched during their own EU Presidencies).

It is worth noting, in the wider context of the European institutions, that the SGAE monitors the work of the European Parliament.<sup>8</sup> Together with the Ministry of European Affairs and France’s Permanent Representation to the European Union (PR), it co-ordinates contacts made with MEPs on behalf of the French Government. Within each ministry, one or more *chargés de mission* follow the work of the European Parliament and, more specifically, the work of the Parliamentary Committees in areas falling within the remit of their ministerial department. They convey the French Government’s position to parliament. In addition to these direct contacts, there are also position papers drawn up by the ministries and validated by the SGAE on the key dossiers before the European Parliament, in particular those connected with legislation subject to the co-decision procedure. At the beginning of each EU Presidency, the SGAE chairs a meeting with all of the ministries to draw up a list of items on the European Parliament agenda that are priorities for the French Government.

## Notes

1. Not to be confused with the generic use of the term “regulation” for this project.
2. Constitutional Council 10 June 2004 N° 2004-496 DC “Act on Confidence in the Digital Economy”.
3. 28 September 1984, National Confederation of Societies for the Protection of Animals in France and French-speaking countries.
4. Circular of 27 September 2004 from the Prime Minister on the procedure for transposing into domestic law the directives and framework decisions negotiated within the framework of the European institutions.  
*www.circulaires.gouv.fr/index.php?action=afficherCirculaire&hit=10.*
5. The United Kingdom, for instance, has put in place transposition arrangements based on a special Act that provides for the use of secondary legislation.
6. The transposition deficit is the percentage of internal market directives not yet transposed and notified as such to the European Commission compared with the total number of directives to be transposed.

7. The role of SPOC is threefold: reporting to the SGAE and ministries on progress in the European project on Reducing Administrative Burdens in the European Union; gathering reactions from ministries on possible areas for simplification proposed by the Commission and forwarding French reactions, via SGAE, to DG ENTR; and keeping the Commission informed of progress in France.
8. Circular of 21 March 1994 from the prime minister on relations between French administrations and European institutions.



## *Chapter 8*

### **The interface between subnational and national levels of government**

Multilevel regulatory governance – that is to say, taking into account the rule-making and rule-enforcement activities of all the different levels of government, not just the national level – is another core element of effective regulatory management. The OECD’s 2005 Guiding Principles for Regulatory Quality and Performance “encourage Better Regulation at all levels of government, improved co-ordination, and the avoidance of overlapping responsibilities among regulatory authorities and levels of government”. It is relevant to all countries that are seeking to improve their regulatory management, whether they are federations, unitary states or somewhere in between.

In many countries local governments are entrusted with a large number of complex tasks, covering important parts of the welfare system and public services such as social services, health care and education, as well as housing, planning and building issues, and environmental protection. Licensing can be a key activity at this level. These issues have a direct impact on the welfare of businesses and citizens. Local governments within the boundaries of a state need increasing flexibility to meet economic, social and environmental goals in their particular geographical and cultural setting. At the same time, they may be taking on a growing responsibility for the implementation of EC regulations. All of this requires a pro active consideration of:

- The allocation/sharing of regulatory responsibilities at the different levels of government (which can be primary rule-making responsibilities; secondary rule-making responsibilities based on primary legislation, or the transposition of EC regulations; responsibilities for supervision/enforcement of national or subnational regulations; or responsibilities for service delivery).
- The capacities of these different levels to produce quality regulation.
- The co-ordination mechanisms between the different levels, and across the same levels.

## Assessment and Recommendations

*Complex structures at the subnational levels heighten the need for a coherent Better Regulation policy.* Over the past three decades, France has moved forward in a decentralisation process intended to shift new powers and responsibilities to local officials and subnational levels of government. In addition, the basic structure is built upon great diversity at the communal level – the essential tie-in point for the needs of SMEs and individuals. This heightens the need for regulatory governance policy. Strategically, France is striving to strike a balance between a number of different principles: subsidiarity/equality at the subnational level, central concentration of power/decentralisation. France is not the only Member State of the European Union with a complex frame of reference. It is, however, undergoing a period of substantial changes. In talks with the OECD, a number of stakeholders have stressed the importance of formulating common-sense guidelines, so as not to get lost in a fog of principles.

### Box 8.1. Excerpts from the 2004 report: Regulatory powers of the subnational levels

#### Recommendation

#### *Clarifying and rationalising the distribution of competences generated by decentralisation.*

In a number of OECD countries, decentralisation allows for setting up rules which are closer to users. France has undertaken a significant decentralisation effort in the past 20 years where numerous competences have been transferred to local authorities, which is in many ways a positive move. However, the inextricable confusion of competences across four levels of government is detrimental to an efficient regulatory process. A clearer distribution of regulatory competences among the various levels of local authorities, with rigorous block allocations, would help to clarify the situation. In addition, improved awareness and exercising by local authorities of regulatory practices should be developed in light of new responsibilities entrusted to them. The process of decentralising responsibilities must be accompanied by clear and effective accountability requirements at all local levels, administrative as well as judicial.

#### Assessment

The way in which powers are co-ordinated between the central state and local authorities reflects the ambiguities and the difficult renunciations of a unitary state committed to a process of decentralisation of which neither the unitary state nor some of the players in the institutions necessarily accept all the consequences. This makes it all very complicated, reducing potential gains from decentralisation. In addition, decentralisation transfers major areas of competence to local levels which are often dispersed and very small for some municipalities with human and financial resources that are not adequate for quality legislation.

The French move towards decentralisation and bringing regulatory power to a local level has a number of praiseworthy, positive aspects. It has enabled the Republic to loosen its fetters and gives a considerable level of autonomy to local bodies. However, it has also created a tangle of powers that it is often difficult to unravel. *Ex post* co-ordination and control systems do not currently provide a really satisfactory answer to the level of complexity thus created. Simultaneously managing three levels of local authorities has turned out to be a source of complexity and administrative management costs. France seems to be trapped in its contradictions by trying to gain as many features of a federal state to draw benefits from it while maintaining the institutional framework of a unitary state at four management levels, none of which she can do without.

Source: OECD (2004).



*Substantial progress has been made towards including subnational governments in the process of making regulations. The Advisory Board for Regulatory Evaluation (Commission consultative sur l'évaluation des normes – CCEN) has recently been established so that proposed regulations from the centre can take account of the financial consequences downstream (thereby avoiding unfunded mandates). Strengthening consultation with local governments would help identify impacts of draft laws and decrees at the local level, beyond financial impacts.*

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**Recommendation 8.1. Consider monitoring and an extension of the scope of the work of the Advisory Commission on Evaluation Standards (CCEN).**

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*Another way forward would be to encourage wider dissemination of the principles and practices of regulatory governance within subnational entities themselves. At present, there is very little swapping of good practices between subnational governments as compared to what can be done in other countries. Subnational governments could exchange ideas and good practices with regard to the drafting of model administrative acts that could benefit them all, for example, or methods for conducting public consultations, without running counter to the ban on one local authority's having jurisdiction over another. Subnational governments in some other countries are currently testing ways to initiate this joint brainstorming process, encouraged by the central government in the Netherlands, Denmark and Portugal, for example.*

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**Recommendation 8.2. Encourage the development of good practice exchanges between local governments.**

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*Better dissemination of local law would enhance the accessibility of subnational administrative provisions, in respect of both local government instruments and those of locally based central-government outposts. The publication of such provisions does not appear to meet minimal criteria for proper accessibility. A stock-taking initiative would also provide an opportunity to check the situation with regard to regulatory inflation at the local level.*

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**Recommendation 8.3. Improve communication on local regulations by identifying possible measures (e.g. legal portals, gradual codification of local regulations,)**

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Subnational entities are starting to be incorporated into the central government's administrative simplification initiatives.

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**Recommendation 8.4. Efforts should be continued to incorporate subnational entities into the central government's administrative simplification initiatives.**

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## Background

### *Structure, responsibilities and funding of local governments*

France is traditionally a unitary and centralised state, in which authority is exercised by a power base in Paris. It is the state's role to impose certain guidelines, such as the sovereign principle of the state's rights and obligations and the principle of equal treatment throughout the country. Nevertheless, the decentralisation process has altered the landscape by transferring powers and areas of authority to local elected officials and subnational governments. It has also given rise to new forms of institutional interface between the central and subnational governments.

#### *Structure of local governments*

France has three levels of decentralised government<sup>1</sup>: communes (36 686 at 1 January 2009), *départements* (96 mainland *départements* and 4 overseas *départements*) and regions (22 mainland regions and 4 mono-departmental overseas regions: Guadeloupe, Martinique, French Guiana and Réunion). On the mainland, the three levels of decentralised government each have a deliberative assembly elected via direct universal suffrage by citizens of the respective entities (municipal council, general council and regional council) and a chief executive elected by the relevant assembly (mayor or chair of the general or regional council).

The division of France into regions, *départements* and municipalities is supplemented by a multitude of overlapping groupings of municipalities. The creation of these groupings stems essentially from the desire of various governments to remedy the division or fragmentation of the municipalities (half of which have a population of under 380). Instead of the merger policies instituted in other countries such as Denmark, France has chosen the path of co-operation in order to pool the resources of communes.

#### *Responsibilities and powers of subnational governments*

Regions, *départements* and communes enjoy decentralised responsibilities stemming *inter alia* from the decentralisation acts of 1982, 1983 and 2004. The first wave of decentralisation raised the status of regions to that of a territorial entity and repealed the state's jurisdiction over all acts of subnational governments (repeal of systematic prior control). The second big step, in 2003, saw a broad swath of responsibilities transferred to subnational governments (essentially regions and *départements*) (Box 8.2).

#### **Box 8.2. How responsibilities are shared between subnational governments**

Most decentralised responsibilities, apart from vocational training (regions), social welfare (*départements*) and urban planning rules (*communes*), are shared, whether they involve delivering a public service, distributing financial aid to businesses or individuals or making capital investments. In practice, the division of responsibilities often appears complex and ambiguous.

Regions are primarily responsible for economic development, vocational training, apprenticeship, land-use planning, *upper secondary* schools, the environment (nature reserves, regional parks), culture (heritage), regional rail transport and, if they so request, major infrastructure (maritime and inland waterway ports, airfields, navigable waterways).

*Départements* are primarily responsible for social and medico-social welfare (organisation and benefits for the disadvantaged and the elderly, social and occupational integration of beneficiaries of minimum income support (*revenu minimum d'insertion*, *RMI*) and the future income support allowance

for low-wage workers (*revenu de solidarité active, RAS*), lower secondary schools, road infrastructure, culture (including museums), sport (equipment), the environment (nature reserves, waterway management, waste treatment plans, water management schemes, etc.), road transport and school bussing, fire and first aid services and, if they so request, major infrastructure (seaports, airfields).

Communes (or in some cases groups of communes) have responsibility for all locally-focused areas of government action. They are involved in town planning, housing, elementary schools, the management of waste, water and energy, urban transport, road safety (traffic and parking), culture (museums), child care (day care centres, recreational facilities), sport (equipment), tourism, road works and, if they so desire, infrastructure (airfields, marinas).

The Constitution recognises the regulatory power of subnational governments, but this power is neither general nor absolute. First, the scope and the very procedures whereby subnational governments exercise their responsibility are set by parliament and national regulatory authorities. In addition, the primary responsibility for regulatory law enforcement measures lies with those national regulatory authorities. Moreover, local regulatory power is still subject to administrative control by the representative of the state, who can petition an administrative judge, who then settles any dispute. The prefect, who represents the state within a *département*, receives copies of the main measures enacted by local governments and their public establishments and may refer to the administrative tribunal any that he or she deems contrary to the law. This control is preceded, however, by a prior dialogue phase which in most cases leads to withdrawal of the contested act before it is referred to the courts. In the event of doubts over the compliance of a decision within his or her authority, the chief executive of a local government can also confer with the prefect's staff and ask them to review the proposed act. This legal advisory function plays an important role in the quality of the measures enacted by local governments.

### Reforms

A reform was undertaken in order to clarify: (1) the interface between subnational governments and the state; and (2) the interface between local authorities. The first segment led to the formation of a working group headed by Senator Alain Lambert, whose recommendations, which were released at year-end 2007, followed up on the creation of an advisory body to assess the impact of regulatory provisions on subnational governments (see below). During the second segment, following the report of the Balladur committee, the government in October 2009 introduced a bill in the Senate (examination of which began in January 2010). This draft legislation calls for reform of how members of the general (*département*-level) and regional councils are elected, measures to bolster inter-communal initiatives and creation of a new structure ("metropolitan areas", *métropoles*) for urban areas with populations of over 500 000 which would replace pre-existing entities (communes, communities and General Council). The bill would also establish the principle of specialisation of responsibilities for regions and *départements*, with communes alone retaining general responsibility.

### Funding

The resources of subnational governments consist of tax revenues, state transfers, transfers from the European Union and other governments, and service charges and levies.<sup>2</sup> Subnational governments enjoy borrowing autonomy, but they may earmark the proceeds for new capital investment alone. Overlapping responsibilities mean that the

same project may be funded by more than one subnational government at once, and perhaps by the state as well.

- Taxes account for just over half the resources of subnational governments (three-quarters of them being direct taxes). Tax rates are set by multiple policymakers (most frequently, each level will add an additional levy to the common tax), in addition to the central government, which supervises the mechanisms through ceilings and the “rate linkage” principle intended to control rate increases. The state also intervenes in local taxation by granting tax exemptions to certain categories of households or businesses, which it then offsets with financial transfers.
- Transfers and grants account for roughly 35% of the resources, and the vast majority of them may be used freely. The largest of these is the global operating grant (*dotation globale de fonctionnement*)<sup>3</sup> which has been built up by reforms that have incorporated a variety of other grants that used to be distinct (OECD, 2006).

### ***So-called “deconcentrated” state services***

Central-government services based in the regions and *départements* coexist with their counterparts in the subnational governments. Prefects are appointed by the President of the Republic and represent the state in the regions and *départements*. They have authority over the deconcentrated (*i.e.* locally-based) services of the various ministries at the regional, inter-departmental and sub-departmental levels (except for education, the administration of justice and tax collection). At the communal level, the mayor is both the chief executive of the commune and an agent of the central government, with respect to certain powers (such as vital records and the organisation of elections).

The decentralisation acts, while granting greater institutional recognition and responsibilities to regional councils, sought to enhance the effectiveness of the deconcentrated administrative apparatus. The regionally deconcentrated services of the various ministries were consolidated into eight power centres, and the regional prefect was asked to co-ordinate the policies implemented by each of the centres. The regional prefect was also assigned an organisational and co-ordinating role *vis-à-vis* departmental prefects – a function that should in no way be construed as implying any hierarchy amongst prefects.

**Table 8.1. Deconcentration and decentralisation****Schematic presentation of deconcentrated services of state administrations and subnational governments**

	Deconcentrated services of central government administrations	Subnational governments
Regions (26)	Regional prefect Secretary-General for regional affairs Deconcentrated services (Regional directorates for infrastructure, housing, agriculture, education, etc.)	President of the Regional Council General director of services Directorates (education, economic development, communications, etc.) Economic and Social Council (representatives of businesses, unions, associations and qualified individuals)
<i>Départements</i> (100)	Departmental prefect Secretary-General of the Prefecture Sub-prefects of <i>arrondissements</i> Deconcentrated services (departmental directorates for infrastructure, housing, etc.)	President of the General Council General director of services Directorates (roads, communications, environment, social assistance, agriculture, culture and tourism, education, etc.)
Municipalities (36 600)	Mayor	Mayor

Source: OECD (2006), *OECD Territorial Reviews: France*, OECD Publishing, Paris.

***Regulatory governance policies at the subnational level***

Efforts by local authorities consist above all of introducing e-Government tools to facilitate access to public services. Because the development of electronic services depends on each locality, the situation varies widely from one to another. Within local governments, mechanisms or procedures are being instituted to get citizens more involved in policymaking, especially in respect of project planning. Local authorities have set up these procedures on a voluntary basis. Moreover, brainstorming sessions, at the central level in particular, have explored how to deliver better access to subnational administrative acts (see Chapter 3).

***Access to subnational acts***

The publication of administrative acts in subnational entities is subject to strict legislative and regulatory provisions. It produces two legal effects: it is one of the conditions for acts to take effect, and it also defines the deadline for third-party filing of legal challenges to regulatory or individual acts. Publication (in an official compilation or bulletin) and posting at appropriate locations are the two ways to satisfy legal publication requirements. With respect to the communes, the code of subnational governments stipulates that in communes having a population of 3 500 or more, mayoral orders of a regulatory nature shall be published in a compilation of administrative acts (*Recueil des Actes Administratifs*, RAA) having at least quarterly editions. For their part, directives, instructions and circulars issued by deconcentrated authorities of the central government must be published in an official bulletin having at least quarterly editions. Since the enactment of Act N° 2002-276 of 27 February 2002 on grass-roots democracy, these conventional provisions may be supplemented by additional arrangements for digital media.

***Public consultation: Grass-roots democracy***

Citizen consultations can be conducted at the initiative of local elected assemblies within a framework stipulated by law. The deliberative assemblies of subnational entities

possess a participatory democracy mechanism instituted by legislation: consultation of the electorate, which has been possible in the communes since 1992, was extended to all subnational entities by Act N° 2004-809 of 13 August 2004 on local freedoms and responsibilities. No area under the responsibility of the deliberative assembly or its executive was excluded. Local elected officials are therefore free to decide to consult the electorate before imposing regulations in an area under the responsibility of their subnational government. Consultations of the electorate are governed strictly by law under an electoral procedure (campaign, dissemination of information, polling station rules, organisation of ballots).

Local referenda are another tool available to subnational authorities. The electorate's participation in policymaking in areas under the responsibility of subnational governments was bolstered considerably by the Constitutional Act of 28 March 2003 on the decentralised organisation of the Republic and Organic Act N° 2003-705 of 1 August 2003 on local referenda. When they decide to submit to a local referendum a proposal intended to settle an issue under the responsibility of the subnational government or an act under the authority of the executive in connection with the powers he or she wields on the community's behalf, the subnational authorities relinquish their decision-making power, deferring to the electorate. The proposal submitted to local referendum shall be adopted if at least half of the registered voters take part in the vote and if the proposal is approved by a majority of the votes cast.

### ***Co-ordination mechanisms***

Associations of local elected representatives comprise a cornerstone of the representation of subnational governments to the state and central government, as well as a forum for pooling and exchanging good practices. A large number of local executive managers and members of local authority assemblies are also members of parliament. This helps the local authorities' voice to be heard more clearly at the centre of power. Their action may focus on the implementation of particular regulations (such as the Service Directive, for instance). It does not specifically tackle issues of regulatory quality or administrative simplification.

### *Co-ordination between the central and subnational administrations*

#### Administrative simplification initiatives

OECD interviews showed that local authorities were keen to become involved more closely in the administrative simplification initiatives being undertaken by the government. Subnational governments are beginning to be included in administrative simplification programmes. In the programme for simplifying administrative procedures, three out of 15 measures require their input (see Chapter 5).

#### Consultations on proposed regulatory provisions

Another source of concern is consultation with subnational governments and consideration of the implications for them of new legislative or regulatory provisions. A variety of mechanisms enable the government to consult with local authorities about proposed regulatory provisions:

- Informal consultation, in particular with national associations of elected officials.
- Formal, mandatory consultation involving specialised committees instituted by legislative or regulatory provisions. For instance, in respect of water regulations,

proposed laws or decrees must be reviewed by the National Water Board, whose members include representatives of local authorities.

- Formal consultation of the National Board of Executives (*Commission nationale des exécutives*, CNE). Chaired by the prime minister and instituted on 4 October 2007, the CNE is an official forum for concertation and exchange between the government and the heads of the three main national associations of elected officials (the French Mayors' Association, the Assembly of French *Départements*, and the Association of French Regions). The Board meets two or three times a year, at the government's initiative or at the joint request of the heads of the three national associations.

The amended 2007 Budget Act instituted the Advisory Board for Regulatory Evaluation (*Commission consultative d'évaluation des normes*, CCEN), the membership and *modus operandi* of which were set forth by decree.<sup>4</sup> This is a special advisory body whose purpose is to fine-tune the analysis of the financial impact of regulations on subnational governments, and it forms part of the broader impact study (Chapter 4). The CCEN took stock of its initial activity in its first annual report, which listed 66 referrals in 2008 (46 decrees and 20 orders). The CCEN notes that the institution of the new Board has started to cause changes in practice, prompting administrations to expand their knowledge in the area and improve their grasp. It also noted an instability in the definition of a “text involving subnational governments” and in the interface between the responsibilities of the CCEN and the CFL (which is consulted about draft decrees involving the resources of subnational governments) (CCEN, 2009).

### Box 8.3. Advisory Board for Regulatory Evaluation (CCEN)

The CCEN is a follow-up to the recommendations of the 2007 *Lafon* report on simplification of the activity of subnational governments<sup>5</sup> and to the 2007 *Lambert* report<sup>6</sup> on the financial interface between the central and subnational governments, which was commissioned by the prime minister as part of the RGPP. The *Lambert* report noted: “Apart from technical standards, the legislative and regulatory activity of the state, in the broad sense, which is excessive and at times inconsistent, especially in the realm of transferred responsibilities, frequently induces consequences on the action of local authorities in terms of costs, procedures or organisation”. It called for establishment of a commission that would get subnational governments involved in the formulation of draft regulations of relevance to them (see Chapter 4).

The CCEN, which was set up officially in September 2008 under the auspices of the Local Finances Committee (*Comité des finances locales*, CFL), draws two-thirds of its members from local elected officials and the other one-third from representatives of the Ministries. It meets once a month. Ministries are required to refer to it regarding the financial impact of proposed regulations involving subnational governments, as is the SGAE in respect of the financial impact of proposed Community provisions having a technical and financial impact on subnational governments. The government may also consult the Board about draft legislation or amendments concerning subnational governments. It must submit the proposed provisions, along with a cover report and a financial impact sheet outlining the direct and indirect financial repercussions of the proposed measures for each level of subnational government. The CCEN must render its opinion within five weeks – a deadline that may be extended once by decision of the Chair, except if the prime minister requests it as a matter of urgency. In a case of absolute necessity, the deadline may be shortened to 72 hours, as an exceptional measure and solely at the request of the prime minister.

### *Co-ordination between subnational administrations*

The main form of co-operation is known as inter-communality, which the central government began to encourage greatly in the 1990s. This involves municipalities that join forces via public inter-communal co-operation establishments (*établissements publics de coopération intercommunale*, EPCIs<sup>7</sup>), to which the member communes transfer certain responsibilities. While they do not constitute a new category of subnational government, EPCIs do have legal personality and financial autonomy and operate in their areas of responsibility on behalf of the member communes. In 2006, 86.5% of the population was covered by such a community. Adding to these communities are other forms of co-operation which in some cases predated them, and which may overlap, but which have not been dismantled. There exist, for instance, many associations of municipalities (*syndicats de communes*) empowered to handle specified technical issues and able to enlist the participation of groups and not strictly municipal entities.

#### **Box 8.4. Co-operation between municipalities**

There are various types of groups of municipalities:

- Associations (*syndicats*) of municipalities, which in most cases predated communities;
- Communities of municipalities, associating municipalities in rural areas;
- Metropolitan communities (*communautés d'agglomération*), uniting municipalities to form a metropolitan area with a population of over 50 000; and
- Urban communities, uniting municipalities to form an ensemble of over 500 000 people.

Associations of municipalities were set up to administer certain public services (water, sanitation, transport, electricity, etc.) At the same time, “*inter-communality*” groupings of municipalities began spouting up in the 1970s and started becoming more numerous in the late 1990s as a result of legislation passed in 1992 and 1999. Municipalities join forces in public inter-communal co-operation establishments (*établissements publics de coopération intercommunale*, EPCIs) to deliver certain services – either technical services, as in the case of associations of municipalities, or broader undertakings such as economic development or town planning. Inter-communality has been encouraged by higher state subsidies for municipalities that join forces, transfer powers to communities and accept the principle of a single business tax (*taxe professionnelle*). EPCIs differ from territorial entities in a number of respects. The persons administering them are not elected directly but are delegated by municipal councils. Their powers are limited. Lastly, to create an EPCI requires central-government approval (*via prefects*). EPCIs have their own tax revenue. This can be either additional, consisting of an extra share of local taxes, or unique, when business tax (the chief local tax) is earmarked for the community. The 1999 legislation gave municipalities belonging to the same community ten years to harmonise their business tax rates.

*Source:* OECD (2007), *OECD Economic Surveys: France*, Volume 2007/13, June 2007, OECD Publishing, Paris.



Each level of subnational government exercises responsibilities assigned to it by law, and those responsibilities must be complied with. Any initiative involving more than one entity must also comply with the prohibition against one subnational government having jurisdiction over another. In practice, all this might make it difficult to implement shared regulatory governance initiatives.

## Notes

1. Since the constitutional revision of 28 March 2008, “territorial communities of the Republic” are defined in Article 72 as communes, *départements*, regions, special-status communities and overseas territorial communities. The special-status communities are the communes of Paris, Lyon and Marseille (because, in particular, of their high population and their geographic and economic importance), along with Corsica (because of its specificity, including the fact that it is an island). Also included are the overseas territorial communities (French Polynesia, Saint-Pierre and Miquelon, Wallis and Futuna, Mayotte and, since 15 July 2007, Saint Martin and Saint Barthélemy). Lastly, mention should be made of New Caledonia, which is a *sui generis* community governed by Title XIII of the Constitution (Articles 76 and 77).
2. Pricing income stems primarily from the sale of goods or services to users (*e.g.* urban transport, school restaurants). Local communities may also derive revenue from their heritage (*e.g.* communes with forests).
3. The global operating grant (DGF) is paid to communes, intercommunal co-operative public establishments (*établissements publics de coopération intercommunale*, EPCIs), *départements* and regions. It is comprehensive and may be used freely. For each level of subnational government, the DGF comprises a fixed portion and one or more equalisation components. In all, the DGF combines 12 grants (4 for communes, 2 for EPCIs, 4 for *départements* and 2 for regions), which in turn are composed of multiple components or fractions.
4. Decree N° 2008-994 of 22 September 2008. Provisions relating to the CCEN are codified in Articles L. 1211-4-2 and R. 1213-1ff of the General Code of Subnational Governments (*Code général des collectivités territoriales*, CGCT).
5. Lafon, 2007.
6. Lambert, 2007.
7. There are different categories of intercommunal co-operative public establishments (EPCIs):
  - A first group comprises single-purpose intercommunal associations (*syndicats intercommunaux à vocation unique*, SIVUs) and multi-purpose intercommunal associations (*syndicats intercommunaux à vocation multiple*, SIVOMs), which bring together neighbouring communes in order to administer services (for example: sanitation, school bussing).

- A second group consists of EPCIs having their own powers of taxation: these include communities of communes (*communautés de communes*), “agglomeration” communities (having a population of 50 000 around a central town of 15 000), urban communities (*communautés urbaines*, having a population of over 500 000) and new agglomeration associations (*syndicats d’agglomération nouvelle*).

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## *Annex A*

### Powers transferred to the territorial communities

Article 34 of the Constitution stipulates that “law shall determine the fundamental principles of... the free administration of territorial communities, the extent of their jurisdiction and their resources”. Article 72, as drafted on the basis of the constitutional law of 28 March 2003, states that “...territorial communities may take decisions in all matters arising under powers that can best be exercised at their level. In the conditions provided for by law, these communities shall be self-governing through elected councils and shall have power to make regulations for matters coming within their jurisdiction.” The same article confirms that no territorial community may exercise authority over another. However, where the exercising of a power requires the combined action of several territorial communities, one of those communities or one of their associations may be authorised by statute to organise such combined action.

It is therefore incumbent on the law to lay down the powers devolved to each level of local administration.

**Table A.1. Powers transferred to the territorial communities**

Level of community	Field of action	Powers transferred prior to the law of 13 August 2004	Powers transferred by the law of 13 August 2004
Commune and groupings of communes	Town planning and transport	<ul style="list-style-type: none"> <li>– Preparation of local urban development plans and territorial coherence schemes.</li> <li>– Issuance of building permits.</li> <li>– Establishment, development and operation of sailing resorts.</li> </ul>	<ul style="list-style-type: none"> <li>– If application was made before 1 January 2006, ownership, development and management of any non-corporate state port in its territory.</li> <li>– Creation, development and operation of commercial and fishing ports transferred to them.</li> <li>– If they applied before 1 July 2006, development, maintenance and management of civil airfields.</li> </ul>
	Education	<ul style="list-style-type: none"> <li>– Ownership, construction, maintenance and facilities of public-sector schools.</li> <li>– Involvement in devising the “schools map”.</li> </ul>	<ul style="list-style-type: none"> <li>– Possibility of setting up local public primary schools on a five-year experimental basis.</li> </ul>
	Economic action	<ul style="list-style-type: none"> <li>– Possible involvement in funding direct aid to businesses under a convention with the region.</li> <li>– Award of indirect aid to businesses.</li> </ul>	<ul style="list-style-type: none"> <li>– Possibility of introducing their own aid systems subject to the agreement of the region.</li> <li>– Possibility of establishing a tourist office.</li> </ul>

Level of community	Field of action	Powers transferred prior to the law of 13 August 2004	Powers transferred by the law of 13 August 2004
	Accommodation	<ul style="list-style-type: none"> <li>Establishment of a local housing programme for the communes within a public establishment for inter-municipal co-operation (EPCI).</li> </ul>	<ul style="list-style-type: none"> <li>Possibility of delegating management of the prefectural quota to the mayor or the president of an EPCI.</li> <li>Possible involvement in the construction, maintenance and servicing of student accommodation.</li> <li>Fight against insanitariness, on an experimental basis.</li> </ul>
	Health and social welfare	<ul style="list-style-type: none"> <li>Action to supplement initiatives by the Department with communal welfare centres (CCAS).</li> </ul>	<ul style="list-style-type: none"> <li>Possibility of carrying out vaccination duties and activities to combat tuberculosis, leprosy, AIDS and sexually transmitted infections.</li> <li>Scope for total or partial management of the assistance fund for young people at risk (FAJ).</li> </ul>
	Culture	<ul style="list-style-type: none"> <li>Responsibility for lending libraries, schools of music and drama and municipal museums.</li> </ul>	<ul style="list-style-type: none"> <li>Organisation and funding of initial arts education.</li> <li>May become owner of classified or listed monuments that belong to the state or the centre for national monuments.</li> </ul>
Department	Welfare, solidarity and housing	<ul style="list-style-type: none"> <li>Responsible for all social welfare provision, subject to exceptions: child welfare support, support for the handicapped, social and professional integration (management of minimum income programmes since 1 January 2004), support for the elderly.</li> <li>Family and child health care.</li> </ul>	<ul style="list-style-type: none"> <li>Drawing up and implementing social welfare policy.</li> <li>Possibility of carrying out vaccination duties and activities to combat tuberculosis, leprosy, AIDS and sexually transmitted infections.</li> <li>Establishment, funding and management in each Department of new assistance funds for young people at risk.</li> <li>Broader responsibility exercised on an experimental basis in some Departments in the area of young people's legal welfare.</li> <li>Establishment, funding and management in each Department of new solidarity funds for housing.</li> </ul>
	Area planning, amenities	<ul style="list-style-type: none"> <li>Maintenance and investment in Department roads.</li> <li>Organisation of non-urban public road transport and of school transport outside urban areas.</li> <li>Establishment, facilities and management of commercial and fishing sea ports.</li> <li>Development of a rural infrastructure support programme.</li> <li>Conservation, management and public admission to natural wooded or non-wooded vulnerable areas.</li> <li>Gives its opinion during preparation (by the region) of the Regional Territorial Planning Master Plan (SRADT).</li> </ul>	<ul style="list-style-type: none"> <li>Management of a share (around 15 000 km) of national roads.</li> <li>If application was made before 1 July 2006, development, maintenance and management of civil airfields.</li> <li>If application was made before 1 January 2006, ownership, development and management of any non-corporate state port in its territory.</li> </ul>
	Education, culture, heritage	<ul style="list-style-type: none"> <li>Construction, maintenance, facilities and funding of <i>collèges</i>.</li> </ul>	<ul style="list-style-type: none"> <li>Ownership of the building and facilities of the <i>collèges</i>.</li> </ul>



Level of community	Field of action	Powers transferred prior to the law of 13 August 2004	Powers transferred by the law of 13 August 2004
		<ul style="list-style-type: none"> <li>– Responsibility for central lending libraries.</li> <li>– Management and maintenance of public records and Department museums.</li> </ul>	<ul style="list-style-type: none"> <li>– Identification of <i>collège</i> recruitment sectors following the opinion expressed by the Department Council of the Ministry of Education.</li> <li>– Responsibility for the recruitment and management of <i>collège</i> technical, operating and service staff (TOS).</li> <li>– Preparation of a Department master plan for arts education in the fields of music, dance and drama.</li> <li>– Management, on a four-year experimental basis, of the funding for maintenance and restoration of elements in the classified or listed heritage that do not belong to the state or its public institutions.</li> <li>– May assume ownership of classified or listed monuments belonging to the State or the national monuments centre.</li> </ul>
	Economic action	<ul style="list-style-type: none"> <li>– Possible involvement in funding direct aid to businesses under a convention with the region.</li> <li>– Award of indirect aid to businesses.</li> </ul>	<ul style="list-style-type: none"> <li>– Possibility of introducing their own aid systems subject to the agreement of the region.</li> </ul>
Region	Economic development (area in which the region acts as a co-ordinator)	<ul style="list-style-type: none"> <li>– Determines the system of direct aid and allocates it (regional employment grants and grants for new business formation, as well as loans and advances at preferential rates).</li> <li>– Implementation and allocation of indirect aid (loan guarantees to businesses, exemption from business tax).</li> </ul>	<ul style="list-style-type: none"> <li>– The distinction between direct and indirect aid to businesses has been abolished and replaced with one between economic aid and property aid.</li> <li>– The regional council establishes the system of economic aid to businesses and decides how it will be allocated.</li> <li>– Establishment of a regional economic development scheme on a five-year experimental basis.</li> </ul>
	Territorial planning and development	<ul style="list-style-type: none"> <li>– Participation in devising national policy for planning and sustainable development.</li> <li>– Preparation of a Regional Territorial Planning Master Plan (SRADT).</li> <li>– Signature of state-region planning contracts (project contracts since 2007).</li> <li>– Preparation of a regional transport master plan.</li> <li>– Organisation of non-urban public road transport and of regional rail transport services, except in Ile-de-France in which these responsibilities are assumed by the Syndicat des transports d'Ile-de-France (STIF, or the Ile-de-France transport union).</li> </ul>	<ul style="list-style-type: none"> <li>– Preparation of a regional infrastructural and transport master plan (formerly the regional transport master plan).</li> <li>– If application was made before 1 July 2006, development, maintenance and management of civil airfields.</li> <li>– If application was made before 1 January 2006, ownership, development and management of any non-corporate state port in its territory.</li> </ul>
	Education, vocational training	<ul style="list-style-type: none"> <li>– Construction, maintenance, facilities and funding of lycées, institutions for special education and maritime vocational lycées.</li> <li>– Funding of a significant share of university institutions.</li> <li>– Preparation of a regional plan for vocational training.</li> <li>– Adoption of an apprenticeship and continuing vocational training programme.</li> </ul>	<ul style="list-style-type: none"> <li>– Ownership of the building and facilities of the lycées, institutions for special education and maritime vocational lycées.</li> <li>– Responsibility for the recruitment and management of lycée technical, operating and service staff (TOS).</li> <li>– Development and implementation of regional policy for the apprenticeship and vocational training of young people and adults.</li> <li>– Adoption of an apprenticeship and</li> </ul>

Level of community	Field of action	Powers transferred prior to the law of 13 August 2004	Powers transferred by the law of 13 August 2004
			continuing vocational training programme now under the regional plan for vocational training.
	Culture	<ul style="list-style-type: none"> <li>– Organisation and funding of regional museums.</li> <li>– Conservation and enhancement of regional records.</li> </ul>	<ul style="list-style-type: none"> <li>– Responsibility for the general cultural heritage inventory.</li> <li>– Scope for management, on a four-year experimental basis, of the funding for maintenance and restoration of elements in the classified or listed heritage that do not belong to the state or its public institutions.</li> <li>– May assume ownership of classified or listed monuments belonging to the state or the national monuments centre.</li> <li>– Organisation and funding of initial vocational education in the arts.</li> </ul>
	Health		<ul style="list-style-type: none"> <li>– Possibility of carrying out vaccination duties and activities to combat tuberculosis, leprosy, AIDS and sexually transmitted infections.</li> <li>– Subject to application, participation on a four-year experimental basis in funding and developing health facilities.</li> </ul>

**Table A.2. Responsibilities of public establishments for inter-municipal co-operation (EPCI)**

	Mandatory responsibilities	Optional responsibilities <sup>3</sup>
Communities of communes	Economic planning and development	One optional responsibility selected from among the following: protection and improvement of the environment; policy for housing and living conditions; development and maintenance of the road network; construction, maintenance and operation of cultural and sports facilities and elementary education facilities; welfare services of community interest.
'Agglomeration' communities <sup>1</sup>	Planning, economic development, social balance and housing, and city government policies	Three additional responsibilities selected from the following six: roads and parking, sanitation, water supply, environment and living conditions, cultural and sports facilities, welfare.
Urban communities <sup>2</sup>	Mandatory responsibilities: development and economic, social and cultural planning within the community, social balance and housing, city government policies, management of public services (e.g. sanitation and water supply), protection and improvement of the environment and living conditions. This group of responsibilities may be supplemented by others in the case of urban communities established prior to the law of 12 July 1999.	

*Notes:*

1. Over 50 000 inhabitants in or surrounding an urban centre with a population of at least 15 000.

2. Over 500 000 inhabitants.

3. Subject to special cases provided for in law, the following responsibilities cannot be transferred to EPCIs: (i) responsibilities that are the prerogative of the mayor (in particular, those assumed for the state as a civil registrar or criminal investigation officer); (ii) responsibilities already transferred to another EPCI.

## *Annex B*

### Application of laws

Example of time schedule for the publication of decrees required to implement laws ([www.Légifrance.gouv.fr](http://www.Légifrance.gouv.fr)).

Law N° 2009-258 of 5 March 2009 on audio-visual communication and the new public television service.

**Table B.1. Example of time schedule for the publication of decrees required to implement laws**

Articles	Purpose	Decrees
Article 45, I	Publicising information via electronic communication services – Conditions governing application of Article L333-7 of the sports code to all kinds of event of considerable public interest.	Publication of the decree envisaged in October 2009.
Article 45, II	Conditions governing application of Article L333-7 of the sports code on the transfer of broadcasting rights for events or sports contests, to a public electronic communications service.	Publication of the decree envisaged at the end of September 2009.
Article 55	Rules applicable to readily available broadcasting services distributed by networks that do not use frequencies allocated by the French broadcasting control authority (the <i>Conseil Supérieur de l'audiovisuel</i> ).	Publication of the decree envisaged at the beginning of September 2009.

Article 66	Conditions under which the French broadcasting control authority may provisionally suspend the transmission of television services controlled by another Member state of the European Community (EU) or a state party to the EEA agreement.	Publication of the decree envisaged at the beginning of September 2009.
Article 66	Conditions under which the French broadcasting control authority may provisionally suspend the transmission of readily available broadcasting services controlled by another Member state of the European Community (EU) or a state party to the EEA agreement, if the following conditions are met.	Publication of the decree envisaged at the beginning of September 2009.
Article 66	Conditions under which a television service or a readily available broadcasting service, with programmes wholly or partially intended for a French audience, is supposed to be subject to the rules that apply to services based in France, when it has set up in the territory of another Member state of the European Community (EU) or a state party to the EEA agreement mainly in order to avoid French jurisdiction.	Publication of the decree envisaged at the beginning of September 2009.
Article 46 and 69	Conditions under which an audio-visual work may be regarded as the contribution of a service publisher to independent output, in accordance with the share held directly or indirectly in the capital of the company that produces the work, either by the publisher or the publisher's one or more controlling shareholders as defined in Paragraph 2 of	Publication of the decree envisaged in June 2009.

	Article 41-3.	
Article 52 and 69	Conditions under which an audio-visual work may be regarded as the contribution of a service publisher to independent output, in accordance with the share held directly or indirectly in the capital of the company that produces the work, either by the publisher or the publisher's one or more controlling shareholders as defined in Paragraph 2 of Article 41-3.	Publication of the decree envisaged in June 2009.
Article 74	Establishment of a committee responsible for monitoring implementation of title V of the law (miscellaneous, provisional and final measures).	Décret n° 2009-495 du 30/04/2009.
Article 75	Implementation measures applicable to the monitoring committee responsible for evaluating enforcement of the present law, excluding title IV, and for proposing, where appropriate, adjustments to the taxes provided for in Articles 302a KG and 302a KH of the general tax code, as well as to the procedures for funding the company specified in section I of Article 44 of the above-mentioned Law N° 86-1067 of 30 September 1986, in accordance with changes in the proceeds from the contribution to public audio-visual output and in revenue from the above taxes.	Publication of the decree envisaged in June 2009.



## *Annex C*

### Structure of the “Guide for drafting legislation and regulations”

The “Guide for Drafting Legislation and Regulations” contains around 100 reference sheets arranged in the five following sections:

#### **1. The production of texts**

- 1.1. The need for regulations
  - 1.1.1. Preliminary questions
  - 1.1.2. Impact assessments
- 1.2. Effectiveness of regulations
  - 1.2.1. Devising a regulation
  - 1.2.2. Application over time
  - 1.2.3. Application in space
- 1.3. Hierarchy of regulations
  - 1.3.1. Different regulations
  - 1.3.2. The domain of law and of regulations
  - 1.3.3. Different categories of decree
  - 1.3.4. Finance laws
  - 1.3.5. Social security funding laws (LFSS)
  - 1.3.6. Administrative regulations
  - 1.3.7. Circulars, directives and instructions
- 1.4. Access to the law
  - 1.4.1. Information sources: *Légifrance*
  - 1.4.2. Codification (general considerations)

#### **2. Stages in the preparation of texts**

- 2.1. General rules
  - 2.1.1. The role of the General Secretariat of the Government and the *Council of State*
  - 2.1.2. Preliminary consultation
  - 2.1.3. Procedure for the collection of signatures and counter-signatures
  - 2.1.4. Publication in the “Official Gazette”
  - 2.1.5. Publication in an official bulletin
- 2.2. Law
  - 2.2.1. Inter-ministerial activity concerned with bills
  - 2.2.2. Consultation with the *Council of State* about bills
  - 2.2.3. Consideration of bills in the Council of Ministers
  - 2.2.4. Bills

- 2.2.5. Consideration of the constitutionality of laws by the *Constitutional Council*.  
Parliamentary procedure
- 2.2.6. Enactment and publication of laws
- 2.2.7. Texts for the implementation of laws
- 2.2.8. Procedural particularities of some laws
- 2.2.9. Proposed timetable for preparing a law
- 2.3. Orders
  - 2.3.1. Inter-ministerial activity concerned with draft orders
  - 2.3.2. Consultation with the *Council of State* about draft orders
  - 2.3.3. Consideration of draft orders in the Council of Ministers
  - 2.3.4. Signature and publication of orders
  - 2.3.5. Ratification of orders
  - 2.3.6. Texts for the implementation of orders
  - 2.3.7. Proposed timetable for preparing an order
- 2.4. Decree
  - 2.4.1. Preparing a simple decree
  - 2.4.2. Drawing up a decree in the *Council of State*
  - 2.4.3. Preparing a decree in the Council of Ministers without consulting the *Council of State*
  - 2.4.4. Preparing a decree in the Council of Ministers and the *Council of State*
  - 2.4.5. Preparing a decree in accordance with the second paragraph of Article 37 of the Constitution

### 3. Drafting of texts

- 3.1. Context
  - 3.1.1. Outlining the reasons for a bill
  - 3.1.2. Report discussing a draft order or decree
  - 3.1.3. The title of a text
  - 3.1.4. Ministers who act as *rapporteurs* concerning an order or decree
  - 3.1.5. Introductory clauses explaining or justifying an order, a decree or a regulation
- 3.2. Structure of the text
  - 3.2.1. Different types of draft outline
  - 3.2.2. Subdivisions
  - 3.2.3. Annexes
- 3.3. Language of the text
  - 3.3.1. Syntax, vocabulary, acronyms and signs
  - 3.3.2. Choice of terms and legal phrases
- 3.4. Amendments, insertions and cross-references
  - 3.4.1. Amendments and insertions
  - 3.4.2. Cross-references to positive law
- 3.5. Cross-references to implementing regulations
  - 3.5.1. Cross-reference in a law to regulatory texts
  - 3.5.2. Cross-reference to a contractual document
  - 3.5.3. Sub-delegation
- 3.6. Application and applicability of Overseas texts
  - 3.6.1. Main rules concerning Overseas communities
  - 3.6.2. Preparation and counter-signing of texts with measures pertaining to Overseas territory
  - 3.6.3. Applicability of EU law to Overseas territory
  - 3.6.4. The Overseas Departments and Regions (Guadeloupe, French Guiana, Martinique, Réunion)
  - 3.6.5. Mayotte



- 3.6.6. French Polynesia
- 3.6.7. Saint Barthélemy
- 3.6.8. Saint Martin
- 3.6.9. Saint Pierre and Miquelon
- 3.6.10. Wallis and Futuna
- 3.6.11. New Caledonia
- 3.6.12. The French Southern and Antarctic Lands
- 3.6.13. Clipperton Island
- 3.7. Application and applicability in certain parts of metropolitan France
  - 3.7.1. Application and applicability of texts in Alsace-Moselle
  - 3.7.2. Corsica
- 3.8. Enforcement
  - 3.8.1. Enforcement techniques
  - 3.8.2. Application to ongoing situations
  - 3.8.3. Repeal
- 3.9. Signatures and counter-signatures
  - 3.9.1. Counter-signing of acts signed by the President of the Republic
  - 3.9.2. Counter-signing of acts signed by the prime minister
  - 3.9.3. Delegated signatures on the authority of members of the government
  - 3.9.4. Signatures provided temporarily on behalf of the prime minister or a minister

#### **4. Rules specific to certain categories of texts**

- 4.1. International and Community (EU) texts
  - 4.1.1. Preparation, conclusion and publication of international texts
  - 4.1.2. Procedure for transposing directives and framework decisions
  - 4.1.3. Drafting of texts to transpose Community (EU) legislation
- 4.2. Individual measures
  - 4.2.1. Distribution of powers of appointment
  - 4.2.2. Content and presentation
  - 4.2.3. Appointment of members of ministerial private offices
  - 4.2.4. Appointment of heads of public institutions and companies

#### **5. Logical flow charts and practical cases**

- 5.1. Logical flow charts
  - 5.1.1. Design issues
  - 5.1.2. Issues of responsibility
  - 5.1.3. Procedural issues
  - 5.1.4. Issues of consistency and effectiveness for a bill
  - 5.1.5. Issues of consistency and effectiveness for a draft order
  - 5.1.6. Issues of consistency and effectiveness for a draft decree
- 5.2. Practical cases
  - 5.2.1. Organisation of state services
  - 5.2.2. Establishing, altering or abolishing a body of an advisory nature
  - 5.2.3. Establishing, altering or abolishing a public institution
  - 5.2.4. Public interest groups
  - 5.2.5. Establishing, altering or abolishing a system for authorisation or declaration
  - 5.2.6. Providing for administrative or penal disciplinary measures
  - 5.2.7. Introducing, amending or abolishing a fiscal tax
  - 5.2.8. Introducing, amending or abolishing contributions, dues or fees
  - 5.2.9. Introducing a form of computerised data processing

### 5.2.10. Status and remuneration of state personnel

## *Annex D*

### The Constitutional Reform of 23 July 2008

Constitutional Law N° 2007-724 of 23 July 2008 on modernisation of the institutions of the Fifth Republic has significantly reformed those institutions. The main measures are as follows:

Parliamentary powers:

- Parliament and government now determine in equal measure the agenda for business in both chambers. Previously, the priority granted to the government in this respect gave it virtually total control of the agenda.
- Discussion in parliamentary sessions is now based on the text tabled by the parliamentary committee concerned and no longer the one submitted by the government, except in the case of proposals for constitutional reform, finance bills and bills concerned with funding of the social security system (Article 42).
- There is now a six-week period between the tabling of a bill or legislative proposal in the National Assembly and its first reading. The period is one of four weeks for the first reading by the upper chamber (Article 42).
- The chambers may pass resolutions under conditions determined by an organic law (Article 34-1).
- The presentation of bills tabled in the National Assembly or the Senate complies with conditions determined by an organic law. Where there is no such compliance, the bills cannot be included on the agenda. In the event of disagreement between the president of the chamber examining the bill and the prime minister about disregard for – or misunderstanding of – the rules concerned, the matter is referred to the *Constitutional Council* (Article 39).
- The extent to which the procedure under Article 49, Paragraph 3 can be invoked is limited: the government can pledge its responsibility on the vote of a text, which is considered as adopted if a motion of censure has not been voted (Article 49, Paragraph 3), solely in the case of finance laws and laws concerned with funding the social security system, and on just one single text *per session*.
- By contrast, the restrictions placed on the introduction of financial legislative proposals by members of parliament (Article 40) and the “blocked vote” measure enabling the government to request a single vote on the whole or part of a text, excluding the amendments it considers unacceptable (Article 44), are maintained.

Exercise of power by the Executive:

- The number of consecutive periods in which a President of the Republic can hold office is limited to two.
- Certain appointments made by the President of the Republic are subject to the obligation to seek the prior advice of a committee consisting of members of parliament (tasks or responsibilities are to be determined by an organic law).

Control of constitutionality<sup>1</sup>:

- A mechanism for controlling constitutionality as a means of defence has been introduced, enabling anyone answerable to the courts to challenge, during the court proceedings, the compliance of a legislative measure with the rights and liberties recognised by the Constitution.

Defender of Citizen's Rights:

- The office of "Defender of Citizen's Rights" has been established. The person appointed is responsible for gathering the complaints of those who consider they have been wrongfully treated through the action of a public service.

The Economic and Social Council.<sup>2</sup>

- It is now possible to petition the Economic and Social Council. The reform asserts the commitment of the Economic and Social Council to taking action on issues concerning the environment.

## Notes

1. Similar to the arrangement in Germany.
2. Similar to the arrangement in Austria, in so far as the environment is taken into account.

## *Annex E*

### Independent administrative authorities

#### Main changes since 2004

The Financial Markets Authority (AMF) set up under Article 2 of Law N° 2003-706 of 1 August 2003 on financial security (L. 621-1 of the monetary-financial code) merges:

- the Stock Exchange Commission (Order N° 67-836 of 28 September 1967 as amended, which was meant to encourage savings and development of the financial market);
- the Financial Markets Board (Article 27 *et seq.* of Law N° 96-597 of 2 July 1996 on the modernisation of financial activities); and
- the Financial Management Disciplinary Board (Article 37 of Law N° 89-531 of 2 August 1989 on the security and transparency of financial markets, which was converted into the body of that name under Article 40 of Law N° 98-546 of 2 July 1998 containing various economic and financial measures).

Law N° 2005-516 of 20 May 2005 on the regulation of postal activity which changed the Telecommunications Regulation Authority (ART) into the Authority for the Regulation of Electronic Communication and Postal Services (ARCEP).

The Competition Council becomes the Competition Authority, with stronger powers and increased resources of its own, in accordance with Article 95 of Law N° 2008-776 of 4 August 2008 on modernisation of the economy (Article L.461-1 of the commercial code). The Authority has its own investigators. Its powers have been strengthened to put an end to unfair trade practices. It reviews all applications for the authorisation of mergers.

Article 46-1 of the constitutional law of 23 July 2008 has provided for the new office of a “Defender of Rights” under Article 71-1 of the constitution. According to this article, the appointee “may be petitioned, under the terms of the organic law, by any person who considers they have been wrongfully treated through the action of a public service, or of a body as specified in the first paragraph. The appointee may assume jurisdiction automatically”. As a result of work done by parliament, this new independent administrative authority is expected to take over the duties of the current Republic Ombudsman, as well as some of the tasks performed by other administrative authorities responsible for protecting basic individual freedoms. An organic law is to specify the duties of the Defender of Rights and the procedures involved, as well as the

circumstances under which the appointee may be assisted by a college in carrying out some of these tasks.

Meanwhile, a further nine independent administrative authorities have been established by law since 2004:

- The High Authority on Health (HAS) is an “independent public authority” established by law N° 2004-810 of 13 August 2004 concerning sickness insurance: Article L. 161-37 of the social security regulations.
- The High Authority for Action to combat Discrimination and for Equality (HALDE) was established by the Law N° 2004-1486 of 30 December 2004.
- The High Council of Auditorship (H3C) is classified as an independent administrative authority under Article 8 of Order N° 2005-1126 of 8 September 2005 concerning the audit office, codified in Article L. 821-1 of the commercial code.
- The French Agency to Combat the Use of Drugs (ALFD) replaces the Council for Preventing and Fighting the Use of Drugs (CPLD), and assumes the status of an independent public authority: Article 2 of Law N° 2006-405 of 5 April 2006 on combating the use of drugs and maintaining the health of sportspeople.
- The Agency for the Evaluation of Research and Higher Education (AERES) has been classified as an independent administrative authority under Article 9 of the law for a programme for research N° 2006-450 of 18 April 2006 (Article L. 114-3-1 of the research code).
- The Authority for Nuclear Safety (ASN) was established under Article 4 of Law N° 2006-686 of 13 June 2006 on transparency and security in nuclear matters.
- The Authority for the Regulation of Technical Measures (ARMT) was set up under Article 14 of Law N° 2006-961 of 1 August 2006 (Article L.331-17 of the code on intellectual property).
- The office of National Energy Ombudsman was instituted under Article 7 of Law N° 2006-1537 of 7 December 2006 concerning the energy sector.
- The role of General Compliance Officer for places in which freedom is restricted was instituted by Law N° 2007-1545 of 30 October 2007.

**Table E.1. List of independent administrative authorities**

The French Agency to Combat the Use of Drugs (ALFD)	Classified as an independent public authority under Article 2 of Law N° 2006-405 of 5 April 2006 on combating the use of drugs and maintaining the health of sportspeople (replaces the Council for Preventing and Fighting the Use of Drugs (CPLD).
Agency for the Evaluation of Research and Higher Education (AERES)	Classified as an independent administrative authority under Article 9 of the law for a programme for research N° 2006-450 of 18 April 2006, codified in Article L. 114-3-1 of the research code).
Airport Noise Control Authority (ACNUSA)	Classified as an independent administrative authority under the first article of Law N° 99-588 of 12 July 1999 on the establishment of the airport noise control authority, creating Article L. 227-1 of the civil aviation code
The Financial Markets Authority (AMF) (Merger of the Stock Exchange Commission [COB], the Financial Markets Board [CMF] and the Financial Management Disciplinary Board [CDGF].)	Classified as an independent public authority and granted legal entity status under Article 2 of Law N° 2003-706 of 1 August 2003 on financial security, amending Article L. 621-1 of the monetary-financial code. Are merged: - the Stock Exchange Commission (set up by order N° 67-836 of 28 September 1967 as amended, which was meant to encourage savings and development of the financial market); - the Financial Markets Board (set up by Law N° 96-597 of 2 July 1996 on modernisation of financial activities: Article 27 <i>et seq.</i> ); - the Financial Management Disciplinary Board (Law N° 89-531 of 2 August 1989 on the security and transparency of financial markets, Article 37 establishing the OPCVM disciplinary board, inserted in Articles 33-1 <i>et seq.</i> of Law N° 88-1201 of 23 December 1988 regarding bodies for collective investment in transferable securities and the establishment of pools of receivables, which was converted into a financial management disciplinary board under Article 40 of Law N° 98-546 of 2 July 1998 containing various economic and financial measures).
The Competition Authority (formerly the Competition Council)	Classified as an independent administrative authority under Article 95 of loi n°2008-776 of 4 August 2008 on modernisation of the economy (Article L.461-1 of the commercial code).
Authority for the Regulation of Electronic Communication and Postal Services (ARCEP)	The Telecommunications Regulation Authority (ART), which became ARCEP under Law N° 2005-516 of 20 May 2005 on the regulation of postal activity, was classified as an independent administrative authority by decision of the <i>Constitutional Council</i> N° 96-378 DC of 23 July 1996.
Authority for the Regulation of Technical Measures (ARMT)	Classified as an independent administrative authority under Article 14 of Law N° 2006-961 of 1 August 2006, inserted as Article L.331-17 of the code on intellectual property.

Authority for Nuclear Safety (ASN)	Classified as an independent administrative authority under Article 4 of Law N° 2006-686 of 13 June 2006 on transparency and security in nuclear matters
Central Rating Bureau (BCT)	Considered to be an independent administrative authority in the 2001 study by the <i>Council of State</i> . Established by Law N° 78-12 of 4 January 1978 concerning responsibility and insurance for building work (Article 12, codified in official insurance regulations: Articles L. 243-4 to L. 243-6).
Credit Institutions and Investment Companies Board (CECEI)	Considered to be an independent administrative authority in the 2001 study by the <i>Council of State</i> . Established under Articles 15, 29, 31, 31-1 and 32 of Law N° 84-46 of 24 January 1984 concerning the activity and control of credit institutions, codified in Articles L. 612-1 <i>et seq.</i> of the monetary-financial code
National Ethics Advisory Committee for Life Sciences and Health (CCNE)	Classified as an independent authority (Article L. 1412-2 of the public health code as drafted under the first Article of Law N° 2004-800 of 6 August 2004 on bioethics)
Commission for Access to Administrative Documents (CADA)	Classified as an independent administrative authority under Article 10 of order N° 2005-650 of 6 June 2005 concerning free access to administrative documents and the reuse of public information. Established under Articles 5 <i>et seq.</i> of Law N° 78-753 of 17 July 1978 concerning various measures to improve relations between administrative authorities and the public, and various provisions of an administrative, social and fiscal nature
Banking Commission	Considered to be an independent administrative authority in the 2001 study by the <i>Council of State</i> . Established under Articles 37 <i>et seq.</i> of Law N° 84-46 of 24 January 1984 concerning the activity and oversight of credit institutions, codified in Articles L. 613-1 <i>et seq.</i> of the monetary-financial code
Permanent Central Commission for Matters relating to Agricultural Profits	Considered to be an independent administrative authority in the 2001 study by the <i>Council of State</i> . Established by the law of 13 January 1941 on the simplification, co-ordination and strengthening of the measures in the code on direct taxation, annex I, book III, creating Article 352a, which has become Article 1652 of the general tax code.
Consultative Commission on National Defence Secrecy (CCSDN)	Classified as an independent administrative authority by the first Article of Law N° 98-567 of 8 July 1998 setting up a consultative commission on national defence secrecy, codified in Article L. 2312-1 of the defence code
The Insurance and Mutual Insurance Companies Supervisory Authority (ACAM) (merger of the insurance supervisory board and the mutual insurance companies and provident societies supervisory board.)	Classified as an independent public authority under Article 30 of Law N° 2003-706 of 1 August 2003 on financial security, codified at Article L. 310-12 of the official insurance regulations Are merged: - the insurance supervisory board (deriving from Law N° 89-1014 of 31 December 1989 on adapting official insurance regulations to opening of the European market,



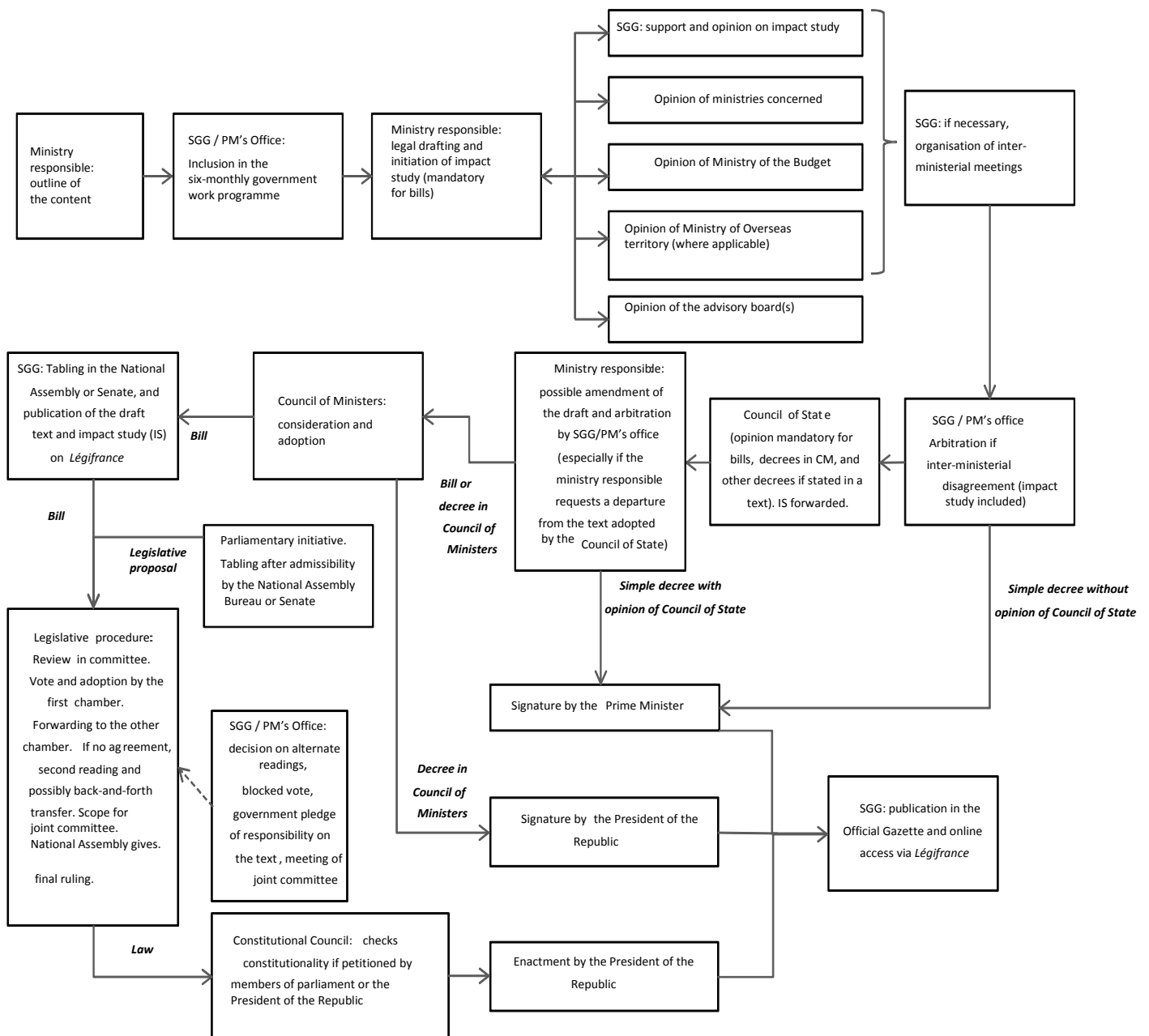
	<p>Article 31 creating Articles L. 310-12 <i>et seq.</i> of the official insurance regulations) and;</p> <p>- the mutual insurance companies and provident societies supervisory board (deriving from Law N° 89-1009 of 31 December 1989 strengthening the guarantees offered to those insured against certain risks, Article 17 creating Articles L. 310-12 <i>et seq.</i> of the social security regulations, which have become Articles L. 951-1 <i>et seq.</i>).</p>
Commission for Tax Offences	<p>Considered to be an independent administrative authority in the 2001 study by the <i>Council of State</i>.</p> <p>Established under the first Article of Law N° 77-1453 of 29 December 1977 as amended, granting procedural guarantees to taxpayers in the area of taxation and customs, codified in Article L. 228 of the tax procedures register</p>
National Supervisory Board on Campaign Accounting and Political Funding (CCFP)	<p>Classified as an independent administrative authority under Article 7 of order N° 2003-1165 of 8 December 2003 for administrative simplification in electoral matters, amending Article L. 52-14 of the electoral regulations</p> <p>This modification was already the result of a decision of the <i>Constitutional Council</i> N° 91-1141 of 31 July 1991, "AN Paris (13e circ.)".</p>
National Supervisory Board for Electoral Campaigns relating to the election of the President of the Republic	<p>Considered to be an independent administrative authority in the 2001 study by the <i>Council of State</i>.</p> <p>Article 13 of decree N° 2001-213 of 8 March 2001 for application of Law N° 62-1292 of 6 November 1962 concerning the election of the President of the Republic by universal suffrage</p>
National Committee for Security Interception Control (CNCIS)	<p>Classified as an independent administrative authority under Article 13 of Law N° 91-646 of 10 July 1991 concerning the secrecy of correspondence by telecommunications</p>
National Advisory Committee on Human Rights (CNCDH)	<p>The National Advisory Committee on Human Rights performs advisory duties and makes proposals for the government in the field of human rights, international humanitarian law and humanitarian aid. The Committee is entirely independent in carrying out its duties. (Article 1 of Law N° 2007-292 of 5 March 2007 concerning the national advisory committee on human rights)</p> <p>It is a national human rights institution as defined by resolution 48/134 of the United Nations General Assembly of 20 December 1993.</p>
National Committee on Public Debate (CNDP)	<p>Classified as an independent administrative authority under Article 134 of Law N° 2002-276 of 27 February 2002 on local democracy, codified in Article L. 121-1 of the environment code</p> <p>Established under Article 2 of Law N° 95-101 of 2 February 1995 on the strengthening of environmental protection</p>
National Commission for Security Ethics (CNDS)	<p>Classified as an independent administrative authority by the first Article of Law N° 2000-494 of 6 June 2000 on the establishment of a National Commission for Security</p>

	Ethics
National Commission for Trade Adjustments (CNAC)	Considered to be an independent administrative authority in the 2001 study by the <i>Council of State</i> . Established under Articles 32 and 33 of Law N° 73-1193 of 27 December 1973 on a strategy for trade and the crafts sector, codified in Articles L. 720-10 and L. 720-11 of the commercial code, amended under Article 102 XXVIII of Law N° 2008-776 of 4 August 2008 (which came into force on the publication date of decree N° 2008-1212 of 24 November 2008, Articles 7 and 8)
National Commission on Information Technology and Civil Liberties (CNIL)	Classified as an independent administrative authority under Article 11 of Law N° 78-17 of 6 January 1978 on computer science, files and liberties.
Publication and Press Agencies Joint Commission	Considered to be an independent administrative authority in the 2001 study by the <i>Council of State</i> . Established under Article 8a of order N° 45-2646 of 2 November 1945 on provisional regulation of press agencies
Shares and Transfers Commission	Considered to be an independent administrative authority in the 2001 study by the <i>Council of State</i> . The Privatisations Commission was established under Articles 3 and 3-1 of Law N° 86-912 of 6 August 1986 concerning privatisation procedures, and became the shares and transfers commission by virtue of decree N° 98-315 of 27 April 1998
Energy Regulatory Board (CRE) (formerly the electricity regulatory board)	Considered to be an independent administrative authority in the 2001 study by the <i>Council of State</i> . Established under Articles 28 <i>et seq.</i> of Law N° 2000-108 of 10 February 2000 concerning the modernisation and development of the public electricity service. The electricity regulatory board became the energy regulatory board under Law N° 2003-8 of 3 January 2003, which broadened its powers to include the production and distribution of natural gas.
Committee on Consumer Safety (CSC)	Considered to be an independent administrative authority in the 2001 study by the <i>Council of State</i> . Established under Articles 13 <i>et seq.</i> of Law N° 83-66 of 21 July 1983 on consumer safety, codified in Articles L. 224-1 <i>et seq.</i> of the consumer code
Opinion Poll Commission	Considered to be an independent administrative authority in the 2001 study by the <i>Council of State</i> . Established under Articles 5 <i>et seq.</i> of Law N° 77-808 of 19 July 1977 on the publication and publicising of certain opinion polls and amended by Law N° 2002-214 of 19 February 2002
Committee for Financial Transparency of Political Life	Considered to be an independent administrative authority in the 2001 study by the <i>Council of State</i> . Established under Article 3 of Law N° 88-227 of 11 March 1988 concerning the committee for financial transparency of political life.

High Council of Agence France Presse	Considered to be an independent administrative authority in the 2001 study by the <i>Council of State</i> . Established under Article 3 of Law N° 57-32 of 10 January 1957 as amended, on the status of Agence France Presse
Broadcasting Control Authority (CSA)	Classified as an independent authority under Article 3-1 of Law N° 86-1067 of 30 September 1986 as amended, on the freedom of communication
The General Compliance Officer for places in which freedom is restricted	Classified as an independent authority under Article 1 of Law N° 2007-1545 of 30 October 2007 instituting a General Compliance Officer for places in which freedom is restricted
Children's Advocate	Classified as an independent authority under the first Article of Law N° 2000-196 of 6 March 2000 instituting a children's advocate
High Authority for Action to combat Discrimination and for Equality (HALDE)	Classified as an independent administrative authority under the first Article of Law N° 2004-1486 of 30 December 2004 on the establishment of the high authority for action to combat discrimination and for equality
The High Authority on Health (HAS)	Classified as an independent public authority of a scientific nature and granted legal entity status by Law N° 2004-810 of 13 August 2004 concerning sickness insurance, codified in Article L. 161-37 of the social security regulations
The High Council of Auditorship (H3C)	Classified as an independent administrative authority under Article 8 of order N° 2005-1126 of 8 September 2005 concerning the audit office, codified in Article L. 821-1 of the commercial code.
National Energy Ombudsman	Authority established under Article 7 of Law N° 2006-1537 of 7 December 2006 concerning the energy sector
Republic Ombudsman	Classified as an independent authority under the first Article of Law N° 73-6 of 3 January 1973 instituting an ombudsman See also: judgement of the <i>Council of State</i> , Assembly, 10 July 1981, Retail (published in the Lebon compendium, p. 303).
Film Industry Ombudsman	Considered to be an independent administrative authority in the 2001 study by the <i>Council of State</i> . Instituted under Article 92 of Law N° 82-652 of 29 July 1982 on audio-visual communication

Source: *Légifrance*.



*Annex F***The process of preparing laws and decrees in France****Figure F.1. The process of preparing laws and decrees in France**



## *Annex G*

### Local level use of ICT

In local authorities, one is witnessing the introduction of systems or procedures to get citizens more involved in drawing up public policies concerned in particular with planning and development schemes. These procedures are implemented by the authorities on the basis of voluntary participation.

- A certain number of authorities thus regularly place on their websites information about planning or urban development schemes, at the same time appealing for comments from residents to gather their opinions and points of view.
- Aside from standard mechanisms for consultation and the provision of information, one should note the increased participation of residents in local affairs via assemblies or councils, be they neighbourhood councils, municipal councils of children or young people, councils of foreign residents, councils of experts, advisory association committees, extra-municipal committees, interactive municipal councils or Internet discussion forums, etc.
- Several examples exist of communes which have established “interactive municipal councils” enabling citizens to interact with their political representatives during council meetings, and providing for “citizens panels”, so that the municipality can consult a representative sample of citizens on various subjects, such as the introduction in 2002 of Neighbourhood Councils which, in this case, “vote” solely over the Internet.
- All in all, therefore, there is no shortage of procedures and mechanisms for public involvement in concerted action, which are linked to use of the Internet.
- Among the mechanisms of participatory debate which primarily involve those forms of interaction closest to personal communication (email, mailing lists, discussion forums, online chat, etc.) and which are often not especially geared to the demands of processes for collective discussion of complex subjects, one may cite:
  - stimulating public interest:
- blog platforms, supportive local media;
  - identifying concerns and calls for proposals:

- in the context of proposals for urban policy initiatives, or participatory budgeting, one may observe the gathering, evaluation and prioritising of issues and proposals;
  - discussion and review by citizens:
- this occurs in conferencing (committees, citizens' panels), especially where decisions have to be taken on the approach in a particular field (*e.g.*, the applications of a technology);
  - subject-based discussion:
- open debate over the internet, including structured dialogue with experts or players from civil society;
  - drawing up proposals:
- this may involve collaborative spaces on the Internet for writing, commenting on and revising proposals in the light of previous discussions;
  - calls for comments from the public:
- these are public comments on legislative texts, charters or bills. Procedures of this kind, which concern just a few texts, assume real significance when it is known who is examining the comments, and who is taking decisions on the options they identify and how.



## *Annex H*

### Reference system for impact assessments

The following document draws upon the *vade mecum* of the General Secretariat of the Government (the *vade mecum* is not a policy guide but a resource to help ministries which prepare impact assessments to progress with their study and satisfy themselves that all questions likely to be considered have been anticipated; it enables the stakeholders to reach agreement on aims and on the work to be done).

Set out as a list of questions and items, it forms a reference system that may help the bodies responsible in the National Assembly to check whether the impact assessment is sufficiently comprehensive with regard to the requirements of the organic law and the legitimate expectations of parliament.

**Table H.1. Diagnosis and justification for the action (Article 8, Paragraph 2 of the organic law)**

<b>1.1. Outline of the problem to be overcome</b>	<b>Demonstration of the existence of a problematic situation.</b> <b>What is the problem to be resolved?</b> 1.1.1 Description of the problem and its scale. 1.1.2. Number of persons affected by the situation under consideration. 1.1.3. Description of the causes of the problem. 1.1.4. Identification of those required to intervene. 1.1.5. Main relations providing an insight into the situation. 1.1.6. Description of the political and institutional context.
<b>1.2. Justification for intervention</b>	<b>Demonstrating that intervention is necessary.</b> <b>Why attempt to resolve the problem now?</b> 1.2.1. What would happen if there were no public intervention? 1.2.2. In what respect is the situation tending to become a public problem? 1.2.3. Why is public authority required to take up the matter? 1.2.4. Description of key factors in success or failure.
This first stage should have demonstrated the existence of a public problem whose resolution calls for action by the public authorities, which may then be studied.	

Source : [www.assemblee-nationale.fr/13/controle/com\\_cec/cec-pdf/R2094.pdf](http://www.assemblee-nationale.fr/13/controle/com_cec/cec-pdf/R2094.pdf).

Table H.2. Definition of the one or more aims (Article 8, Paragraph 2)

<b>2.1. Description of the situation that needs to be reached and the aims associated with it</b>	<b>Questions:</b> 2.1.1. What should be done? What are the ultimate goals? 2.1.2. Definition of the situation to be reached.
<b>2.2. Outline of the intervention</b>	<b>Description of the methods and procedures enabling intervention to result in the new situation:</b> 2.2.1. What means will be deployed for each option? 2.2.2. What will be directly achieved by each option? 2.2.3. How will these direct achievements produce the outcomes expected?
<b>2.3. Outline of the aims of intervention</b>	<b>Review of the aims with reference to the following questions:</b> 2.3.1. What are the intermediate aims? 2.3.2. How do they relate to strategic objectives? 2.3.3. Will the progress of strategic objectives be monitored? 2.3.4. Are the aims and achievements associated with them “SMART” (Specific, Measurable, Accepted and Realistic with a clear Time frame)?
<b>2.4. Key conditions for success</b>	2.4.1. Does success depend entirely on the action of whoever is responsible for intervention? 2.4.2. If not, does it depend on other players and, if so, to what extent? 2.4.3. Does it depend on contextual factors and, if so, to what extent?

Source : [www.assemblee-nationale.fr/13/controle/com\\_cec/cec-pdf/R2094.pdf](http://www.assemblee-nationale.fr/13/controle/com_cec/cec-pdf/R2094.pdf).

Table H.3. Possible options and the need to regulate (Article 8, Paragraph 2)

The need to regulate must depend on demonstrating the superiority of the law over other possible options.

<b>3.1. List of options<sup>1</sup></b>	
<b>3.2. The extent to which each option helps to resolve the problem</b>	
Analysis of each option. Appraisal of advantages and disadvantages of each option.	Contribution of each option to the results.
<b>3.3. Outline of the reasons underlying selection of the option proposed in the bill</b>	

Outline of the criteria governing selection of the best option	<b>Outline and explanation of the chosen selection criteria</b> Ranking of selection criteria in descending order with regard to the nature of the problem faced and issues related to it.
Need to regulate	Application of criteria: highlighting the proposed option. In what respect has the superiority of legislative intervention been established?
Assets and limitations of the proposed option	<ul style="list-style-type: none"> <li>• Does the proposed option help to solve fully the problem at issue?</li> <li>• What are its strong and weak points?</li> <li>• Are other actions desirable to maximise effectiveness?</li> </ul>
<b>Summary of possible options as alternatives to the legislative solution of the bill</b>	
List of possible options	<b>Options that always have to be envisaged:</b> <ul style="list-style-type: none"> <li>• Option of the status quo, placed on a formal footing when aims are identified.</li> <li>• Suspension of existing forms of intervention, where appropriate.</li> </ul> <b>Alternative options to legislation, for example:</b> <ul style="list-style-type: none"> <li>• Adapting the regulations.</li> <li>• Simplifying the regulations.</li> <li>• Strengthening or reorganising the means available to enforce current regulations.</li> <li>• Communication and information activities.</li> <li>• Free play of users or operators, combined with recommendations.</li> <li>• Networking of users, operators or agents.</li> <li>• Reliance on mediation.</li> <li>• Encouraging the introduction of private certification by businesses or professional organisations.</li> <li>• Drafting a code of good conduct negotiated with a professional sector, or negotiated agreements between partners.</li> </ul>

	<ul style="list-style-type: none"> <li>• Financial incentives (subsidies, or even tax incentives).</li> <li>• Regulation by an independent administrative authority and self-regulation.</li> <li>• Combining two or more of the foregoing proposals.</li> </ul>
<p><i>(1) The organic law prescribes only a list of the various options. However, for the debate to be constructive, it is useful to have points of comparison for the advantages and disadvantages of each of them.</i></p>	

Source: [www.assemblee-nationale.fr/13/controle/com\\_cec/cec-pdf/R2094.pdf](http://www.assemblee-nationale.fr/13/controle/com_cec/cec-pdf/R2094.pdf).

**Table H.4. Presentation and review of the impacts of the planned measures**

<p><b>4.1. Inventory and study of impacts</b> For each type of impact, there is a need to distinguish between the short term, the medium term and the long term.</p>
<p><b>4.1.1. Economic impacts (Article 8, Paragraph 8), and in particular:</b></p> <ul style="list-style-type: none"> <li>– Market operation</li> <li>– Competition</li> <li>– Businesses</li> <li>– VSEs/SMEs</li> <li>– Private individuals</li> <li>– Research and innovation</li> <li>– Territories</li> <li>– Competitiveness of the national economy</li> <li>– Macroeconomic environment</li> </ul>
<p><b>4.1.2. Social impacts (Article 8, Paragraph 8), and in particular:</b></p> <ul style="list-style-type: none"> <li>– Employment and labour market</li> <li>– Social integration and protection of special groups</li> <li>– Equality of treatment and opportunity</li> <li>– Civil liberties</li> <li>– Governance, public participation, transparency</li> <li>– Public health</li> </ul>
<p><b>4.1.3. Environmental impacts (Article 8, Paragraph 8), and in particular:</b></p> <ul style="list-style-type: none"> <li>– Climate</li> <li>– Transport and energy</li> <li>– Air quality</li> <li>– Biodiversity, flora, fauna and landscapes</li> <li>– Water quality and resources</li> <li>– Soil quality and resources</li> <li>– Land use</li> <li>– Renewable and non-renewable resources</li> <li>– Environmental impacts of businesses and consumers</li> <li>– Waste production/recycling</li> <li>– Environmental risks</li> <li>– Animal welfare</li> <li>– International environment</li> </ul>

<p><b>4.1.4. Legal impacts (Article 8, Paragraph 5), and in particular:</b></p> <ul style="list-style-type: none"> <li>– Legal certainty</li> <li>– Intelligibility / accessibility of the law</li> <li>– European and international law (Article 8, Paragraph 4)</li> <li>– Litigation</li> </ul>
<p><b>4.1.5. Impacts on public administration (Article 8, Paragraphs 8 and 9), and in particular:</b></p> <ul style="list-style-type: none"> <li>– Labour</li> <li>– Deployment</li> <li>– Training</li> <li>– Administrative formalities</li> <li>– Supervision</li> <li>– Other administrative bodies</li> </ul>
<p><b>4.1.6. Impact on justice (Article 8, Paragraph 8), and in particular:</b></p> <ul style="list-style-type: none"> <li>– Litigation</li> <li>– Prison population</li> </ul>
<p><b>4.2. Conditions governing application in the overseas communities (Article 8, Paragraph 7)</b></p>
<p><b>4.3. Distributional analysis (Article 8, Paragraph 8)</b></p>
<p>Which public groups are probably going to gain from the reform (and why)? Which public groups are probably going to be affected by the outcome of the reform (and why)?</p>
<p><b>4.4. Budgetary analysis (Article 8, Paragraph 8)</b></p>
<p>What amounts are earmarked for the planned intervention? What savings and/or credit restructuring are expected of the proposed reform? How much will the planned reform cost during its implementation, and then when it is fully operational? What is the impact of intervention on territorial community expenditure? What is the budgetary impact on other public operators? What is the overall impact on public employment, within central government and other public administrative authorities? Can one specify the impact on the government budget within a multi-annual framework? What is the impact of intervention on territorial community expenditure? What is the budgetary impact on other public operators (public institutions, public enterprises, corporate financial statements)?</p>

<b>4.5. Risk analysis (Article 8, Paragraph 8)</b>	
What risks are associated with the preferred option? Is it possible to identify undesirable effects? What measures are taken to prevent the biggest negative risks, and to lessen and limit them?	
<b>Type of risk</b>	
Availability risk	Non-existent, low, medium, high, etc.
Demand-related risks	
Economic risks	
Environmental risks	
Funding risks	
Legislative risks	
Operational risks	
Political risks	

Technological risks	
Volume risks	
<b>4.6. Implementation (Article 8, Paragraphs 6 and 11)</b>	
<ul style="list-style-type: none"> <li>• System for implementing the proposed option (information systems, etc.)?</li> <li>• Administrative units involved in implementation?</li> <li>• Selected method of governance for implementing the proposal?</li> <li>• Provisional timetable for implementing the proposed option?</li> <li>• Possible monitoring and evaluation procedures?</li> </ul>	
<b>4.7. Advantages and disadvantages of the proposed option (Article 8, Paragraphs 2, 8 and 9)</b>	
Inventory of the main advantages and disadvantages of the proposed option.	
<b>Conclusion</b> What general judgement can be made about the feasibility of the option presented?	

Source : [www.assemblee-nationale.fr/13/controle/com\\_cec/cec-pdf/R2094.pdf](http://www.assemblee-nationale.fr/13/controle/com_cec/cec-pdf/R2094.pdf).

**Table H.5. Consultation (Article 8, Paragraph 10)**

<b>5.1. Mandatory consultation processes</b>
<b>5.1. Non-mandatory consultation processes</b>

Source: [www.assemblee-nationale.fr/13/controle/com\\_cec/cec-pdf/R2094.pdf](http://www.assemblee-nationale.fr/13/controle/com_cec/cec-pdf/R2094.pdf).

**Table H.6. – Implementation, monitoring and evaluation of the intervention (Article 8, Paragraphs 6 and 11)**

<b>6.1. Monitoring management</b>
<b>6.2. Monitoring performance</b>
<ul style="list-style-type: none"> <li>• With what programme is the proposed reform connected? With what action?</li> <li>• If the reform accounts for a decisive share of programme funding, are there plans to alter one of the aims of the programme with which it is concerned?</li> <li>• If so, is it possible to select an aim in stage 2 for this purpose?</li> <li>• If so, what are the one or more indicators envisaged (indicators of service quality, socio-economic effectiveness, efficiency)?</li> </ul>
<b>6.3. Evaluation arrangements</b> (ongoing or subsequent)
<ul style="list-style-type: none"> <li>• Has evaluation of the proposed reform been envisaged?</li> <li>• Within what timetable might an evaluation occur?</li> <li>• What form might it take? Is a Government or parliament report envisaged?</li> </ul>

Source: [www.assemblee-nationale.fr/13/controle/com\\_cec/cec-pdf/R2094.pdf](http://www.assemblee-nationale.fr/13/controle/com_cec/cec-pdf/R2094.pdf).



## Annex I: Progress report on the 15 measures outlined on 19 October 2009

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## État d'avancement des 15 mesures présentées par ERIC WOERTH le 19 octobre 2009

Mesures	Étapes réalisées	Prochaines étapes
Permettre aux citoyens de s'inscrire sur les listes électorales	Une expérimentation a été réalisée dans trois communes en 2009 (en quatre mois déjà plus de 15% des inscriptions ont été faites en ligne dans les villes d'Issy-les-Moulineaux, du Havre et d'Aix-sur-Vienne)	Extension à partir de fin mars à toutes les communes volontaires (déjà plus de 120 candidates) ; cible : 2,1 millions de Français concernés tous les ans
Permettre à tous les jeunes Français âgés de 16 ans de réaliser les démarches de recensement citoyen par internet	Une expérimentation a été lancée avec une douzaine de communes fin 2009	Le dispositif est en phase de généralisation depuis janvier 2010 pour toutes les communes volontaires ; cible : 800 000 jeunes Français concernés tous les ans
Permettre aux entreprises retenues dans le cadre d'un marché public d'obtenir une attestation fiscale dématérialisée	La DGFIP a permis aux entreprises, depuis la fin de l'année 2009, d'obtenir l'attestation fiscale dématérialisée depuis leur compte fiscal. En un mois, près de 12 000 attestations ont été délivrées grâce à ce nouveau dispositif	Cible : assurer le déploiement auprès des entreprises
Simplifier la vie de l'entrepreneur	Le guichet unique « création » a été lancé le 1 <sup>er</sup> janvier 2010. Les autres mesures annoncées : réduction des délais, suppression de la redondance des informations demandées et accompagnement des créateurs, sont engagées	Durant le 1 <sup>er</sup> semestre, les principales autorisations d'exercer vont être simplifiées et dématérialisées (par exemple, pour les coiffeurs ou les plombiers). Cible : 550 000 créateurs d'entreprises concernés tous les ans
Améliorer le traitement des réclamations	Une expérimentation lancée dans 7 sites pilotes depuis fin 2009	Présentation du bilan de l'expérimentation d'ici avril 2010
Simplifier et permettre d'effectuer en ligne, le transfert du siège social d'une entreprise	La demande de transfert du siège social par Internet est dorénavant possible depuis décembre 2009. Ce service inclut la publication de l'annonce légale dans la presse (Le Parisien, les Petites Affiches, le Journal Spécial des Sociétés)	Extension progressive aux 700 journaux d'annonces légales. Cible : 250 000 transferts annuels de sièges sociaux
Permettre aux associations de déposer en ligne leur dossier de subvention	Le service « e-subvention » a été dévoilé en décembre 2009 et est en phase de test avec les associations	Déploiement progressif auprès des organismes de gestion des subventions : ministères de la Santé, du Sport et de la Ville (deuxième trimestre 2010), et des collectivités locales volontaires à partir du deuxième semestre 2010



État d'avancement des 15 mesures lancées le 19 octobre 2009  
Février 2010



Mesures (suite)	Étapes réalisées (suite)	Prochaines étapes (suite)
Permettre à l'usager de pouvoir effectuer en une seule fois la déclaration de perte et la demande de remplacement de ses papiers administratifs	Le service en ligne permettant de remplir en une seule fois les formulaires de déclaration de perte et de demander le renouvellement de ses papiers est en phase de test	Mise en place fin mars 2010 via mon.service-public.fr d'une version de test permettant d'engager le renouvellement de la carte d'identité, du passeport et du certificat d'immatriculation (carte grise)
Permettre la dématérialisation des procédures d'urbanisme	Une expérimentation de la dématérialisation de la déclaration d'intention d'aliéner est lancée dans 4 collectivités (CG Hérault, Paris, Niort, Neuilly) depuis janvier 2010	Poursuite de l'expérimentation et bilan avant d'envisager sa généralisation début 2011
Simplifier la déclaration préalable à l'embauche et expérimenter la déclaration simplifiée par téléphone	Développement d'un nouveau service accessible par téléphone (smartphone) permettant de réaliser sa Déclaration Unique d'Embauche en 2 saisies. Suppression de la moitié des données demandées sur tous les modes déclaratifs (Internet, smartphone, EDI)	Lancement d'un prototype de service en juin 2010 puis, après expérimentation, généralisation envisagée du service fin 2010
Supprimer les demandes de copie ou d'extrait d'actes d'état civil demandées comme justificatifs lors de certaines démarches	Un projet de « plate-forme d'échange et de confiance » a été lancé en collaboration avec l'Agence Nationale des Titres Sécurisés (ANTS)	Mise en place en septembre 2010 de cette plateforme qui permettra de remplacer progressivement les actes par un échange sécurisé de données entre les mairies, les administrations et certains tiers (notaires)
Éviter aux associations d'avoir à fournir plusieurs fois les mêmes informations à chaque demande d'agrément	Un tronc commun d'informations demandées pour chaque agrément a été défini lors de la 2ème Conférence nationale de la vie associative (17 décembre 2009)	Le service permettant les demandes d'agrément en ligne sera développé d'ici fin 2010
Simplifier l'ouverture et le renouvellement des droits pour les personnes handicapées	Un téléservice pour déposer et suivre en ligne son dossier de demande initiale ou de renouvellement de droits auprès d'une Maison Départementale pour les Personnes Handicapées (MDPH) est à l'étude	Ouverture programmée à l'été 2010
Lors du décès d'un proche, éviter à la famille d'avoir à fournir plusieurs fois les mêmes informations à différentes administrations	Développement en cours d'un nouveau service en ligne	D'ici novembre 2010, les usagers ayant perdu un proche pourront transmettre en une seule fois les informations relatives à son décès, à plusieurs administrations (CNAV, Cnamts, CNAF, Agirc-Arrco)
Éviter aux entreprises d'avoir à fournir plusieurs fois les mêmes informations de base (chiffre d'affaires, effectif, etc.) aux administrations	Le lancement du projet de suppression de deux déclarations (participation à l'effort de construction et formation professionnelle) a été lancé par la DGFIP (Direction Générale des Finances Publiques)	Suppression des deux déclarations d'ici fin 2011 grâce à la refonte des informations nécessaires dans la DADS (Déclaration Annuelle des Données Sociales)

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## Progress report on the 15 Measures outlined by Eric Woerth on 19 October 2009

• Measures	• Stages completed	• Next stages
<ul style="list-style-type: none"> <li>Enabling citizens to register on the electoral roll</li> </ul>	<ul style="list-style-type: none"> <li>Experiments were carried out in three communes in 2009 (in just four months, over 15% of registrations have been completed on line in the towns of Issy-les-Moulineaux, Le Havre and Aix-sur-Vienne).</li> </ul>	<ul style="list-style-type: none"> <li>From the end of next March, extension to all communes that volunteer (already over 120 have applied);</li> <li>Target: 2.1 million French citizens involved annually.</li> </ul>
<ul style="list-style-type: none"> <li>Enabling all young French people aged 16 to complete the formalities for registering as citizens on line</li> </ul>	<ul style="list-style-type: none"> <li>Experiments were carried out in around 12 communes at the end of 2009.</li> </ul>	<ul style="list-style-type: none"> <li>The system has been gradually extended since January 2010 to all communes that volunteer;</li> <li>Target: 800,000 young French people involved annually.</li> </ul>
<ul style="list-style-type: none"> <li>Enabling businesses selected under a public procurement procedure to obtain a dematerialised tax certificate.</li> </ul>	<ul style="list-style-type: none"> <li>Since the end of 2009, the Directorate General of Public Finances (DGFIP) has enabled businesses to obtain the dematerialised tax certificate from their tax account. In one month, almost 12,000 certificates have been issued thanks to this new system.</li> </ul>	<ul style="list-style-type: none"> <li>Target: Enable businesses to use the system</li> </ul>
<ul style="list-style-type: none"> <li>Simplifying the life of entrepreneurs</li> </ul>	<ul style="list-style-type: none"> <li>The "creation" single counter was established on 1 January 2010. Other measures announced: fewer deadlines, an end to requests for unnecessary information, and support for new business entrepreneurs are under way.</li> </ul>	<ul style="list-style-type: none"> <li>During the first six months, the main authorisations to take up an occupation are going to be simplified and dematerialised (for hairdressers and plumbers for example).</li> <li>Target: 550,000 new business entrepreneurs annually.</li> </ul>
<ul style="list-style-type: none"> <li>Improving the processing of complaints</li> </ul>	<ul style="list-style-type: none"> <li>Experiments have been conducted on 7 pilot websites since the end of 2009.</li> </ul>	<ul style="list-style-type: none"> <li>A report on these experiments by April 2010</li> </ul>

<ul style="list-style-type: none"> <li>• Simplifying the transfer of business head offices, and providing for it on line</li> </ul>	<ul style="list-style-type: none"> <li>• Head office transfer applications have been possible over the Internet since December 2009.</li> <li>• The service includes publication of the legal notice in the press [<i>Le Parisien, les Petites Affiches, le Journal Spécial des Sociétés</i>].</li> </ul>	<ul style="list-style-type: none"> <li>• Gradual extension of legal notices to 700 newspapers or periodicals.</li> <li>• Target: 250,000 head office transfers annually.</li> </ul>
<ul style="list-style-type: none"> <li>• Enabling associations to place their grant documents on line</li> </ul>	<ul style="list-style-type: none"> <li>• The “e-subvention” service was unveiled in December 2009 and is in a test phase with associations.</li> </ul>	<ul style="list-style-type: none"> <li>• General extension to grant management bodies: Ministries of Health, Sport, and Towns and Cities [second half of 2010], and to local authorities that volunteer from 1 July 2010.</li> </ul>

### Progress report on the 15 measures unveiled on 19 October 2009 February 2010

<ul style="list-style-type: none"> <li>• Measures (continued)</li> </ul>	<ul style="list-style-type: none"> <li>• Stages completed (continued)</li> </ul>	<ul style="list-style-type: none"> <li>• Next stages (continued)</li> </ul>
<ul style="list-style-type: none"> <li>• Enabling users to report the loss of their personal administrative documents and request their replacement in a single operation.</li> </ul>	<ul style="list-style-type: none"> <li>• The online service for filling forms to declare that personal administrative documents are lost and request their replacement as part of a single operation, is in a test phase.</li> </ul>	<ul style="list-style-type: none"> <li>• Establishment at the end of March 2010 of a test version via <i>mon.service-public.fr</i> for initiating renewal of identity cards, passports and vehicle registration documents.</li> </ul>
<ul style="list-style-type: none"> <li>• Enabling dematerialisation of urban planning and development procedures</li> </ul>	<ul style="list-style-type: none"> <li>• Experiments in dematerialising the “declaration of intention to dispose”, have been started in four local authorities since January 2010 [CG Hérault, Paris, Niort, Neuilly]</li> </ul>	<ul style="list-style-type: none"> <li>• Continued experimentation and report on the measure, prior to its possible extension on a general basis in early 2011</li> <li>•</li> </ul>
<ul style="list-style-type: none"> <li>• Simplifying the “declaration prior to recruitment” and testing the simplified declaration by telephone</li> </ul>	<ul style="list-style-type: none"> <li>• Development of a new service via telephone access [smartphone] for completing the “single declaration of recruitment” in two data entries. Half the data submitted in all usable modes [Internet, smartphone, EDI] is no longer requested</li> </ul>	<ul style="list-style-type: none"> <li>• Launching of a service prototype in June 2010, and then its possible extension on a general basis at the end of 2010, following experimentation.</li> </ul>

<ul style="list-style-type: none"> <li>Abolishing requests for copies or certified copies of official civil status documents, as supporting items in some formalities.</li> </ul>	<ul style="list-style-type: none"> <li>A “discussion and trust platform” scheme has been developed in co-operation with the National Agency for Document Security [ANTS]</li> </ul>	<ul style="list-style-type: none"> <li>Establishment of this platform in 2010, so that certificates and similar documents can gradually be replaced by secure data exchange between town halls, public administrative authorities, and certain third parties (notaries).</li> </ul>
<ul style="list-style-type: none"> <li>Obviating the need for associations to submit the same information several times whenever they require formal approval</li> </ul>	<ul style="list-style-type: none"> <li>A “common core” of information requested for each approval procedure was established at the Second National Conference of the Voluntary Sector</li> </ul>	<ul style="list-style-type: none"> <li>The online approval request service will be developed by the end of 2010.</li> </ul>
<ul style="list-style-type: none"> <li>Simplifying initial access to entitlements, as well as their renewal, for the handicapped</li> </ul>	<ul style="list-style-type: none"> <li>A teleservice is under consideration to enable the online submission and follow-up of initial personal applications for entitlements, or requests for their renewal, to Department Homes for Handicapped Persons (MDPHs).</li> </ul>	<ul style="list-style-type: none"> <li>Service scheduled to begin in the summer of 2010.</li> </ul>
<ul style="list-style-type: none"> <li>Obviating the need for families to submit the same information several times to different administrative authorities, when a close relative dies.</li> </ul>	<ul style="list-style-type: none"> <li>Development of a new online service is under way</li> </ul>	<ul style="list-style-type: none"> <li>By November 2010, users who have lost close relatives will be able to forward information concerning their death to several authorities [CNAV, Cnamts, CNAF, Agirc-Arrco] in a single once-only operation.</li> </ul>
<ul style="list-style-type: none"> <li>Obviating the need for businesses to provide public authorities several times with the same basic information [turnover, number of employees, etc.].</li> </ul>	<ul style="list-style-type: none"> <li>The scheme to abolish two declarations [“participation in the construction effort” and vocational training] has been initiated by the DGFIP (Directorate General of Public Finances).</li> </ul>	<ul style="list-style-type: none"> <li>The two declarations will be abolished by the end of 2011, thanks to the overhaul of necessary information in the Annual Declaration of Social Data [DADS].</li> </ul>

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