



Better Regulation in Europe

AUSTRIA



Better Regulation in Europe: Austria 2010



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Foreword

The OECD Review of Better Regulation in Austria 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 (EU), 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.

Austria is part of the third group of countries to be reviewed – the other two are Ireland and Luxembourg. The first group of Denmark, the Netherlands, Portugal and the United Kingdom were published in May 2009, the second group of Belgium, Finland, France, Germany, Spain and Sweden in mid-2010 and the remaining countries will follow in the second half of 2010.

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, (Austria, Belgium, Luxembourg and Portugal were not covered by these previous reviews) and to find out what has happened in respect of the recommendations made at the time.

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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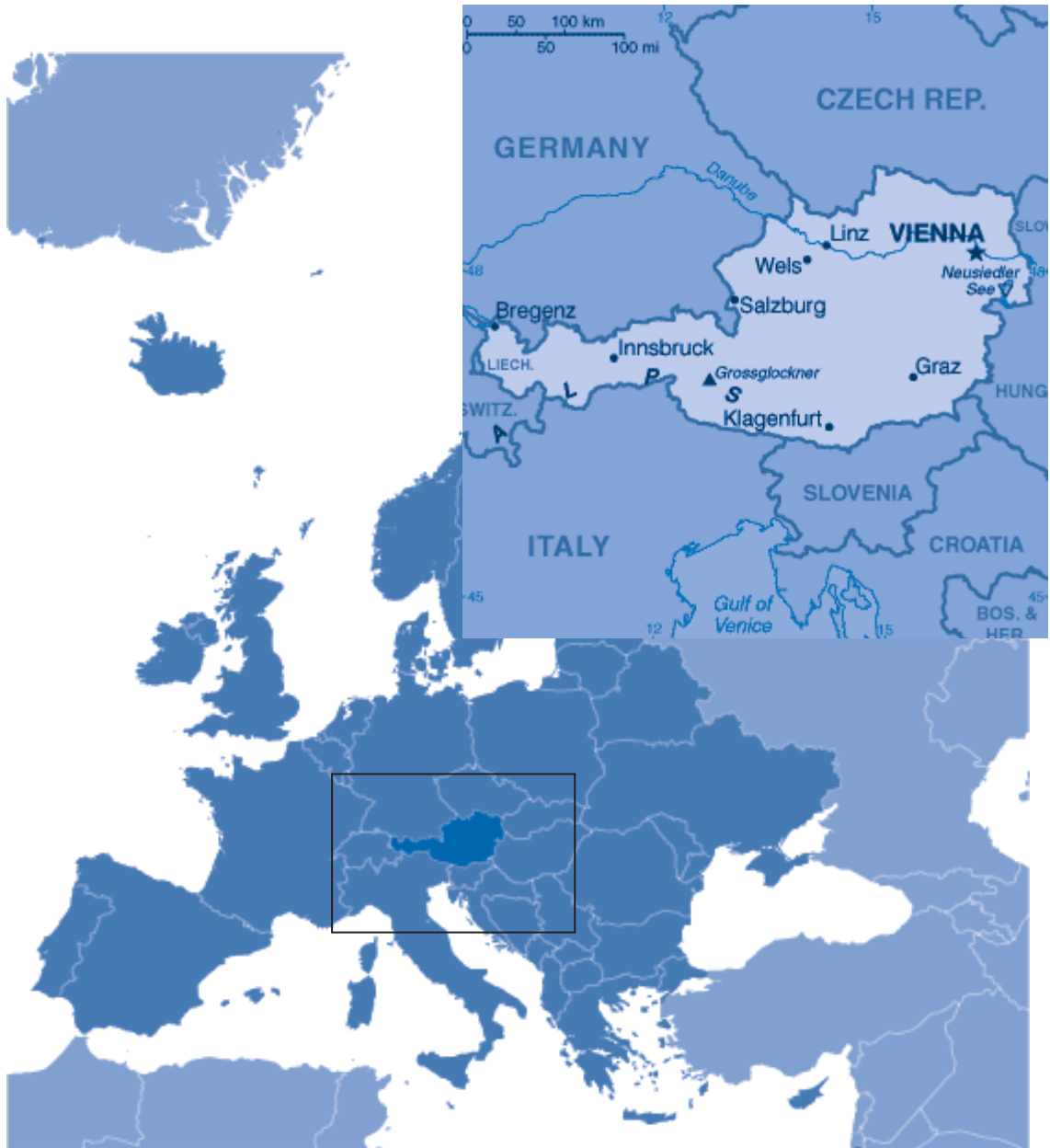
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Abbreviations and Acronyms

A-SIT	Secure Information Technology Centre
AWS	Austrian Federal Finance Institute (Wirtschaftsservice)
BFG	The Federal Finance Act (Bundesfinanzgesetz)
BHG	The New Federal Budget Law (Bundeshaushaltsgesetz)
BRZ	Federal Data Processing Centre (Bundesrechenzentrum)
CIO	Federal Chief Information Officer
COREPER	The Committee of Permanent Representatives in the European Union
DSG	Austrian Data Protection Act (Datenschutzgesetz)
ECG	The eCommerce Act (eCommerce Gesetz)
ECN	The European Network of Competition Authorities
EGIZ	E-Government Innovation Centre (E-Government Innovations Zentrum)
EIA	Environmental Impact Assessment
eID card	Electronic Identity Card
ELAK	The federal electronic filing system
ERV	Electronic Legal Communication
FAG	The Federal Inter-governmental Fiscal Relations Act (Finanzausgleichsgesetz)
FCA	The Austrian Federal Competition Authority
FPÖ	Freedom Party
FFG	The Austrian Research Promotion Agency
ICT	Information and Communications Technologies
KVP	Climate Impact Test (Klimaverträglichkeitsprüfung)

MFA	The Ministry of Foreign Affairs
MTEF	The Medium Term Expenditure Framework
NGO	Non-Governmental Organisation
OGH	Supreme Court (Oberster Gerichtshof)
ON	The Austrian Standardisation Institute (Österreichisches Normungsinstitut)
ÖVP	Austrian People's Party
RIA	Regulatory Impact Assessment
RIS	The Legal Information System of the Republic of Austria (Rechtsinformationssystem)
RTR	The National Regulatory Authority for Broadcasting and Telecommunications
SCM	Standard Cost Model
SigG	The Electronic Signature Act (Signaturgesetz)
SME	Small and Medium Enterprises
SPC	Single Points of Contact
SPÖ	Austrian Social Democratic Party
TKG	The Telecommunications Act (Telekommunikationsgesetz)
URÄG	The Company Law Amendment Act (Unternehmensrechts-Änderungsgesetz)
UVS	The Independent Administrative Tribunals in the States (unabhängige Verwaltungssenate in den Ländern)
WRI	The Viennese legal information system (Wiener Rechtsinformationssystem)

Country Profile – Austria

Source: CIA factbook: www.cia.gov/library/publications/the-world-factbook/geos/au.html.

Country Profile – Austria

The land		
Total Area (1 000km ²):	84	
Agricultural (1 000km ²):	38	
Major regions/cities (thousand inhabitants):	Vienna	1 630
	Graz	250
The people		
Population (thousands, 2007):	8 315	
Number of inhabitants per km ² :	99.1	
Net increase (2006/2007):	0.4	
Total labour force (thousands):	4 380.3	
Unemployment rate (2009) (% of civilian labour force):	4.8	
The economy		
Gross domestic product in USD billion:	320.4	
Per capita (PPP in USD):	38 400	
Exports of goods and services (% of GDP):	59.2	
Imports of goods and services (% of GDP):	53.9	
Monetary unit:	Euro	
The government		
System of executive power:	Parliamentary	
Type of legislature:	Bicameral	
Date of last legislative election:	28 September 2008	
Date of next legislative election:	2012	
State structure:	Federal state	
Date of entry into the EU:	1 January 1995	
Composition of National Council of Austria (Number of Seats):	Social Democratic Party of Austria (SPÖ)	57
	Austrian People's Party (ÖVP)	54
	Freedom Party of Austria (FPÖ)	34
	Alliance for the Future of Austria (BZÖ)	21
	The Green (Grüne)	20
	Total	183

Note: 2008 Unless otherwise stated.

Sources: OECD Economic Survey of Austria 2009, OECD in Figures 2009, OECD Employment outlook 2009 and OECD Government at a Glance 2009.

Executive Summary

Economic context and drivers of Better Regulation

Austria has one of the higher rates of GDP per capita levels in Europe. Like other OECD countries, it has however, been challenged by the effects of the economic and fiscal crisis. The Austrian government has improved its processes for strategic planning of public expenditure through budget reforms to set explicit performance targets for all key public services to facilitate the assessment of the costs of public activities against their social benefits and lead to efficient programme design. This output based budgeting will be enforced from 2013. In addition, strategies focused on reducing the administrative burdens on business and citizens are intended to improve the efficiency of the public sector. However, the OECD Economic Review (OECD 2009) also identified that, in the long-term, structural reforms in product and labour markets held the potential to boost output, improve trend growth and raise average per capita income levels. It encouraged an assessment of the impacts of prevailing regulations on cost, productivity and price outcomes in specific areas to identify the resulting impacts on potential supply and employment, and for targeted regulatory reforms to close these gaps. A policy goal of Better Regulation is ensuring that regulation promotes entrepreneurship and a competitive private sector, and achieves policy objectives at least cost to society. This at least points to the potential for Better Regulation strategies to improve the competitiveness of the economy through, for example, improved *ex ante* and *ex post* review of the effectiveness of regulation.

The public governance context for Better Regulation

Box 0.1. The federal structure and competences across the levels of government

Austria is a federal republic with some direct democratic features. It is based on the principles of a democratic republic (the law emanates from the people, it has an elected Head of State). Austria is a federal state and constitutional state (the administration of the State is carried out solely on the basis of laws). The fundamental rights and rights of personal liberty guaranteed in the Federal Constitution of 1920 were already incorporated in the Basic Law of the State in 1867.

The Austrian federal administrative structure consists of a four-tiered system comprising the federal government, the federal states (*Länder*), districts and municipalities. All political institutions established by the constitution are elected. Direct elections are held for the National Council (*Nationalrat*), the Federal President and the nine state parliaments (*Landtage*) and of municipal Mayors.

A number of instruments of direct democracy are used at the Federal and *Länder* level:

- *Referendum* – Introduced in 1972, referenda may be held on a law adopted by parliament. Their result is binding on the legislator.
- *Petition for a referendum* – A petition for a referendum differs from an actual referendum in that it involves collecting signatures. If a petition collects a minimum of 100 000 signatures, the National Council must take up the issue. However, it is not compelled to legislate on it. A petition therefore has no direct repercussions, but is mainly a political signal. It was introduced in 1973.

- *Consultations* – A consultation is held if the issue is of fundamental importance and concerns Austria as a whole, and the National Council decides to hold the consultation based on a motion by its members or the Federal Government.

The Federal Constitutional Law contains an exhaustive list of the competences conferred on the Federation, whereas the competences of the states are established by a general clause. The latter states that the *Länder* have the competence in a matter unless the Constitution expressly assigns it to the federal level. Overall, many legislative competences are conferred on the federal level while the *Länder* often play an implementing role, to the extent that Austria sometimes is described as a “centralised federal state”.

The Federal Constitution distinguishes four general types of competence:

- Both legislation and execution are the responsibility of the Federation (Article 10 of the Federal Constitution).
- Legislation is the responsibility of the Federation, execution of the States (Article 11 of the Federal Constitution).
- The Federation is responsible for legislative principles, the States for translating these principles into law and executing them.
- Both legislation and execution are the responsibility of the States (Article 15 of the Federal Constitution).

An overlapping of rule-making responsibilities is not legally possible, because the allocation of the various powers is understood to be exclusive. This means that an area is exclusively and unambiguously assigned to the competence either of the Federation or of the *Länder*. According to the Austrian Constitutional Law, it is unimaginable that both these levels are competent in a specific area. However, this does not remove the possibility of dispute over the competence among the federal government or *Länder*. In cases of dispute the Constitutional Court determines at the application of the federal government or *Länder* whether an act of legislation or execution falls into the competence of the Federation or the *Länder*.

The Austrian political system has been classified as an extreme case of *consociational* democracy and neo-corporatism (Schmitter/Lehmbruch 1979). While the latter term describes the particularly intertwined relationship of key stakeholders organisations (the Social Partners) in the political, economic and social life of the republic, the first term refers to the dominant position held by the two largest parties of in the political system of the country. The conservative Austrian People’s Party (ÖVP) and the Austrian Social Democratic Party (SPÖ) have formed most of the governing coalitions (based on the “historic compromise”) and until the 1980s they have accounted for more than 80% of the electoral votes. A relative exception occurred during the period of the conservative government of the ÖVP and the Freedom Party (FPÖ) (2000-06), which moved in the direction of a more conflict oriented system where the importance of the social partnership diminished.

Source: Responses of the Austrian Government to the OECD questionnaire; Federal Chancellery (2006;2007a); EUI (2008;2009).

Developments in Better Regulation and main findings of this review

Strategy and policies for Better Regulation

Better Regulation has successfully incorporated administrative reforms directed at improving administrative efficiency. Austria has an established history in promoting administrative reforms of which the programme of administrative burden reduction and e-Government are the most recent and prominent. In this context, the main driver of the Better Regulation programme is the goal

of improving public sector efficiency. There appears to be a strong appreciation of the potential for administrative burden reduction and e-Government to reduce the costs of government on citizens and business as well as to reduce the incidence of unnecessary costs of government activities on the budget. In support of this, a comprehensive programme of budget reform commencing in 2013 will place greater incentives on ministries to plan and manage their use of resources against government priorities. The Austrian federal government's administrative burden reduction programme has a number of strengths and appears to be on course to deliver the expected benefits. E-Government initiatives in particular have led to comparatively remarkable achievements. Over the past years, steady progress has been made to diffuse ICT to support administrative reform.

An emphasis on administrative efficiency is important, but it tends to narrow the conception of the potential for Better Regulation to improve the welfare of citizens and businesses. The main aim of administrative burden reduction programmes is lower administrative costs for companies and citizens principally brought about through a reduction in information obligations, and the budget reforms have significant potential to deliver programme efficiencies. This is an important, but limited objective. The broader perspective of better regulation, which seeks to ensure that regulations are effective and efficient and achieve public policy goals efficiently and effectively, cannot be fully addressed by burden reduction programmes. It requires a broader set of initiatives integrating Better Regulation with the design, implementation and review of new and existing regulation, including a fully fledged impact assessment process, a proactive and integrated policy for efficient implementation and enforcement of legislation, effective processes for public consultation and the integration of multilevel (*Länder* and EU) regulatory management into the policy.

The economic and competitiveness potential of Better Regulation as well as its potential to contribute to sustainable development is, as a result, not being fully exploited. The relative failure to define Better Regulation in broader terms means that there is a lack of focus on the potential economic and competitiveness benefits which it could deliver, and the broader dimensions of sustainable reform. In Austria the links between administrative reform, public sector efficiency and more efficient systems of federalism and fiscal policy are all clearly articulated in policy arrangements. Better regulation has a role in promoting these goals but should be viewed as a strategy in its own right.

There are significant potential economic opportunities for Austria through improved regulatory management, in particular competition assessment and promoting productivity enhancement in the economy. The OECD Economic Survey of Austria identified that assuring the efficient functioning of the *Länder* is critical to the development of the credible fiscal consolidation measures that are required in Austria (OECD 2009:12). It also noted the potential for differences in *Länder* regulation to reduce market competition, with reference to the effects of regional planning rules restricting retail trading arrangements (OECD 2009:45). The performance of Austria's internal market is thus likely to be affected by the absence of a well conceived Better Regulation strategy. There are also likely to be opportunities for unlocking productivity gains through an assessment of restrictions on competition in the services sector. It is in Austria's interest to examine how to apply Better Regulation strategies to consider and identify these opportunities.

There is no clear expression of political support for Better Regulation which can establish its potential to deliver economic and competitiveness advantages, and no overarching strategy. The current imperative for Better Regulation appears to come from outside the Austrian administration from the Lisbon agenda of the EU. It is not driven from within Austria, by the political level within the executive, or by Parliament. In discussions with Austrian officials, the OECD review team noted no emphasis on competitiveness as a driver of Better Regulation initiatives. This raises the question as to whether there is an adequate allocation of resources within government dedicated to administrative

reform versus initiatives for economic reform. To be effective, a “whole-of-government” policy on Better Regulation requires support at the highest political levels and has to be communicated to stakeholders. But there is, as yet, no overarching strategy for promoting the full potential of Better Regulation initiatives, and no broad policy statement on Better Regulation in the Austrian administration. The Ministry of Finance takes the lead on the administrative efficiency and administrative burden reduction goals and initiatives. The Legal Service of the Federal Chancellery has a broader perspective on legal quality. The production of the Better Regulation Handbook reflects a valuable step in promoting the Better Regulation initiative. But no Better Regulation champion has yet emerged.

The development of an overarching strategy on Better Regulation with strong political support would require a consensual approach and strong communication internally and externally. The elements of Better Regulation that are in place appear to be well understood, however the gap in understanding the potential of Better Regulation has to be addressed internally. Officials need to be made aware that the current emphasis in their activities is too focussed (as it also is in many other EU countries) on administrative burden reduction and other efficiency measures, at the expense of the potential for impact assessment, and other key aspects of effective regulatory governance. External communication and debate will also be needed. It is interesting that there is no broader public debate of the merits of better regulation.

The budget reforms can also be a vehicle for promoting better regulation. The full implementation in 2013 of the Austrian federal budget reforms will integrate the existing procedures for the *ex ante* assessment of the financial consequences of government regulation and projects on the budget and the administrative burdens on citizens and businesses. These assessments are planned to form an integral part of the future impact assessment framework. To the extent that they encompass an assessment of the broader economic impact of regulations, and are not confined to the impacts on the public sector or administrative burdens, the impact assessment initiatives proposed to be implemented under the federal budget reforms can be used to provide a strong foundation for advancing the broader Better Regulation strategy.

The Austrian government has successfully promoted the merits of its administrative burden reduction programme across government and its budget reforms. The initiatives in relation to the administrative burden reduction programme, the budget reform programme and the e-Government programme are all well publicised and appear to be well understood across government. For the achievement of these programmes, there was explicit institutional restructuring (for example, the establishment of the Federal Chief Information Officer, ICT Strategic Unit for e-Government; and the dedicated unit on administrative burden reduction for business in the Ministry of Finance). This involved the deployment of new resources and training and intense interface with stakeholders (notably chambers of commerce) in the design and implementation of the programmes, as well as to diffuse information on the initiatives and its intended outcomes. In addition, the Council of Ministers is currently considering the elaboration of an overall and integrated Better Regulation strategy “in and for Austria”.

In general however, only single elements of the Better Regulation programme policy are being communicated. In the absence of an integrated strategy on better regulation, there is no basis for an overarching communication programme to promote its merits. This also means that some elements that contribute to better regulation, such as Austria’s e-Government activities and the budget reforms may not be understood as an enabler of Better Regulation as this is not their primary purpose.

Austria has the facility for comprehensive programme and policy evaluation and the capacity to introduce sustained reforms. However, because no explicit regulatory policy yet exists

in Austria, comprehensive reviews of the strategy and its outcomes have not been carried out. The individual elements of the Better Regulation agenda have been subject to forms of *ex post* evaluation. Of these, the relatively institutionalised forms are the reviews of public consultation practices, and the administrative burden reduction strategy by the Austrian Court of Audit.

The use of ICT and e-Government systems is well advanced in Austria and could become an even stronger enabler of Better Regulation. Austria has well-developed e-Government systems for Better Regulation with strong links to other aspects of regulatory policy; for example the drafting of legislation within the e-Law system and the use of the electronic administrative burdens calculator and the business portal. However, there appears to be unrealised potential for synergies.

There would be merit in examining the extent to which the e-Law process can be enhanced to enable public consultation on the development of legislation. The e-Law making process might also help in mainstreaming Better Regulation and facilitating a wider focus such as legal quality and integrated impact assessments for new legislation. E-Government in Austria has been led to a certain extent by central co-ordination and steer. However, there also appears to be examples where the benefits of and the knowledge created within the policy field are not shared across the administration, arguing for further initiatives to share best practice.

Institutional capacities for Better Regulation

Within the Austrian administration there is a highly professional administration with a clear focus on administrative efficiency. The Austrian administration relies upon the efficient operation of institutions that operate with a high degree of autonomy to deliver their own policy agenda. Effective administrative relationships follow from established modes of operation which tend to be focussed on reducing administrative costs and promoting the quality of legal drafting. The absence of hierarchy in the executive and the principle of unanimity in the Council of Ministers mean that no single ministry has significant institutional leverage to impose an overarching policy on Better Regulation across the administration. While this creates potential opportunities for fruitful competition and internal benchmarking, it can also mean that good initiatives and practices which develop within agencies are not necessarily diffused across the government.

Whilst there is no specific institutional ownership of the Better Regulation agenda in Austria, three entities (the Federal Chancellery, the Finance ministry and the Court of Audit) currently play a key role which needs to be reinforced. Responsibilities and capacities for Better regulation are shared across the Austrian administration. This appears to have had the effect of making it difficult to establish accountability for Better Regulation and has undermined the organisational focus, attention to and resources for Better Regulation initiatives. However, the Federal Chancellery, the Ministry of Economy, Family and Youth, the Ministry of Finance and the Court of Audit are the existing basic structural elements on the institutional map of Better Regulation in Austria. Each of these institutions is engaged in important roles to promote the quality of rule-making processes and improve the design of regulatory proposals. The Federal Chancellery currently gives guidance on legal quality to other actors within the administration. It has the most comprehensive perspective on better regulation, but currently does not have the institutional leverage to enforce the adoption of a Better Regulation policy across the administration, as the role of the Chancellor is *primus inter pares* with no authority to set binding policy guidelines. The Ministry of Finance does not claim overall responsibility for better regulation. It has a strong focus on budgetary consequences and public sector efficiency. It monitors the delivery of the administrative burden reduction programme and provides the guidelines and tools to assess financial impacts on the budget. This is supported by the Court of Audit which oversees that the guidelines for the calculation of administrative costs have been followed, but does not extend its analysis to an assessment of the quality of the economic analysis supporting a

regulatory proposal. Improvements to the effectiveness of Better Regulation strategies could be expected to come from strengthening co-operation between these institutions.

A stronger gatekeeper function is essential to ensure that key Better Regulation policies, such as consultation and impact assessment, are carried out to minimum standards. A particularly important function is oversight of the Regulatory Impact Assessment process. This is needed to ensure that the analysis of the economic, social and environmental costs as well as benefits of regulatory proposals have been given thorough consideration. This requires staff trained in specific skills as well as the authority to challenge the adequacy of assessments, either directly with rule-making bodies, or by raising awareness of the quality of the assessments with decision makers, or possibly by publishing information for public consumption. The aim is to provide an incentive for proponents of regulation to undertake an early and thorough assessment of the implications of regulatory proposals and to consider any possible, more efficient, alternatives to regulation.

A further objective should be to identify and disseminate the good practices that are currently being undertaken by ministries, and to champion good ideas. For example, the OECD mission heard of commercial innovation by the Ministry of Economy, Family and Youth to make Austrian government services more competitive relative to other EU countries in the field of assessing import/export licences. The competition analysis that underpins this type of innovation should be captured as it could be transferable to other areas of government to improve productivity.

It appears that the Federal Chancellery is best placed to take primary responsibility as gatekeeper and co-ordinator for the implementation of an overall Better Regulation strategy. The Federal Chancellery already has a strong co-ordination function at the centre of the federal government and ensures the legal quality of proposals. In 2008, it prepared a handbook on Better regulation that mapped the main elements of a comprehensive Better regulation strategy. The Federal Chancellery designs and manages horizontal tools and programmes, and has competence over administrative reform.¹ It is for example responsible for the development of e-Government, the e-Law system, the RIS-system and the co-ordination of EU matters. The Chancellery also represents the Republic in front of the Constitutional Court, the Administrative Court and international courts. Broadening its role would depend on the Federal Chancellery being invested with the necessary political support to oversee the dissemination of better regulation. It would also require that the Federal Chancellery have an appropriate allocation of staff with relevant (including economic) skills. In principle, the role of assessing the quality of regulatory impact assessments could be undertaken either by the Federal Chancellery or the Court of Audit. It might not, however, be appropriate to require that the Court of Audit do the job of mainstreaming and strengthening Better Regulation is the task of the Court of Audit on its own as this could undermine its independence. Similarly, the Court of Audit should not conduct impact assessment itself. The Ministry of Finance would continue to play an important role in ensuring administrative efficiency assessing financial impacts on the budget and overseeing administrative cost issues as part of impact assessment. OECD principles an international practices show that the role of assessing the quality of RIAs is best assigned to a body at the centre of government.

Improving the capacity of the Austrian administration to undertake Better Regulation will also require further training and the development of supporting materials. One of the issues heard by the OECD review team was that insufficient resources are given to undertaking the important tasks of considering and reporting on the impacts of regulatory proposals in the *Vorblatt*. Building the capacity for Better Regulation in the Austrian administration is a core task. Beyond the training given on the standard cost mode to implement the administrative burden reduction programme, little else appears to be on offer. There is for example, no training in the conduct of impact assessment and evaluation of alternatives to regulation. The 2008 handbook on Better Regulation does not constitute a

comprehensive guide to implementing regulatory impact analysis. The development of a more comprehensive handbook/manual would assist the Better Regulation agenda. This should be supported by the development of online tools that at a minimum assist agencies to calculate compliance costs and identify the potential impact of regulatory proposals. Expanding the current training provided for the staff of the Courts of Audit could provide the basis for training programmes for other officials.

It also appears that, at the federal level, there is no systematic and ongoing legal drafting training for those involved in regulatory work. At the *Länder* level, the situation varies from *Land* to *Land*. However, there are *Länder* which seem to be more active in this field than the federal authorities and sometimes offer, in co-operation with the federal government, training for legists working at the federal level.

A stronger role is also needed for external partners, as Better Regulation programmes benefit from the incorporation of a variety of views. Many countries have sought to establish external bodies with responsibility for advising the government on how to implement Better Regulation and reviewing the achievements of Better Regulation programmes. The core membership of these bodies usually includes business representation. Within Austria, the institutional functions performed by the Social Partners are already often integral to the effective operation of government administration. They include providing a source of consultation on the impacts of proposals but can also extend to research and analysis on the effects of existing regulatory arrangements. Regarding this latter function, the Social Partners might be asked to conduct further studies on the effectiveness of regulation in specific areas to assist in informing the government where reforms efforts may be applied to the greatest social advantage. Any formal arrangements should be mindful of the need to have a transparent process taking account of the views of all stakeholders, including interests outside the Social Partners.

The Parliament needs to be encouraged into playing a stronger role in support of the executive's work on Better Regulation. Although the parliament does not have a specific Better Regulation orientation, its website on legislative procedures and consultations contributes significantly to communication and consultation practices. It also has a formal role in the “e-Law” process for the standardised development of regulations. However, it does not currently have a committee structure with responsibility for reviewing the effects of regulatory proposals, as exists in a number of other European countries.

The landscape of regulatory agencies in Austria is varied and dynamic. The practice of creating legally independent entities to undertake technical and administrative governmental functions appears to be in common use within Austria. Part of the purpose of using this type of “des-incorporated body” appears to be to create staffing and budgetary independence for the performance of its functions. Of itself this may not be an issue, but it raises questions about the transparency of agency activities and of how to include these functions within the better regulation agenda. Like many countries, Austria cannot afford to maintain administrative overlaps and has an imperative to control its fiscal obligations to manage its budget. Furthermore, the diffusion of the better regulation agenda requires a comprehensive approach that involves and influences all agencies with rule-making or other coercive powers.

Apparently there is no central database listing all of the regulatory agencies in Austria, including the so called “des-incorporated bodies”. The absence of a database makes it difficult to assess a number of critical issues relevant to whether the Austrian administration is receiving value for money from its regulatory agencies. For example, is the number, and the design of regulatory agencies, appropriate for the delivery of the government's policy programme? This can only be assessed by an examination of the administrative design of the regulatory agencies, which requires, as

a start, an audit of the number of organisations, their purpose, budgets and reporting frameworks. This may involve a review of the des-incorporation guidelines of 1992 (*Ausgliederungsrichtlinien* 1992) to determine if it provides a clear policy on the budget accountability, and organisation structure that is appropriate to the purpose of the regulatory agencies.

Transparency through public consultation and communication

Austria's public consultation approach is structured around formal and informal institutional relationships (including not least with the social partner) and the individual practices of ministries. The approach is robust in many respects, as the institutionalised relationships cover a wide range of relevant interests, and there is evidence of specific good practices. Some ministries, for example, put consultation results on their websites. The consultation process has a pre-consultation phase, and an official consultation phase. There is no administration wide forward legislative plan to use as a practical starting point for citizen engagement. In the first phase the competent federal ministries are responsible for commencing the development of regulations, including initiating contact with colleagues in other ministries as well as with relevant stakeholders including the Social Partners, the *Länder* and the Court of Audit. This part of the consultation exercise is not public, but depending on the political salience of the issue, Ministries may use the internet or mass media to inform the public. The subsequent official consultation phase involves the circulation of a draft bill. It is understood that this should occur for a minimum of six weeks, but in practice this may vary from two weeks to six months. Administrative requirements exist for consultation with the Court of Audit, the Social Partners and the legal service of the Federal Chancellery.

Austria's aim for its consultation practices should be to enhance transparency in the regulatory environment in order to ensure that all relevant aspects and interests have been taken into account, and to improve the quality of regulation. Effective public consultation has systemic benefits including improving the evidence basis for regulation and promoting legitimacy and trust. Citizen engagement is an important part of improving the design of rules and promoting acceptance of and compliance with rules. However, increased public participation can also present political challenges and mean additional administrative delay to the legislative process. It therefore requires careful planning and preparation. It also usually requires culture change to be successfully integrated within the administration. The development of a policy on public consultation supported by clear guidance documents can assist in promoting a commitment to citizen engagement within the administration. It clearly expresses the government's expectation that civil servants will engage the public and also provides valuable technical guidance to public officials on how to design effective public consultation and integrate the views of the public.

The approach is largely dependent on formal and informal relationships with the Social Partners, which can raise issues of exclusion. Of itself, the emphasis on consultation with the Social Partners is not necessarily detrimental to the development of good policy. The Social Partners can together claim membership representative of the majority of Austrian citizenry. The role of Social Partners at the pre-consultation stage is important for ensuring that representative views are taken into account in the development of regulations. But care is needed not to block out other interests. There is a risk that consultation processes do not provide opportunities to account for the views of all citizens, and may not pick up innovative perspectives. An effective system of public consultation must be able to assure the public that there is an opportunity for their views to be heard and considered outside the institutional relationships. The main challenge here appears to be to develop a systemic approach to facilitate early and open participation of citizens and other groups in policy development. The public notification of a forward plan of regulation can be beneficial in broadening awareness of forthcoming policy issues that members of the public may have an interest in (this is linked to forward planning which is addressed in Chapter 4).

Another key issue is how to ensure that there is consistent use of good practice across the administration. Although some ministries appear to be at the forefront of good practice, there are, for example, concerns that the conclusions drawn through consultation are not routinely made available to stakeholders. There is a demand for feedback about the results of consultation, in particular to understand how the information has been used, including from the Social Partners. In this respect, it appears that binding guidelines are required to give a clear direction to ministries as to what approaches should be followed. Apart from selected specific requirements there are no administration wide binding guidelines for public consultation. General standards have been developed but these have not been translated into enforceable formal requirements on institutions. Under the auspices of an inter-ministerial committee, *Standards for Public Consultation* applying to policies and programmes were developed. These were “noted” by the Council of Ministers in 2008, but regulatory bodies are not obliged to follow them. As a result, they tend to vary among institutions and could be improved through the establishment of more formalised arrangements applying across government. There are no committees in the parliament specialised on Better Regulation to make an assessment of whether consultation processes are being followed.

To be effective, guidelines need to be collectively agreed, and provisions made for monitoring and enforcement. The Federal Chancellery appears best placed to follow up on this as it already maintains and publishes a list of stakeholders that could be consulted in the preparation of rules. Current guidance, so far as it exists, extends to consultation on EU related matters. This should continue so as to ensure that the public administration is aware of procedures to be followed.

Austria’s success in integrating its administrative procedures for rule-making with IT systems through the legal information system could be extended to public consultation. The spread of good practice can be encouraged by the use of IT tools. There appears to be considerable potential to make use of existing systems, to expand public access to early information about policy proposals. For example, other OECD countries have developed single consultation portals which enable government agencies to post notice of all forthcoming regulatory/policy initiatives at the one site including links to related background materials. This single portal approach reduces the transaction costs for government, business and citizens and can become the primary site for soliciting comment from all interested parties including citizens and organised groups. A portal of this type can also be used to manage the effective targeting of consultation to interested persons by allowing them to self select to be automatically notified when an issue falling within a category that interests them arises.

There are effective channels for the communication of regulations using electronic databases. The parliament plays an innovative role in promoting awareness of changes in the law. Austrian parliamentary practices involve the publication of material relating to all laws under consideration, including comments received from the public and interest groups. This is a good example of parliament taking the initiative to communicate with the public about regulation. However, it is more of a communication than a consultation facility, as it is remains the responsibilities of the Ministries to use the information collected by the parliament to influence the scope of legislative proposals. The requirement that all regulations have to be published on the Legal Information System of the republic of Austria (RIS) to have binding effect is a good example of using legal procedural requirements to ensure that the body of law is up to date, transparent and accessible to the public.

The development of new regulations

There is sustained use of regulation to achieve government policy goals, but no suggestion of regulatory inflation. Austria does not record changes in the overall quantum of the regulatory stock, but the review heard no evidence either of regulatory inflation or of significant trends in the decline in

the use of regulation. Available data provided by reference to the publication of new laws in the federal gazette each year generally indicates consistency in the use of primary laws and subordinate regulation over the past decade, with a slight decline in the number of new laws published in the period from 2003 to 2007.

The forward planning processes for law making are somewhat fragmented in Austria but shows an intelligent use of electronic systems for maintaining standards and quality control in the production of legislation. Cross ministerial co-ordination of rule-making is weak in Austria, with regulations being autonomously conceived within each responsible ministry. As a result forward planning policies vary from ministry to ministry. The proponent ministry is also responsible for initiating consultation with affected ministers, according to its own priorities. When notified, the Ministry of Finance reviews the assessment of the budgetary implications and administrative burdens of the legislative proposal and the federal chancellery checks the legal quality of the draft proposal, the Court of Audit assess compliance with the requirement to report the financial costs and administrative burden.

In this decentralised system, the e-Law system is intended to manage the quality control aspects of rule-making and promote the efficient management of the drafting of laws through a continuous electronic production channel, from the initial drafting to promulgation of the law. The e-Law system ensures that ministries remain consistent with the guidelines issued by the Federal Chancellery through the use of a template approach. The e-Law system is only accessible by password to staff of the federal ministries. This is an innovative approach to the electronic management of rule-making that is not yet in widespread use across the OECD. There is likely to be the potential to extend this electronic tool further in the legislative process to include amendments introduced in parliament and apply compatible tools for use at the level of the *Länder*.

While Austria reports that forthcoming regulation can be anticipated to be consistent with the published overall programme of the federal government, there is no consolidated legislative plan. The Austrian government reported selected cases of forward planning of rule-making, including examples from ministries which published planned legislative projects, and internal planning tools used by the Federal Chancellery to manage legislative projects. This suggests fragmented practices across the government that could be improved through the application of a consistent planning discipline and notification procedure. The use of a consolidated forward planning schedule would aid transparency and the effective management of legislative drafting, and be useful for monitoring that other policy processes such as consultation and the preparation of impact analysis are being organised in a timely way. A forward planning schedule does need to be binding on agencies to be useful, and it should not be an impediment to the timely development of unanticipated but necessary legislative responses. A planning framework could build on the internal planning tools used by the Federal Chancellery and be linked to proposed regulatory measures identified in the forward budget estimates of agencies.

In spite of the existence of important administrative provisions and signals of an emerging awareness of the importance of the tool, Austria has not developed integrated and formalised systems for the *ex ante* analysis of the impacts of proposed regulation. The procedural requirements include an obligation on officials to assess the financial economic, environmental and consumer effects of new legislation. Technically, officials are required to provide an account of these elements in the *Vorblatt*, a statement of effect that accompanies a legislative proposal. In the recent past, moreover, promising initiatives have been taken that signal an increased attention of the government to enhancing the RIA tool. The Austrian administration is aware of the need to strengthen arrangements in respect to the effective implementation of RIA. Particular mention deserve the debate on introducing the so-called Climate Impact Test and, more significantly, the new provisions included

in the 2009 Federal Budget Law, which requires that from 2013 all “essential” impacts of future legislative proposal be assessed.

In practice, there are no effective systematic mechanisms for ensuring that officials formally undertake *ex ante* analysis of regulatory impacts during the development of a regulatory proposal. Notable areas of weakness include an absence of systematic guidance material on the calculation of costs and benefits of regulatory alternatives, and no effective oversight of the process to ensure compliance with RIA requirements. OECD analysis has found that RIA is unlikely to be effective in improving the quality of regulatory proposals unless it is supported by these systemic elements as well as training and political commitment. Simply having a procedural requirement for RIA will not produce the benefits of improved regulatory design that are expected from regulatory impact analysis. A potential deficiency of RIA that has been observed in practice in OECD countries is that it is often relegated to a check box exercise. To be effective RIA has to be incorporated early in the policy process and have the potential to influence policy outcomes.

The current arrangements are unlikely to ensure that officials have undertaken a thorough economic assessment of the costs and benefits of alternative regulatory proposals. Where there is a stronger focus on *ex ante* analysis is in respect to the calculation of the financial impacts of policy proposals. The Federal Minister of Finance has issued an ordinance on presenting and assessing financial impacts and the ministry appears to be alert to the proper assessment of financial impacts. This role is aided by the Court of Audit which examines regulatory proposals for compliance by ministries with the requirement to assess financial impacts. Similarly, with respect to environmental impact assessment, Austria has incorporated formalised practices including an innovative mechanism for assessing the carbon output of government programmes.

The Austrian administration is aware of the need to strengthen arrangements in respect to the effective implementation of RIA. Further to the new Federal Budget Law of 2009, ordinances as well as guidelines are planned to be issued by the Federal Chancellery and the respective Ministries to address threshold issues such as what impacts are to be considered and what methodology should be used. This is however, an area that requires further work in Austria. The current Handbook on Better Regulation (2008) does not provide an effective tool for guiding policy analysts on how to undertake RIA. Accordingly the construction of a clear and practicable framework for undertaking RIA and carefully assigning responsibility for assessing the quality of RIA will be critical to its effective contribution to policy development in the future.

Responsibility for oversight of the conduct of RIA in the rule-making process should be assigned to a function within the Federal Chancellery, with the role of preparing guidance on the use of RIA, engaging with ministries to ensure its performance (including through training and capacity building) and having some form of oversight and veto role on poor quality regulatory proposals. It is important that the regulatory oversight role is located at the centre of government to ensure that it has the necessary political authority to promote the effective contribution of impact analysis to policy development, and that it is integrated procedurally in the law making process. The Federal Chancellery seems to be the single best authority to take on this role, however, the skills of analytical staff allocated to the task cannot only be based in an assessment of legal quality, but must also include staff skilled in economic analysis and in particular the economics of regulation.

Some of the issues that will confront the Austrian administration are ensuring that all regulatory proposals with the potential for significant economic, environmental or social impacts are captured, and also balancing the use of scarce policy resources. One way of addressing this chosen by a number of OECD countries, is through the use of a two stage process, including a screening assessment to identify if a policy proposal requires a more elaborated RIA; a compliance

cost calculator can help to streamline this process. It is likely to take some time to embed a RIA system in the rule-making process. Accordingly, the preparation of draft guidelines should be commenced without delay. The draft guidelines should be prepared in consultation with ministries to engage them with the scope and application of the guidelines and to encourage their use. However, at their root the guidance should draw on the OECD and EU best practices for RIA and relevant examples from other OECD jurisdictions. Critical aspects include a clear focus on defining the nature and extent of the problem to be addressed (risk analysis).

Another important methodological aspect is the consideration of potential of any regulatory proposal to impact positively or negatively on competition. The OECD Economic Survey of Austria identified that “the rules governing market entry and the creation of new corporations, as well as various sectoral regulations are not sufficiently supportive of competition, innovation and productivity growth”. (OECD 2009:12). This has undermined productivity growth in the services sector. The RIA system can assist in preventing the development of regulations that are welfare reducing restrictions on competition.

A further element is the integration of RIA with public consultation, as transparency and the incorporation of a diverse range of perspectives are integral to the credible use of RIA to ensure its effectiveness and legitimacy in evaluating alternative options. This will require officials to move beyond informal modes of consultation to use a more systematic inclusion of interests external to the government. Experience across the OECD demonstrates that implementing a system of RIA is not straightforward. It is a long-term endeavour requiring cultural change and capacity building. Accordingly, Austrian officials should anticipate that this project will require the reform of some existing practices and modes of working. To be effective it will be necessary that the procedural elements of RIA are clearly defined, integrated with the rule-making process and made mandatory by formalising the requirements of the guidelines.

Austria has considerable experience with the use of co-regulation through the delegation of rule-making powers to public law chambers giving a regulatory role to the Social Partners. However, as currently formulated, the RIA processes do not appear to be effective in ensuring that alternatives to regulation are considered in the development of regulatory proposals. Formally, the *Vorblatt* requires ministries to consider alternatives, including the do nothing option in evaluation of the effectiveness of regulatory proposals. In general this is an area of regulatory quality where all governments find it is difficult to encourage rule makers to give serious consideration to alternative approaches once a policy decision has been made to use regulation. It is advisable to provide guidance and training on the use of alternatives in building the capacity of officials to use RIA effectively. The use of co-regulation through the delegation of rule-making powers to public law chambers giving a regulatory role to the Social Partners is a potential strength of the Austrian system. While this may create some risks of compromises to competitive efficiency, there is obviously potential for these measures to reduce regulatory costs and promote economically efficient outcomes which should be fully explored in RIA.

There is no formalised policy on the adoption of risk-based approaches. There is likely to be considerable potential for improving the contribution of risk-based approaches to improving the efficiency of compliance and enforcement practices. This is particularly the case at the administrative level of the *Länder* through the identification and sharing of good practices (see the recommendation in Chapter 6 on the development of a principles based framework for assessing the quality of enforcement practices and the preparation of draft guidance for agencies).

The management and rationalisation of existing regulations

The Austrian government has undertaken various general simplification initiatives to keep the stock of regulation up to date. These have been mostly for the purpose of removing outdated provisions and repealing ancient regulatory stock and have been applied across the ministries. Co-ordinated approaches include the first Federal Repeal Act (1999) guillotined rules dating before 1946, the Deregulation Law (2001) which requires federal authorities to examine the relevance existing law and the effect of any proposed amendment, and the Deregulation Law of 2006 which repealed legal provisions made obsolete by the accession to the EU. The use of sun-setting provisions is not routine in legislation although there are cases of its use among agencies.

The fuller use of *ex post* processes to evaluate adopted regulations and to ensure that the regulatory stock is kept fully up to date should be considered. This can be achieved for example, through the incorporation of sunset clauses in legislation and targeted regulatory reviews. It is noted that the new Budget law foresees a compulsory internal evaluation of regulations and projects which when implemented could also provide a basis for systematic review.

The identification and reduction of administrative costs is a strong feature of the Austrian system. The administrative burden reduction programme is sensibly based on the achievement of a *net target* of 25% of administrative burdens on business. The programme demonstrates a good balance of central oversight and devolved responsibility. It is managed from within the Ministry of Finance, and each individual ministry has been assigned the responsibility for achieving its own reduction. The design of the programme has been intelligently informed by a review of similar European programmes. Like a number of these programmes it included a baseline assessment of the regulations in force (not including the *Länder*). The programme commenced in 2006, initially focusing on business. In September 2007, *ex ante* assessment was introduced of the burdens of new regulatory policies above a certain threshold. In 2009, the programme was expanded to include the 100 most burdensome obligations on citizens (in conjunction with the Federal Chancellery). It is estimated that achieving the target will bring about more than EUR 1 billion in savings by 2012.

The goal of reducing administrative costs is aimed both at ensuring the efficient operation of the Austrian administration and reducing administrative burdens on business. The first objective is reflected in a requirement on ministries to calculate and report the costs to government of any new administrative activities as a consequence of regulation. These requirements are likely to have aided the performance of the administrative burden programme by avoiding the hidden problem of ministries meeting their administrative burden target objectives by bringing administrative functions in house, instead of removing or reducing them.

Austria has been progressive in the use of ICT solutions to support its administrative burden reduction programme. Since September 2009, the administration of the programme has been supported by the use of sophisticated ICT tools for the calculation of administrative burdens using the standard cost model and integration with the “e-Law” system. General guidelines have been provided and training is offered by the Ministry of Finance. The ordinance on the use of the standard cost model is binding on ministries and provides the methodological and procedural rules for ensuring that the burden is calculated and reported in the introductory remarks (*Vorblatt*) of the regulatory proposal. Austria has also implemented a number of ICT solutions that have reduced the transaction costs of administrative requirements. This includes the integration of information and transaction services for all levels of government in a single portal for business, which is being progressively implemented from 2010 to 2013.

The programme is apparently on track to achieve its net target. The Ministry of Finance regularly monitors new burdens and reduction measures by Ministries and publishes them in an excel table on the programme website. Future budget materials are planned to contain a performance report on the status of burden reduction by all Ministries. Being held to account against performance targets sharpens the incentives for achieving burden reductions. Effective reporting on the outcomes of the programme also helps to assess its overall performance and identify areas of success, and allows the merits of the programme to be fully communicated to business. To a large extent the merits of administrative burden reduction programmes can be expected to come from ministries achieving their targets by imitating and adapting the successful reform experiments of other ministries. Sharing experience therefore can be potentially very helpful. Finally, the functional role of the Ministry of Finance in combining budget discussions with a consideration of measures for reducing the burden of regulatory proposals could be explored, following the experience of other EU countries.

An evaluation of the effectiveness of the programme against the original goals and the scope for broadening its reach to cover full compliance costs would be timely. Part of this assessment should be to assess perceptions of business of the effectiveness of reductions in administrative burdens. Related to this, the merits of the burden reduction strategy including its aims and aspirations should be strategically communicated to business to secure support. There appears to be potential for expanding the use of the existing ICT tools used for calculating the SCM, as well as to calculate broader compliance costs. This could be combined with better use of reporting frameworks (the *Vorblatt* in particular) in accounting for an analysis of the economic impacts of regulatory proposals. An expansion of the programme to this effect should build on the collaborative relationship that is in place between the Ministry of Finance, including the role of staff currently overseeing the administrative burden reduction programme, and the Federal Chancellery to provide support to ministries in assessing and reporting on the design and costs and benefits of regulatory measures. It is noted that the future assessment of compliance costs is part of the discussion of the new impact assessment procedures being planned for under the current budget reforms.

The administrative burden reduction programme measures do not extend to the information obligations imposed by the *Länder*. The potential for a co-ordinated programme including the *Länder* could be explored to take advantage of the opportunities for shared practices and lessons among the *Länder*, in particular this would be expected to address the burdens imposed through the enforcement of federal laws.

A number of e-Government programmes have been developed in response to demands for improving internal administrative efficiency. However, there is no co-ordinated administrative burden reduction programme to counter the growth of regulation inside government.

Compliance, enforcement, appeals

Some regulatory agencies have coherent strategies for compliance and enforcement that are well managed. The OECD review heard of examples of good practice; for example the comprehensive risk-based strategy employed by the Austrian tax office. It was also suggested that fiscal constraints limiting the resources for compliance and enforcement have provided an incentive for the *Länder* to develop risk-based approaches and apply efforts in the most effective way. In addition it is reported that the *Länder* have already engaged in a discussion of the establishment of national uniform quality standards for maximum waiting times for citizens and as well performance targets for satisfaction with service standards.

Austria could benefit from the development of a framework approach to compliance and enforcement. A focus on improving compliance and enforcement strategies is a relatively new field

for the Better Regulation agenda. However, it has considerable potential for reducing the burden on business of regulatory activity and improving the effectiveness of the design of regulation and its implementation, thereby resulting in improved outcomes for citizens and lower costs for the state. A comprehensive and strategic approach to improved compliance and enforcement can help to improve efficiency. This can be achieved in part through sharing good practices among ministries, agencies and jurisdictions with regulatory missions. Furthermore, by focusing on those activities which presents the greatest risk to the achievement of policy objectives, and on those businesses that present the greatest risk of non compliance, the resources required for enforcement by the government and for compliance by business can be allocated more efficiently.

The enforcement of regulation is a principal responsibility of each Land, which allows for wide variance in practices and resultant inefficiencies. This suggests that there is considerable potential for sharing information on new strategies for improving compliance taking account of technical innovations and potential synergies from common practices across the *Länder*. There is no suggestion that the rates of compliance in Austria are low, but Austria does not collect and report statistics on general compliance rates. Accordingly, as a starting point it would be prudent to collect information on compliance problems across the *Länder* to develop a strategic picture of any underlying trends and difficulties, based on the information already collected by regulatory agencies.

The *Länder* Courts of Audit would benefit from having a principles based framework for assessing the quality of enforcement practices and draft guidance for agencies on the adoption of risk-based approaches (see Chapter 8). This should be supported by a survey of the range of compliance problems across the *Länder* and be grounded in the experiences of regulatory agencies at the level of the *Länder*. Reference to practical examples from within the EU and other countries from within the OECD also merits study as a basis for comparative approaches (in particular, examples from the Netherlands, Denmark, the U.K. and Australia).

The institutional arrangements of the Austrian appeals system are comprehensive and appear to function well, supported by a system of arbitration tribunals and the independent ombudsman's office. In addition Austria has developed an extensive IT network which promotes the efficient administration of the judicial system and electronic access to the records of legal proceedings free of charge on the Internet, as part of the Federal Legal Information System (RIS).

The interface between member states and the European Union

As in other EU countries the influence of EU regulations in Austria is significant and a well structured institutional framework is in place to co-ordinate EU affairs. Austria appears to have established wide-ranging and effective co-ordination mechanisms for the management of EU affairs including the transposition of EU directives, with leadership from the federal government but also allowing for the *Länder* to take responsibility and exert influence within their sphere of administrative competence. Austrian officials are conscious of the need to have an effective influence in the negotiation stage of EU legislation. Within the federal government the internal co-ordination of EU affairs is led by the Ministry of Foreign Affairs (MFA) and the Federal Chancellery, but each ministry within the government leads on EU dossiers within its area of responsibility.

Binding guidelines for all federal ministries and the *Länder* relating to the negotiation, transposition and infringement phases have been in place since 2003. In 2003, the Ministry of Foreign Affairs (MFA) and the Constitutional Service of the Federal Chancellery produced binding guidelines. The 2008 Better Regulation handbook references the EU Better Regulation programme. The system appears to work well as regards transposition deadlines. In general the speed of transposition does not appear to be an issue.

Transposition procedures may not be dealing effectively with the issue of unnecessary administrative burdens. In general, Austria practices the incorporation of directives into the existing stock instead of creating new implementation laws. Despite this, EU regulations are considered to have a potential negative impact on the quality of national regulations through the burdens they cause. An internal network of officials from each of the ministries meets regularly to discuss issues that arise with transposition. However, there is no specific procedure for supervising the consistency of Austrian legislation with EU law. The relevant ministry is responsible for ensuring transposition and the removal of inconsistencies and there is no mechanism established to evaluate the burdens that may be caused by EU regulations. It seems clear that there should be a procedure for supervising the consistency of EU law with Austrian national regulation, and a process to consider the costs and benefits of alternative means of incorporating EU directives without creating unnecessary regulatory burdens. The Ministry of Finance anticipates that the regime of the Budget Law of December 2009 – coming into force in 2013 – will strengthen the financial impact assessment of draft EU law.²

The *Länder* are also closely involved in the process of consultation and negotiation. The *Länder* have a constitutional right to comment on legislative drafts, and if they have implementation responsibility at the federal level, they also co-ordinate and represent Austria at the EU in Brussels. The ministries and the *Länder* have to inform the Chancellor on a regular basis about their progress with transposition. If a state fails to comply punctually the federal government may acquire responsibility for the implementation of a transposition obligation.

However, the rapid evolution of EU legislation is a particular challenge for federalist countries and Austria is no exception. First, the Austrian authorities (Federation and *Länder*) have to organise themselves in order to enable them to participate actively and effectively in the preparatory stage of the EU legislative process. Second, they have to take into account that the often short deadlines fixed for the transposition of EU legislation necessitates an optimal co-ordination between the authorities at the federal and at the *Länder* level. In practice, the involvement of the *Länder* authorities could be more systematic and, take place earlier in the legislative process. It would benefit from clearer institutional arrangements providing the necessary time for legislative and administrative measures at the *Länder* level. Furthermore, there seem to be different practices and rules with regard to the formal legal drafting procedures of the integration of EU legislation into national law.

The interface between subnational and national levels of government

The Austrian Constitution contains the basic rules relating to the allocation of legislative powers. The Constitution identifies where the Federation has the exclusive responsibility for legislation and execution, where the execution of federal legislation is left to the *Länder*, and where the *Länder* have their own legislative and executive powers. However, not all provisions concerning the allocation of legislative powers between the Federation and the *Länder* are integrated into the Constitution, leading to some apparent difficulty in delimitating the legislative powers of the Federation from those of the *Länder*.

The *Länder* have a critical role in regulatory management in the federation as they are responsible for the execution of most federal law. In Austria, the execution of federal legislation is in many fields left to the *Länder*, and in the fields where the legislative powers of the Federation are limited to the principles, the *Länder* are also responsible for the enactment of secondary regulations as well as the application and enforcement of federal laws. More broadly, two thirds of public employment is at the *Länder* and municipal level, and the *Länder* are responsible for delivering significant programme activities including the delivery of health and education services. The OECD 2009 Economic Survey of Austria identified that assuring the efficient functioning of the *Länder* is critical to the development of the credible fiscal consolidation measures that are required in Austria

(OECD 2009:12). It also noted the potential for differences in *Länder* regulation to reduce market competition, with reference to the effects of regional planning rules restricting retail trading arrangements (OECD 2009:45). Given their size and influence, further investment in efforts to improve the development and delivery of regulation by the *Länder* are therefore warranted.

The implementation of federal legislation by the *Länder* can involve the enactment of secondary legislation by the *Länder*. This creates an institutional distance between the preparation of legislation and its execution. This distance is possibly one of the reasons why Austrian legislation is quite detailed: in order to achieve a more or less uniform interpretation and application by the *Länder* authorities, the federal legislator tends to be rather precise. On the other hand, this distance makes it more difficult for the federal authorities to know what happens once legislation is enacted. In other words, they lack the information necessary to know if federal legislation proves to be implementable and achieves its goals or if it needs to be adapted.

Their significant regulatory responsibilities mean that the *Länder* should in practice be closely associated with the preparation of new legislation at the federal level. The participation of the *Länder* in the legislative process at the federal level fulfils two important functions: it contributes to the quality of legislation and it strengthens the *Länder* as constituent element of the Federation. In addition, the consultation of the *Länder* permits them to better co-ordinate their own legislative activities (in fields falling within their residual powers) with the legislative activities at the federal level. In this sense it may also contribute to the overall coherence of national legislation. The *Länder* are consulted before legislative decisions are taken in policy fields where they are responsible for the implementation (in a broad sense) or for the execution (in a narrow sense) of legislation, because federal legislation must take into account problems of practicability which are best assessed by the authorities at the level of the *Länder* or even the municipalities.

However, in spite of its practical and institutional importance, the participation of the *Länder* in the legislative process at the federal level is not regulated in a comprehensive way. There are some fragmentary provisions, partly in the Constitution (for example, Article 14b, Para. 4), partly in primary legislation (especially in the context of Austria's membership in the EU), partly in administrative instructions, but the modalities are essentially governed by administrative practice and may vary from case to case and from ministry to ministry. Various inter-governmental bodies set up to facilitate the horizontal (among the *Länder*) and vertical (between the *Länder* and the Federation) co-operation play a major role in this context.

Legal and administrative arrangements that guarantee a minimum level of reporting about implementation and effects should also be strengthened. They are particularly important in federalist countries to ensure the quality of legislation. This may be done in various ways (setting up of organs with special monitoring or reporting tasks, introducing evaluation clauses in federal legislation, using the existing inter-governmental bodies in order to get more reliable and relevant information about the implementation of federal legislation, etc.). Monitoring implementation and evaluation of the effects are the necessary complements to regulatory impact assessments (RIA) or prospective evaluations undertaken in the preparatory stage of the legislative process. At the moment, a clear institutional responsibility is missing and the resources are insufficient.

There has been a change in culture over that last decade to improve the quality of customer services that the *Länder* governments provide. This review has not had the benefit of a comprehensive survey of Better Regulation initiatives at the *Länder* level, but in interviews officials reported a change in culture, and a sample of activities shows evidence of a focus on administrative efficiency and improving the delivery of services to citizens. There appear to be examples of good practice; programme responses vary across the *Länder* and some have developed impact assessment

requirements and administrative burden reduction programmes. Overall, however, these are not comprehensively applied. The *Länder* are not linked to the federal administrative burden reduction programme and implementation of impact assessment, for example, has tended to follow from the initiative of individual civil servants. The relatively few resources specifically dedicated to RIA in a few *Länder* is considered to be one of the underlying reasons why it has been difficult to sustain efforts to introduce the tool. While the impacts of regulatory proposals on administrative costs are often assessed, broader cost benefit analysis is not routinely undertaken.

Austria needs to ensure that the effect of different administrative and regulatory arrangements within *Länder* does not impose barriers to entry or high transaction costs impeding the efficient operation of businesses across the federation. In principle, this suggests the need for an assessment of the areas of regulatory responsibility of the *Länder* that may be of concern to businesses operating across different parts of the federation, and an analysis of the number of such businesses. This could be best performed by the national statistical agency.

The vertical and horizontal co-ordination arrangements between the federal government and the *Länder* appear to be a notable strength of the Austrian federation. Co-ordination mechanisms are usually a particular challenge for multilevel governance. In Austria's case, conferences are regularly convened between representatives of the nine *Länder*. These conferences (*Landeshauptleutekonferenzen*) are informal meetings of the nine state governors and have important political impact. The nine state governors discuss common positions and develop common strategies – the chair alternates. They are supported by a permanent liaison office of the *Länder*. Besides the *Landeshauptleutekonferenzen* there are also informal preparatory meetings at technical level: the *Landesamtsdirektorenkonferenz*. Representatives of the federal government are regularly invited to both of these conferences (political and expert level respectively).

Austria should use its sophisticated co-ordination mechanisms to promote a common strategy for Better Regulation at the sub-federal level. This should include the incorporation of impact assessment principles for improving enforcement and compliance and sharing of good practices among the *Länder*. The *Länder* Courts of Audit already play an important role in assessing the efficiency of *Länder* programmes. There appears to be considerable potential for expanding this role to include the sharing of good practices among the *Länder* and promoting improved regulatory performance. This could be done for example, through the various *Länder* Courts of Audit jointly developing a principle-based framework for assessing the quality of enforcement practices, particularly risk-based approaches, and drafting guidance for regulatory agencies, such as has been done by the audit offices of a number of OECD governments (see for example, Australia and the United Kingdom).

A special feature of Austrian legislation is its rather detailed content, which makes normative density of primary federal legislation rather high. This may be due to legal requirements (quite a strict conception of the principle of legality); the specifically Austrian legal drafting culture or style, and; the endeavour of the Federation to guarantee a uniform or at least a largely harmonised implementation (secondary legislation enacted by the *Länder* and execution) at the subnational levels by leaving only quite a small margin to the implementing authorities. This may favour legal security and make state action more easily foreseeable, but it can also make legislation more rigid and more difficult to understand. If legislation is too detailed, the need grows to change it frequently, potentially compromising its stability. In addition, the very detailed character of many pieces of Austrian legislation contributes to the overall quantity of norms. Reducing normative density would have positive qualitative and quantitative effects.

Key recommendations

<i>Strategy and policies for Better Regulation</i>	
1.1.	Establish a comprehensive policy on Better Regulation taking full account of its potential to improve the design and administration of new and existing regulation, set within a clearly articulated policy framework for meeting the government's policy aims and strengthening the overall competitiveness of the Austrian economy.
1.2.	As part of this, define an institutional framework for its delivery, setting out clearly the roles of key stakeholders within and outside government, and a timetable for implementation. The policy should be given political endorsement by the Council of Ministers.
1.3.	To secure its relevance and effectiveness, prepare the policy through an iterative consultation process with input from government ministries, the Social Partners and the wider community.
1.4.	Following the establishment of a comprehensive policy on better regulation, develop a communications strategy to ensure that it is well known and its benefits are understood by stakeholders within and outside government.
1.5.	Include, in the establishment of a comprehensive policy on better regulation, terms of reference and a schedule for the review of the effectiveness of that strategy in achieving its policy objectives.
1.6.	The strategic framework for e-Government should be examined for its potential to further support Better Regulation processes, including promoting transparency, public consultation and reducing the transaction costs for officials engaged in preparing impact assessment on regulatory proposals.

<i>Institutional capacities for Better Regulation</i>	
2.1.	Establish a core working group of Better Regulation champions, at both ministerial and official level, chaired by the Federal Chancellery, and including the Finance ministry, the Court of Audit and any other key and committed player in the central Federal administration (for example, the Economy ministry), to develop and promote a Better regulation strategy.

2.2.	Consider how to secure an effective gatekeeper function to co-ordinate and monitor minimum Better regulation standards across the administration, especially as regards impact assessment, but also with regard to public consultation and other important issues such as forward planning of legislation. Ideally, the Council of Ministers should formally invest the Federal Chancellery with this role.
2.3.	Undertake a Better regulation training needs assessment including methods of delivery and existing forums that could be adapted, such as the Court of Audits programme, to improve the capacity of the public administration to design and implement better regulation.
2.4.	Give responsibility to the Federal Chancellery, as part of its Better regulation functions, for developing comprehensive training programmes on Better Regulation for the Austrian administration. Ensure that this is supported by the development of guidance documents and IT tools to assist with undertaking impact assessment (including competition analysis), the evaluation of regulatory alternatives, and consultation.
2.5.	Consider the development of more systematic and permanent legal drafting training for those persons involved in legislative work at the federal and at the <i>Länder</i> level.
2.6.	Consider whether the Social Partners should be asked to undertake further studies on the <i>ex post</i> effectiveness of regulation in specific areas, taking care to ensure that any process remains transparent and takes in all relevant views.
2.7.	Encourage the Parliament to play a more active role in Better regulation, including by fostering political debate on the benefits of broader strategy of Better Regulation. The parliament should support the Government in developing and achieving its Better Regulation agenda.
2.8.	Undertake an audit to centrally record the names and functions of all regulatory agencies, including budgetary, staffing and reporting relationships. Identify which of these agencies have coercive or rule-making powers. Once established the database should be maintained and updated, and made available for public access. The goal should be to identify how they can be involved in the Better Regulation agenda, through for example, the inclusion by the parent ministry of requirements for Better Regulation initiatives in the mission/objectives statement of the regulatory agencies.

Transparency through public consultation and communication

3.1.	Draw up and adopt (through the Council of Ministers) comprehensive guidelines on public consultation, to set minimum good-practice requirements on ministries in the development of new regulations. These guidelines should address planning, timing and methods of consultation as well as feedback to stakeholders on. Minimum requirements should also include publication of a summary of the results of consultation, and making this summary a part of the explanatory memorandum attached to a proposed bill. The guidelines should continue to address consultation on EU related matters.
3.2.	Establish how the guidelines will be promoted, monitored and enforced. Consider putting the Federal Chancellery in charge, including giving it the authority to return a draft regulatory proposal to the ministry if the minimum requirements have not been followed.
3.3.	Expand the use of existing IT systems in the preparation of regulation including a clear link between public consultation and the drafting process. Develop a single consultation portal for use by all ministries to enhance citizen participation in the legislative process.
3.4.	Ensure that all related policy materials, including all guidelines and instructions that may be required by a civil servant preparing draft legislation, are available electronically from a central repository linked to the e-Law system (or the new consultation portal – the portal should be accessible from outside the public administration, but the facility could provide that material that is relevant only to officials is able to be accessed separately).

The development of new regulations

4.1.	The Federal Chancellery should co-ordinate an annual formal plan of forthcoming legislative projects, as a communication and planning tool both for internal government use and to promote public transparency as well as better structure public consultation. This should include lists of all projects which Ministries have under preparation, even before they have reached the (pre)consultation phase.
4.2.	Develop administrative mechanisms to support the incorporation of <i>ex ante</i> analysis in the development of regulatory policy including formal administrative requirements, the development of RIA guidelines and training and capacity building involving the ministries. Many OECD examples and

	models exist for the guidelines, but the implementation of the system is an opportunity for an interactive discussion with ministries and the establishment of a network of officials informed on how to use the RIA process effectively.
4.3.	Establish a two stage process for impact assessment including clear minimum threshold criteria to identify when a RIA is required and the use of compliance cost calculators to simplify the process of determining the extent of regulatory impacts.
4.4.	Establish institutional oversight of compliance with RIA processes in the Federal Chancellery including economic analysis skills to assess and comment on the quality of the RIA documents, the role of preparing guidance on the use of RIA, engaging with ministries to ensure its performance (including through training and capacity building) and having some form of oversight and veto role on poor quality regulatory proposals.
4.5.	Guidance and training to build the capacity of officials on the use of RIA should also address the use of alternatives in designing regulations, including an analysis of the most effective roles for the Social Partners having regard to the potential risks to competition.

The management and rationalisation of existing regulations

5.1.	Develop a policy framework for the <i>ex post</i> review of regulation drawing on the RIA methodology to ensure that the regulatory stock is kept up to date, and meets policy objectives efficiently and effectively. Relevant programme features for consideration should include: the systematic use of sunset clauses; the use of review clauses in primary and subordinate legislation; scheduled reviews of regulation in sectors, targeting those areas of high economic value, and; the use of external reviewers (independent of the ministries administering the regulation) to conduct periodic reviews.
5.2.	Promote the success of ministry activities at achieving their individual net reduction targets, to include providing information on the performance of ministries against their targets and sharing of information about practical measures that can be implemented and adapted among ministries. Consider the use of incentives for compliance by associating performance with budget decisions (for example, rewarding the achievement of burden reduction targets with discretionary budget measures, or requiring an evaluation of regulatory costs in conjunction with budget bids).

5.3.	Establish a framework to evaluate the success of the administrative burden reduction programme in reducing burdens on business. Include an assessment of the perceptions of business of the most successful burden reduction initiatives.
5.4.	Consider how processes may be adapted, expanded or joined up more closely with <i>ex ante</i> impact assessment processes to improve the evaluation of substantive compliance costs of regulation in the future.
5.5.	Develop collaborative programmes with the <i>Länder</i> to extend the administrative burden reduction programme, including sharing good practices and common ICT tools for the calculation of administrative burdens on the basis of the standard cost model. Consider the use of central reporting of overall burden reduction measures achieved at the federal level and at the level of the <i>Länder</i> .
5.6.	Consider whether there is a need for a distinct policy to address administrative burdens inside government.

Compliance, enforcement, appeals

6.1.	Undertake a survey using the records already compiled by agencies to develop a strategic assessment of the underlying trends and difficulties with compliance and enforcement practices.
6.2.	Engage the <i>Länder</i> Courts of Audit to jointly develop a principle-based framework for assessing the quality of enforcement practices and the preparation of draft guidance for agencies, with reference to good practices within Austria and examples from other jurisdictions.

The interface between member states and the European Union

7.1.	Produce guidelines to apply impact assessment to EU regulations at the transposition stages, to ensure that the incorporation of EU directives does not duplicate Austrian law or create unnecessary burdens.
7.2.	Consider formalising the processes by which the representatives of the <i>Länder</i> are informed about and involved in the early stages of the legislative process at the EU level. Establish clear and uniform legal drafting techniques regarding the integration of EU legislation into national law at the federal and the <i>Länder</i> levels.

<i>The interface between subnational and national levels of government</i>	
8.1.	Set up clear legal rules concerning the participation of the <i>Länder</i> in the legislative process at the federal level in order to determine which organs participate, when in the process and how the results are communicated.
8.2.	Improve monitoring of the implementation of federal legislation by the <i>Länder</i> and the evaluation of the effects of legislation.
8.3.	Undertake an assessment of the areas of regulatory responsibility of the <i>Länder</i> that may be of concern to businesses operating across different parts of the federation, either because of unnecessary transaction costs or possible barriers to entry.
8.4.	Use co-ordination mechanisms with the <i>Länder</i> to encourage a Better Regulation strategy for the <i>Länder</i> governments, including a focus on developing and sharing best practice to improve enforcement and compliance strategies. Encourage the <i>Länder</i> courts of audit to develop a principles based framework to assess enforcement practices.
8.5.	To reduce the overall normative density of federal legislation in Austria, make efforts to avoid unnecessary details and to limit provisions to the essential normative content in primary federal legislation.

Notes

1. See: *Bundesministeriengesetz*, Part 2A 5b.
2. Source: § 17 (5) Federal Budget Law 2013.

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 Austria was:

- Caroline Varley, Project Leader for the EU 15 reviews, Regulatory Policy Division of the Public Governance Directorate, OECD.
- Gregory Bounds, Senior Policy Analyst, OECD.
- Kirstin Lindloff, Policy Analyst, OECD.
- Pekka Nurmi, Director Ministry of Justice, Law Drafting Department, Finland.
- Luzius Mader, Vice Director of the Federal Office of Justice, Head of the Public Law Division, Berne, and professor at the Swiss Graduate School of Public Administration, Lausanne.
- Lorenzo Allio, Independent Policy Analyst and Consultant on Public Governance and Regulatory Reform (not present on mission).

The review team held discussions in Vienna with Austrian officials and external stakeholders on 16 September and from 19-23 October 2009. The report takes account of major initiatives and developments since this mission.

The team interviewed representatives from the following organisations:

- Federal Chancellery.
- Federal Chancellery, Legal Service.
- Legal, Legislative and Research Service, Parliament.
- Ministry of Justice.
- Liaison-Office of the Austrian *Länder*.
- Federal State Government, Vienna.
- Austrian Associations of towns.
- Ministry of Finance.

- Ministry of Economic Affairs, Family and Youth.
- Federal Competition Authority.
- Energy-Control Ltd. and Energy-Control Commission.
- AWS - Austrian Federal Finance Institute (Wirtschaftsservice).
- Austria Research Promotion Agency.
- Institute for Advanced Studies.
- Austrian Federal Economic Chamber.
- Chamber of Labour.
- Federation of Austrian Industries.
- Austrian Trade Union Federation.
- Ministry of Finance.
- Ministry for Labour, Social Affairs and Consumer Protection.
- Electronic file system of health data.
- Constitutional Court of Justice.
- Austrian Court of Audit.
- Upper Austrian Court of Audit.
- Federal Chancellery, EU-co-ordination.
- Ministry for European and international Affairs.

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 the national level 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.

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 the Austrian Government.

The report is also based on material provided by the Austrian Government 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. This report was prepared by Lorenzo Allio, Gregory Bounds and Kirsten Lindloff. Elsa Cruz de Cisneros and Shayne MacLachlan provided administrative and communications support, respectively, for the development and publication of the report.

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

Better regulation has successfully incorporated administrative reforms directed at improving administrative efficiency. Austria has an established history in promoting administrative reforms of which

the programme of administrative burden reduction and e-Government are the most recent and prominent. In this context, the main driver of the Better Regulation programme is the goal of improving public sector efficiency. There appears to be a strong appreciation of the potential for administrative burden reduction and e-Government to reduce the costs of government on citizens and business as well as to reduce the incidence of unnecessary costs of government activities on the budget. In support of this, a comprehensive programme of budget reform commencing in 2013 will place greater incentives on ministries to plan and manage their use of resources against government priorities. The Austrian federal government's administrative burden reduction programme has a number of strengths and appears to be on course to deliver the expected benefits. E-Government initiatives in particular have led to comparatively remarkable achievements. Over the past years, steady progress has been made to diffuse ICT to support administrative reform.

An emphasis on administrative efficiency is important, but it tends to narrow the conception of the potential for Better Regulation to improve the welfare of citizens and businesses. The main aim of administrative burden reduction programmes is lower administrative costs for companies and citizens principally brought about through a reduction in information obligations, and the budget reforms have significant potential to deliver programme efficiencies. This is an important, but limited objective. The broader perspective of better regulation, which seeks to ensure that regulations are effective and efficient and achieve public policy goals efficiently and effectively, cannot be fully addressed by burden reduction programmes. It requires a broader set of initiatives integrating Better Regulation with the design, implementation and review of new and existing regulation, including a fully fledged impact assessment process, a proactive and integrated policy for efficient implementation and enforcement of legislation, effective processes for public consultation and the integration of multilevel (*Länder* and EU) regulatory management into the policy.

The economic and competitiveness potential of Better Regulation as well as its potential to contribute to sustainable development is, as a result, not being fully exploited. The relative failure to define Better Regulation in broader terms means that there is a lack of focus on the potential economic and competitiveness benefits which it could deliver, and the broader dimensions of sustainable reform. In Austria the links between administrative reform, public sector efficiency and more efficient systems of federalism and fiscal policy are all clearly articulated in policy arrangements. Better regulation has a role in promoting these goals but should be viewed as a strategy in its own right.

There are significant potential economic opportunities for Austria through improved regulatory management, in particular competition assessment and promoting productivity enhancement in the economy. The OECD Economic Survey of Austria identified that assuring the efficient functioning of the *Länder* is critical to the development of the credible fiscal consolidation measures that are required in Austria (OECD 2009:12). It also noted the potential for differences in *Länder* regulation to reduce market competition, with reference to the effects of regional planning rules restricting retail trading arrangements (OECD 2009:45). The performance of Austria's internal market is thus likely to be affected by the absence of a well conceived Better Regulation strategy. There are also likely to be opportunities for unlocking productivity gains through an assessment of restrictions on competition in the services sector. It is in Austria's interest to examine how to apply Better Regulation strategies to consider and identify these opportunities.

There is no clear expression of political support for Better Regulation which can establish its potential to deliver economic and competitiveness advantages, and no overarching strategy. The current imperative for Better Regulation appears to come from outside the Austrian administration from the Lisbon agenda of the EU. It is not driven from within Austria, by the political level within the executive, or by Parliament. In discussions with Austrian officials, the OECD review team noted no emphasis on competitiveness as a driver of Better Regulation initiatives. This raises the question as to whether there is

an adequate allocation of resources within government dedicated to administrative reform versus initiatives for economic reform. To be effective, a “whole-of-government” policy on Better Regulation requires support at the highest political levels and has to be communicated to stakeholders. But there is, as yet, no overarching strategy for promoting the full potential of Better Regulation initiatives, and no broad policy statement on Better Regulation in the Austrian administration. The Ministry of Finance takes the lead on the administrative efficiency and administrative burden reduction goals and initiatives. The Legal Service of the Federal Chancellery has a broader perspective on legal quality. The production of the Better Regulation Handbook reflects a valuable step in promoting the Better Regulation initiative. But no Better Regulation champion has yet emerged.

The development of an overarching strategy on Better Regulation with strong political support would require a consensual approach and strong communication internally and externally. The elements of Better Regulation that are in place appear to be well understood, however the gap in understanding the potential of Better Regulation has to be addressed internally. Officials need to be made aware that the current emphasis in their activities is too focussed (as it also is in many other EU countries) on administrative burden reduction and other efficiency measures, at the expense of the potential for impact assessment, and other key aspects of effective regulatory governance. External communication and debate will also be needed. It is interesting that there is no broader public debate of the merits of better regulation.

The budget reforms can also be a vehicle for promoting better regulation. The full implementation in 2013 of the Austrian federal budget reforms will integrate the existing procedures for the *ex ante* assessment of the financial consequences of government regulation and projects on the budget and the administrative burdens on citizens and businesses. These assessments are planned to form an integral part of the future impact assessment framework. To the extent that they encompass an assessment of the broader economic impact of regulations, and are not confined to the impacts on the public sector or administrative burdens, the impact assessment initiatives proposed to be implemented under the federal budget reforms can be used to provide a strong foundation for advancing the broader Better Regulation strategy.

Recommendation 1.1. Establish a comprehensive policy on Better Regulation taking full account of its potential to improve the design and administration of new and existing regulation, set within a clearly articulated policy framework for meeting the government’s policy aims and strengthening the overall competitiveness of the Austrian economy.

Recommendation 1.2. As part of this, define an institutional framework for its delivery, setting out clearly the roles of key stakeholders within and outside government, and a timetable for implementation. The policy should be given political endorsement by the Council of Ministers.

Recommendation 1.3. To secure its relevance and effectiveness, prepare the policy through an iterative consultation process with input from government ministries, the Social Partners and the wider community.

Communication on Better Regulation strategy and policies

The Austrian government has successfully promoted the merits of its administrative burden reduction programme across government and its budget reforms. The initiatives in relation to the administrative burden reduction programme, the budget reform programme and the e-Government programme are all well

publicised and appear to be well understood across government. For the achievement of these programmes, there was explicit institutional restructuring (for example, the establishment of the Federal Chief Information Officer, ICT Strategic Unit for e-Government; and the dedicated unit on administrative burden reduction for business in the Ministry of Finance). This involved the deployment of new resources and training and intense interface with stakeholders (notably chambers of commerce) in the design and implementation of the programmes, as well as to diffuse information on the initiatives and its intended outcomes. In addition the Council of Ministers is currently considering the elaboration of an overall and integrated Better Regulation strategy “in and for Austria”.

In general however, only single elements of the Better Regulation programme policy are being communicated. In the absence of an integrated strategy on better regulation, there is no basis for an overarching communication programme to promote its merits. This also means that some elements that contribute to better regulation, such as Austria’s e-Government activities and the budget reforms may not be understood as an enabler of Better Regulation as this is not their primary purpose.

Recommendation 1.4. Following the establishment of a comprehensive policy on better regulation, develop a communications strategy to ensure that it is well known and its benefits are understood by stakeholders within and outside government.

Ex post evaluation of Better Regulation strategy and policies

Austria has the facility for comprehensive programme and policy evaluation and the capacity to introduce sustained reforms. However, because no explicit regulatory policy yet exists in Austria, comprehensive reviews of the strategy and its outcomes have not been carried out. The individual elements of the Better Regulation agenda have been subject to forms of *ex post* evaluation. Of these the relatively institutionalised forms are the reviews of public consultation practices, and the administrative burden reduction strategy by the Austrian Court of Audit.

Recommendation 1.5. Include, in the establishment of a comprehensive policy on better regulation, terms of reference and a schedule for the review of the effectiveness of that strategy in achieving its policy objectives.

E-Government in support of Better Regulation

The use of ICT and e-Government systems is well advanced in Austria and could become an even stronger enabler of Better Regulation. Austria has well-developed e-Government systems for Better Regulation with strong links to other aspects of regulatory policy; for example the drafting of legislation within the e-Law system and the use of the electronic administrative burdens calculator and the business portal. However, there appears to be unrealised potential for synergies.

There would be merit in examining the extent to which the e-Law process can be enhanced to enable public consultation on the development of legislation. The e-Law making process might also help in mainstreaming Better Regulation and facilitating a wider focus such as legal quality and integrated impact assessments for new legislation. E-Government in Austria has been led to a certain extent by central co-ordination and steer. However, there also appears to be examples where the benefits of and the knowledge created within the policy field are not shared across the administration, arguing for further initiatives to share best practice.

Recommendation 1.6. The strategic framework for e-Government should be examined for its potential to further support Better Regulation processes, including promoting transparency, public consultation and reducing the transaction costs for officials engaged in preparing impact assessment on regulatory proposals.

Background

Main developments in Austrian Better Regulation agenda

Table 1.1. Milestones in the development of Better Regulation policies in Austria¹

1970 + 79	– Regulatory guidelines for the federal government.
1990/98	– Updated regulatory guidelines for the federal government / EU-Addendum.
1990	– Implementation of the Law Information System (<i>Rechtsinformationssystem, RIS</i>).
1992	– What does a law cost? (<i>Was kostet ein Gesetz?</i>) Project manual to calculate financial impacts of laws.
2003	– Launch of the (federal) “e-Government Offensive.”
2004	– Federal Law Gazette authentic only in electronic format. – Launch of the e-Law System.
2006	– Start of the Initiative “Reducing administrative burdens for businesses.”
2008	– Launch of Climate Impact Test at the federal level.
2009	– Start of the programme “Reducing administrative burdens for citizens” Launch of the Austrian Federal Budget Reforms.
2010	– Launch of business portal (<i>Unternehmensserviceportal</i>).

Guiding principles for the current Better Regulation policy agenda

In the absence, as yet, of a comprehensive strategy for Better Regulation as a policy in its own right, the goal of improving public sector efficiency is the main framework for current Better Regulation initiatives. The potential for administrative burden reduction and e-Government to reduce the costs of government on citizens and business as well as to reduce the incidence of unnecessary costs of government activities on the budget is well appreciated.

Main Better Regulation policies

A tradition of efforts to structure and improve the quality of decision-making is evident in Austria. Regulatory guidelines for the Federal Executive were issued in the 1970s, and legislative acts have provided the legal basis for a number of Better Regulation tools since the end of the 1990s. Aspects of regulatory reform have been repeatedly part of the coalition agreements and government programmes. An example is the latest government programme of 2008, in which the initiatives related to administrative burden reduction and e-Government are particularly highlighted.²

Despite these developments, to date no explicit overall and coherent Better Regulation policy has been formulated, neither at the federal level nor in the *Länder*. Policy statements have been made on different aspects of Better Regulation in different (federal) government programmes, notably on the reduction of administrative burdens. However, no administration has so far made Better Regulation an explicit policy objective.

Work has recently been undertaken to remedy that situation. In September 2008, the Federal Chancellery presented the Handbook “Better Regulation”.³ This offers an overview of the Better Regulation history on the EU and Austrian level, including impact assessment, administrative burden reduction, consultation and legislative simplification. In addition, the Council of Ministers is currently considering the elaboration of an overall and integrated Better Regulation strategy “in and for Austria”. At the end of 2009, the Austrian parliament unanimously adopted a large Federal Budget Reform. Among various reform areas, the law, which will enter into force in 2013, foresees a new regime for impact assessments of new regulations and projects with budgetary consequences.⁴ However, the scope of the impact assessment procedure focuses on essential impacts only, suggesting that there is probably scope to extend this assessment to include broader economic costs not related to the impact on the budget.

Box 1.1. The Austrian Federal Budget Reforms 2009-13

The Austrian Federal Budget Reform, being implemented in two phases from 2009 and 2013 on, represents one of the most encompassing public sector reforms of recent decades. It includes a binding medium term expenditure framework & strategy report, increased budgetary flexibility for line ministries, a new budget structure, results-oriented management of administrative units, performance budgeting, and accrual budgeting and accounting. From 2013, outcome-orientation will be a constitutional principle in Austria, moving the budget documents towards a comprehensive steering of resources and performance. The implementation of outcome-orientation in Budget Management consists of:

- The integration of performance information in the whole budget cycle: the strategy report, budget statement and explanatory documents.
- Comprehensive regulatory impact assessment (RIA) system for regulations and projects.
- Performance controlling.
- Reporting and information requirements.
- Results-oriented management by means of performance contracts.

Institutional responsibilities:

- Parliament has to decide on outcomes and outputs, which will be systematically integrated in the budget bill.
- The Court of Auditors will evaluate the outcomes and outputs *ex post* und publish the results.
- The Federal Chancellery will monitor line ministries and provide support and advice to cope with this new performance culture. It will not, however, have the power to give orders to the line ministries.
- Ministries are responsible for their outcomes and outputs, it is obligatory for the line ministries to establish internal controls for their performance goals.

Crucial elements of outcome-orientation include a new regime for impact assessments which covers new regulations and projects in the whole policy cycle (*ex ante* and *ex post*):

- Key procedural steps include: problem definition, definition of policy objectives and policy initiatives, impact analysis, monitoring and evaluation.
- Two-step procedure, lean and pragmatic system focusing on essential impacts only.
- Simple guidance and easy-to-use IT Tools allow implementation within public administration.
- Clear format for presentation.
- Systematic internal evaluation.

The setup and preparations for the new impact assessment regime and internal evaluation of regulations and project is a joint project run by the Federal Chancellery and Ministry of Finance, consisting of a core project team of 5-7 people. The existing *ex ante* assessments of financial consequences on the budget and admin burden on citizens and businesses will be updated and form an integral part of the future impact assessment framework.

Source: Response from the Austrian Ministry of Finance.

The federal Better Regulation programmes normally cover the federal administration as a whole. They therefore encompass all bodies of the executive, including the regulatory agencies. The principle of separation of powers prevents that they extend to the national parliament. It falls within the sphere of the legislature to establish its own regulatory policy. So far, however, no explicit coherent Better Regulation initiatives have been established by the legislature, neither at the federal nor at the subnational level. An exception in this respect is the electronic rule-making process, which covers both the executive and legislative power.

Over the past two or three years, the main reform initiatives have concerned the following areas:

- *Administrative burden reduction* – In April 2006, the federal government launched an initiative for reducing administrative burdens imposed on businesses by federal regulation by 25% by 2012, using the Standard Cost Model (SCM). *Ex ante* measurement of administrative burdens of new federal regulatory policies was started from September 2007. In April 2009, this was accompanied by a parallel programme on the reduction of administrative burdens for citizens, including a focused baseline measurement, accompanied by fast-track actions. *Ex ante* measurement of administrative burden for citizens has started in September 2009 and reduction measures for citizens will be implemented from 2010 onwards.
- *Legislative simplification* – Austria has undertaken irregular but in-depth simplification initiatives both at the federal and the *Land* level over the past years. The *Deregulierungsgesetz* 2006, in particular, confirms the country's commitment to the initiative "Less and Better Regulations" of the European Commission, as it seeks to reduce and improve legal provisions under formal, linguistic and substantive aspects. Further to the recommendations of an expert group for the reform of the State and its administration established within the Federal Chancellery, obsolete provisions of the constitution have been formally removed from the body of Austrian constitutional law in 2007.
- *Impact assessment* – In order to address substantial aspects of the Austrian Climate Strategy,⁵ Austria introduced a so-called "Climate Impact Test" in October 2008.

- *e-Government* – The transposition process of the EU Services Directive is used to scrutinise, rationalise and re-organise administrative processes. It is perceived as a chance for administrative reform on a large scale throughout the whole Austrian administrative system. In this context, the establishment of Single Points of Contact is seen as a major achievement, since they establish an interface between different spheres of competence. In 2009, the council of ministers decided to set up a one-stop shop e-Government portal for businesses providing information and transaction services for businesses. Other ongoing priorities are the harmonisation and further development of central registers and international co-operation for cross border e-services.

Communication on the Better Regulation agenda

Comparatively remarkable efforts have been put into communicating administrative simplification initiatives (the administrative burden reduction and e-Government programmes), notably through the Internet. Also the budget reform programme is well publicised. Other aspects of the Better Regulation agenda as well as the rationale and drivers underlying it have by contrast not been promoted as much to the public (largely because there is no clearly articulated strategy which has political support, as yet).

The 2008 Federal Chancellery handbook on Better Regulation has been posted on the website of the Chancellery, but the review team could not assess the degree of its visibility and diffusion both within and outside the public administration.

Ex post evaluation of Better Regulation strategy and policies

Because no explicit regulatory policy yet exists in Austria comprehensive reviews of the strategy and its outcomes have not been carried out. However, individual strands of the Better Regulation agenda are subject to forms of *ex post* evaluation, though this may be considered more as monitoring than broad strategic evaluation. Relatively institutionalised are the reviews of public consultation practices, and the administrative burden reduction strategy.

The Austrian Court of Audit reports annually to the National Council on the results of consultations in the previous year. The report⁶ contains:

- information on the number of draft laws and ordinances received in the previous year within the framework of a consultation procedure;
- reference to (selected) legislation that were not subjected to any consultation;
- a synopsis of selected results of consultation involving the Austrian Court of Audit; and
- information on compliance provisions and guidelines for the assessment and presentation of the financial impact of new legislation.⁷

The above information indicates that the ministries are not always fully meeting their duty to calculate the financial impact of new legislation. In the past three years, 60 to 73% of all draft legislation contained sufficiently plausible information on the financial impact. In its Annual Report 2007/08, the Court noted that approximately 76% of the some 200 draft laws and ordinances submitted until November 2008 contained a sufficient calculation of their financial impact.⁸

The Court of Audit also pointed out that increasingly strict requirements should be applied to the legislative process and the assessment of the impact of new legislation (notably with regard to the consistent use of the SCM provided for in the government programme in order to reduce administrative

costs on business generated by existing regulation and planned new legislation, and the EU's Better Regulation initiative). Moreover, sustainability audits should be carried before large-scale reforms and projects entailing high costs are cast in law.⁹

The progress of the initiative on the reduction of administrative burdens in individual ministries is regularly monitored by the Ministry of Finance in a central monitoring table on the basis of calculations of the individual ministries. Status reports are brought to the attention of ministers during regular meetings of the federal government. The results of the programme are also discussed by the Ministry of Finance with the other ministries during the budget negotiations. Public relations tools such as brochures and a website providing the opportunity for companies to propose improvements are targeted at the wider public and stakeholders.¹⁰ The Ministry of Finance also has responsibility for monitoring the overall performance of the administrative burden reduction programme.

The Ministry of Finance prepared a supplement to the 2009 budgetary materials to report on the progress of the reduction programme, including a list of reduction proposals by ministries.¹¹ The results were publicised on the Ministry's homepage. Furthermore, media such as the Ministry's intranet, its internal newspaper, a newsletter of the Austrian Chamber of Commerce and a supplement to a daily business newspaper are used to report on progress of the reduction programme.

New developments and results of key Better Regulation policies are communicated to all departments in the Ministry for Science and Research, especially those departments with a legal or regulatory responsibility.

E-Government in support of Better Regulation

Austria has a sound track record in introducing and diffusing ICT in support of public administration procedures and the provision of public services. Since 1998, public authorities and e-Government project teams have continually been working to expand and improve on public services. In May 2003, the federal government launched an e-Government initiative under the label "e-Government Offensive" to co-ordinate all related activities.

The strategy is based on a number of underlying principles, which include responsiveness to citizens; trust and security; user friendliness, transparency and accessibility; and technological neutrality, co-operation, and inter-operability. It is also geared towards achieving the objectives set by the European Commission's Action Plan for electronic public services of April 2006.

The foundations for the coming years are set in the 2008 work programme of the federal government (the Government Declaration), which constitutes the last update on the political level in the national e-Government strategy called "Administrative Quality Initiative" and launched in 2007. The main priorities include the harmonisation and further development of central registers; international co-operation for cross border e-services; the development of a service portal for businesses and the implementation of the EU Services Directive (2006/123/EC). The platform Digital Austria set itself principles for cooperation and a vision 2020 for e-Government.¹²

Organisationally, the relevance of e-Government is illustrated by the fact that it is located in the presidential section within the Federal Chancellery (see below).

Legal provisions

The e-Government Act of 2004 (*E-Government-Gesetz*, E-GovG, last amended in 2007), is a milestone achievement, as it sets the legal basis for federal action in the domain. In this respect, Austria was one of the first EU Member States to adopt comprehensive legislation on e-Government.

The Constitutional Law on Access to Information (*Auskunftspflichtgesetz*) entered into force in 1988. It contains provisions on obtaining answers from federal and regional authorities on the content of information, but it does not permit citizens to access documents. The legal framework is complemented by the Austrian Data Protection Act (*Datenschutzgesetz*, DSG 2000)¹³ and the Electronic Signature Act (*Signaturgesetz*, SigG) of 2000, the eCommerce Act (*eCommerce Gesetz*, ECG) of 2002; the Telecommunications Act (*Telekommunikationsgesetz*, TKG) of 2003; as well as the Federal Procurement Act (*Bundesvergabegesetz*, BVergG), which entered into force in 2006.

E-Government federal initiatives leading to Better Regulation

The interface between e-Government projects and Better Regulation is particularly strong. Projects such as the Law Information System (*Rechtsinformationssystem*, RIS) and e-Law (*e-Recht*) are clear examples of such a synergy. Further projects such as the Electronic Legal Communication (ERV) and *ELAK im Bund* support regulation inside government efficiency programmes (see below for more details).

Another area where close synergies have been established is the interface with the administrative reduction programme. The agenda addressing burdens on businesses, launched in 2006, particularly benefits from the creation of an e-Government portal (see Box 5.2. below).

Other projects worthy of mention include:

- *The HELP government portal* – This one-stop portal is the official national platform for information on public services for citizen’s including the possibility of downloading and filling in official forms on line, e-payments, etc. organised around approx. 200 “life-events”. Launched in 1997, it is now a well established tool of e-Government in Austria, and visits have continuously increased over the years. The portal offered also a section explicitly dedicated to business, which was integrated into the BUSINESS service portal.¹⁴ Since 2008, a personalised HELP was launched under the name MYHELP to increase the relevance of information for the user. Since January 2010, the BUSINESS service portal (*Unternehmensserviceportal*,) is on line, serving as a central one-stop portal for businesses.¹⁵
- *FINANZOnline* – Launched by the Federal Ministry of Finance in 2003, this is a public platform of the fiscal administration that allows all citizens to carry out tax adjustment or advance returns on line, as well as enabling electronic access to files. Also businesses can carry out their tax formalities irrespective of opening hours. For the tax and accounting professions, the online communication via *FINANZOnline* has become an obligation. Electronic document transfer is possible and is equipped with the necessary security functions. User identification and authentication is possible via the Citizen Card and conventional PIN-codes. It is estimated that *FINANZOnline* may reduce the time needed to fill in a tax form down to one hour. The system would also speed up the control process by the administration significantly.¹⁶
- *The Citizen Card (Bürgerkarte)* – This is an electronic identity card (eID card). Austria was the first country in the world to provide eID cards for all citizens. The card allows citizens and businesses to be uniquely identified and authenticated digitally where required by law. The e-Card is a smartcard for the health sector and can be activated by the citizen for free. It is administered by the Main Association of Austrian Social Security Institutions and can be used in both health and administration sectors, as a replacement of the health insurance vouchers. Since the end of 2009, the Citizen Card function can also be activated (free of charge) with ordinary mobile phones, thus eliminating the need for additional hardware requirements (chip card reader) or software installations.

- *E-Procurement* – An electronic database was established in 2006 to guarantee the full and unrestricted access to procurement opportunities on the federal level. It contains all tenders of the last two years and supports certain search functions. Its use is free of charge. An electronic connection with the EU Official Journal guarantees the electronic delivery of all procurement publications without further cost or administrative burdens.¹⁷ The e-procurement implementation was among the finalists for the EU e-Gov Awards in 2009 at the EU e-Gov Ministerial Conference in Sweden.
- *E-Delivery* – The electronic delivery of registered mail (*elektronischer Zustelldienst*) is another service meant to reduce administrative burdens. Citizens and businesses do not need to retrieve official notifications as physical documents from the post office. Instead they can enter their electronic delivery service, where they can download documents and save them on their local PC or process them as needed with their internal information systems.¹⁸ In contrast to e-mail, e-delivery provides a secure proof of delivery.

E-Government and other levels of government in Austria

The Federation does not dispose of powers to impose ICT and systems and structures and e-Government based initiatives on the *Länder*, but can only issue recommendations. In addition, e-Government is not funded centrally. Co-operation (vertical and horizontal) is therefore the main tool to steer and ensure coherence across the country. Conventions are concluded between the different actors, for instance regarding compatible structures across ministries and states.

The implementation of the EU Services Directive

ICT today is mainly used for the provision of information about procedures and formalities. To a lesser extent ICT is used for electronic transactions. As in many other EU countries, Single Points of Contact (SPCs, *einheitliche Ansprechpartner*) are being established in the context of the implementation of the EU Services Directive (Directive 2006/123/EC).¹⁹ These will simplify the provision of information and services. Austria follows a de-centralised approach, because of its federal structure. Nine SPC's (one in each *Land*) were established to fulfil the EU guidelines. A common website bundles all SPC's to facilitate the access for potential service suppliers.²⁰ The flow of information through these one-stop shops will be both vertical (Federation-*Länder*) and horizontal (among the *Länder*).

The national e-Government portal for businesses provides services to the SPCs. The necessary technologies are in place and now need to be implemented to support this task. One example is standards-based content syndication which HELP today offers to local communities. It will be expanded to facilitate information about Austrian official procedures on member state portals and to integrate information about foreign authorities and their procedures to Austrian service providers.²¹

An additional innovative element introduced in compliance with the Directive is the so-called “silence is consent” rule, according to which applications for providing services are approved if the responsible authority does not answer (in a negative way) within a certain timeframe.

Box 1.2. Information Society indicators in Austria

- Percentage of households with Internet access (*): 69% (2008).
- Percentage of enterprises with Internet access: 97% (2008).
- Percentage of individuals using the Internet at least once a week: 66% (2008).
- Percentage of households with a broadband connection: 54% (2008).
- Percentage of enterprises with a broadband connection: 76% (2008).
- Percentage of individuals having purchased/ordered on line in the last three months: 28% (2008).
- Percentage of enterprises having received orders on line within the previous year: 15% (2008).
- Percentage of individuals using the Internet for interacting with public authorities: obtaining information 36.2% / downloading forms 23.1% / returning filled forms 13.6% (2008).
- Percentage of enterprises using the Internet for interacting with public authorities: obtaining information 71% / downloading forms 75% / returning filled forms 59% (2008).

Source: e-Practice, e-Government Factsheets. Austria, Edition 12.0 July 2009, p.2, based on Eurostat data and Statistik Austria (*).

Notes

1. Source: Responses of the Austrian Government to the OECD questionnaire.
2. See: The *Regierungsprogrammeme für die XXIV. Gesetzgebungsperiode*, December 2008, pp.254ff, at www.bundestkanzleramt.at/DocView.axd?CobId=32966 (last accessed 6 April 2010).
3. See: www.bundestkanzleramt.at/DocView.axd?CobId=31617 (last accessed 23 November 2009).
4. See: The new Federal Finances Law (*Bundeshaushaltsgesetz*, BHG), in Federal Law Gazette Nr.139 of 30 December 2009, at: www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2009_I_139/BGBLA_2009_I_139.pdf (last accessed 6 April 2010).
5. See: www.klimastrategie.at/article/archive/8790/ (last accessed 10 December 2009).

6. For the most recent appraisal by the Court of Audit, see Annual Report 2009, Series Bund 2009/14, at: www.rechnungshof.gv.at/fileadmin/downloads/2009/berichte/teilberichte/bund/bund_2009_14/bund_2009_14_1.pdf (last accessed 6 April 2010).
7. In accordance with Section 14 of the Federal Budget law, and with the guidelines for the assessment and presentation of the financial impact of new legislation as laid down in the ordinance of the Federal Minister of Finance, Federal Law Gazette II Nr.50/1999, last amended by Federal Law Gazette II Nr.387/2004.
8. See: Court of Audit, Annual Report 2007/2008, Series Bund 2008/13, page 11.
9. See: Court of Audit, Position Paper on Government Reform, series *Positionen* 2009/1, item 6.2.
10. For instance, through the website: www.verwaltungskostensenken.at (last accessed 18 November 2009).
11. See: www.bmf.gv.at/BUDGET/budgets/2009/beilagen/Verwaltungskosten_senken_01042009_os.pdf (last accessed 18 November 2009).
12. See: www.digitales.oesterreich.gv.at/site/6878/default.aspx (last accessed 6 May 2010).
13. See: Federal Law Gazette I Nr.165/1999.
14. See: www.help.gv.at (last accessed 8 December 2009).
15. See: www.usp.gv.at (last accessed 29 March 2010).
16. See: www.bmf.gv.at/EGovernment/FINANZOnline/ (last accessed 8 December 2009).
17. See: www.pep-online.at/auftrag/WZOnlineSearch.aspx (last accessed 8 December 2009). In addition, the Central Procurement Agency (*Bundesbeschaffung GmbH*) has set up a full fledged electronic procurement system for low value contracts to simplify public purchases. The so-called “e-shop” contains *inter alia* the possibility to set up electronic catalogues. See: www.bbg.gv.at/lieferanten/infos-zum-e-shop/ (last accessed 8 December 2009).
18. See: www.bka.gv.at/site/4633/default.aspx (last accessed 8 December 2009).
19. The SPCs are exclusively related to the implementation of the EU Services Directive. The HELP government portal operates for citizens, while its business sections have been replaced by the BUSINESS service portal.
20. See: www.eap.gv.at (last accessed 31 March 2010).
21. See: e-Practice, *e-Government Factsheets. Austria*, Edition 12.0 July 2009, p.22.

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

Within the Austrian administration there is a highly professional administration with a clear focus on administrative efficiency. The Austrian administration relies upon the efficient operation of institutions that operate with a high degree of autonomy to deliver their own policy agenda. Effective administrative relationships follow from established modes of operation which tend to be focussed on reducing administrative costs and promoting the quality of legal drafting. The absence of hierarchy in the executive and the principle of unanimity in the Council of Ministers mean that no single ministry has significant institutional leverage to impose an overarching policy on Better Regulation across the administration. While this creates potential opportunities for fruitful competition and internal benchmarking, it can also mean that good initiatives and practices which develop within agencies are not necessarily diffused across the government.

Whilst there is no specific institutional ownership of the Better Regulation agenda in Austria, three entities (the Federal Chancellery, the Finance ministry and the Court of Audit) currently play a key role which needs to be reinforced. Responsibilities and capacities for Better regulation are shared across the Austrian administration. This appears to have had the effect of making it difficult to establish accountability for Better Regulation and has undermined the organisational focus, attention to and resources for Better Regulation initiatives. However, the Federal Chancellery, the Ministry of Economy, Family and Youth, the Ministry of Finance and the Court of Audit are the existing basic structural elements on the institutional map of Better Regulation in Austria. Each of these institutions is engaged in important roles to promote the quality of rule-making processes and improve the design of regulatory proposals. The Federal Chancellery currently gives guidance on legal quality to other actors within the administration. It has the most comprehensive perspective on better regulation, but currently does not have the institutional leverage to enforce the adoption of a Better Regulation policy across the administration, as the role of the Chancellor is *primus inter pares* with no authority to set binding policy guidelines. The Ministry of Finance does not claim overall responsibility for better regulation. It has a strong focus on budgetary consequences and public sector efficiency. It monitors the delivery of the administrative burden reduction programme and provides the guidelines and tools to assess financial impacts on the budget. This is supported by the Court of Audit which oversees that the guidelines for the calculation of administrative costs have been followed, but does not extend its analysis to an assessment of the quality of the economic analysis supporting a regulatory proposal. Improvements to the effectiveness of Better Regulation strategies could be expected to come from strengthening co-operation between these institutions.

A stronger gatekeeper function is essential to ensure that key Better Regulation policies, such as consultation and impact assessment, are carried out to minimum standards. A particularly important function is oversight of the Regulatory Impact Assessment process. This is needed to ensure that the analysis of the economic, social and environmental costs as well as benefits of regulatory proposals have been given thorough consideration. This requires staff trained in specific skills as well as the authority to challenge the adequacy of assessments, either directly with rule-making bodies, or by raising awareness of the quality of the assessments with decision makers, or possibly by publishing information for public consumption. The aim is to provide an incentive for proponents of regulation to undertake an early and thorough assessment of the implications of regulatory proposals and to consider any possible, more efficient, alternatives to regulation.

A further objective should be to identify and disseminate the good practices that are currently being undertaken by ministries, and to champion good ideas. For example, the OECD mission heard of commercial innovation by the Ministry of Economy, Family and Youth to make Austrian government services more competitive relative to other EU countries in the field of assessing

import/export licences. The competition analysis that underpins this type of innovation should be captured as it could be transferable to other areas of government to improve productivity.

It appears that the Federal Chancellery is best placed to take primary responsibility as gatekeeper and co-ordinator for the implementation of an overall Better Regulation strategy. The Federal Chancellery already has a strong co-ordination function at the centre of the federal government and ensures the legal quality of proposals. In 2008, it prepared a handbook on Better regulation that mapped the main elements of a comprehensive Better regulation strategy. The Federal Chancellery designs and manages horizontal tools and programmes, and has competence over administrative reform.¹ It is, for example, responsible for the development of e-Government, the e-Law system, the RIS-system and the co-ordination of EU matters. The Chancellery also represents the Republic in front of the Constitutional Court, the Administrative Court and international courts. Broadening its role would depend on the Federal Chancellery being invested with the necessary political support to oversee the dissemination of better regulation. It would also require that the Federal Chancellery have an appropriate allocation of staff with relevant (including economic) skills. In principle, the role of assessing the quality of regulatory impact assessments could be undertaken either by the Federal Chancellery or the Court of Audit. It might not, however, be appropriate to require that the Court of Audit do the job of mainstreaming and strengthening Better Regulation on its own as this could undermine its independence. Similarly, the Court of Audit should not conduct impact assessment itself. The Ministry of Finance would continue to play an important role in ensuring administrative efficiency assessing financial impacts on the budget and overseeing administrative cost issues as part of impact assessment. OECD principles an international practices show that the role of assessing the quality of RIAs is best assigned to a body at the centre of government.

Recommendation 2.1. Establish a core working group of Better Regulation champions, at both ministerial and official level, chaired by the Federal Chancellery, and including the Finance ministry, the Court of Audit and any other key and committed player in the central Federal administration (for example the Economy ministry), to develop and promote a Better regulation strategy.

Recommendation 2.2. Consider how to secure an effective gatekeeper function to co-ordinate and monitor minimum Better regulation standards across the administration, especially as regards impact assessment, but also with regard to public consultation and other important issues such as forward planning of legislation. Ideally the Council of Ministers should formally invest the Federal Chancellery with this role.

Improving the capacity of the Austrian administration to undertake Better Regulation will also require further training and the development of supporting materials. One of the issues heard by the OECD review team was that insufficient resources are given to undertaking the important tasks of considering and reporting on the impacts of regulatory proposals in the *Vorblatt*. Building the capacity for Better Regulation in the Austrian administration is a core task. Beyond the training given on the standard cost mode to implement the administrative burden reduction programme, little else appears to be on offer. There is, for example, no training in the conduct of impact assessment and evaluation of alternatives to regulation. The 2008 handbook on Better Regulation does not constitute a comprehensive guide to implementing regulatory impact analysis. The development of more comprehensive handbook/ manual would assist the Better Regulation agenda. This should be supported by the development of online tools that at a minimum assist agencies to calculate

compliance costs and identify the potential impact of regulatory proposals. Expanding the current training provided for the staff of the Courts of Audit could provide the basis for training programmes for other officials.

Recommendation 2.3. Undertake a Better regulation training needs assessment including methods of delivery and existing forums that could be adapted, such as the Court of Audits programme, to improve the capacity of the public administration to design and implement better regulation.

Recommendation 2.4. Give responsibility to the Federal Chancellery, as part of its Better regulation functions, for developing comprehensive training programmes on Better Regulation for the Austrian administration. Ensure that this is supported by the development of guidance documents and IT tools to assist with undertaking impact assessment (including competition analysis), the evaluation of regulatory alternatives, and consultation.

It also appears that, at the federal level, there is no systematic and ongoing legal drafting training for those involved in regulatory work. At the Länder level the situation varies from Land to Land. However, there are Länder which seem to be more active in this field than the federal authorities and sometimes offer, in co-operation with the federal government, training for legists working at the federal level.

Recommendation 2.5. Consider the development of more systematic and permanent legal drafting training for those persons involved in legislative work at the federal and at the Länder level.

A stronger role is also needed for external partners, as Better Regulation programmes benefit from the incorporation of a variety of views. Many countries have sought to establish external bodies with responsibility for advising the government on how to implement Better Regulation and reviewing the achievements of Better Regulation programmes. The core membership of these bodies usually includes business representation. Within Austria, the institutional functions performed by the Social Partners are already often integral to the effective operation of government administration. They include providing a source of consultation on the impacts of proposals but can also extend to research and analysis on the effects of existing regulatory arrangements. Regarding this latter function, the Social Partners might be asked to conduct further studies on the effectiveness of regulation in specific areas to assist in informing the government where reforms efforts may be applied to the greatest social advantage. Any formal arrangements should be mindful of the need to have a transparent process taking account of the views of all stakeholders, including interests outside the social partners.

Recommendation 2.6. Consider whether the Social Partners should be asked to undertake further studies on the *ex post* effectiveness of regulation in specific areas, taking care to ensure that any process remains transparent and takes in all relevant views.

The Parliament needs to be encouraged into playing a stronger role in support of the executive's work on Better regulation. Although the parliament does not have a specific Better Regulation orientation, its website on legislative procedures and consultations contributes significantly to

communication and consultation practices. It also has a formal role in the “e-Law” process for the standardised development of regulations. However, it does not currently have a committee structure with responsibility for reviewing the effects of regulatory proposals, as exists in a number of other European countries.

Recommendation 2.7. Encourage the Parliament to play a more active role in Better regulation, including by fostering political debate on the benefits of broader strategy of Better Regulation. The parliament should support the Government in developing and achieving its Better Regulation agenda.

The landscape of regulatory agencies in Austria is varied and dynamic. The practice of creating legally independent entities to undertake technical and administrative governmental functions appears to be in common use within Austria. Part of the purpose of using this type of “des-incorporated body” appears to be to create staffing and budgetary independence for the performance of its functions. Of itself this may not be an issue, but it raises questions about the transparency of agency activities and of how to include these functions within the Better Regulation agenda. Like many countries, Austria cannot afford to maintain administrative overlaps and has an imperative to control its fiscal obligations to manage its budget. Furthermore, the diffusion of the Better Regulation agenda requires a comprehensive approach that involves and influences all agencies with rule-making or other coercive powers.

Apparently there is no central database listing all of the regulatory agencies in Austria, including the so called “des-incorporated bodies”. The absence of a database makes it difficult to assess a number of critical issues relevant to whether the Austrian administration is receiving value for money from its regulatory agencies. For example, is the number, and the design of regulatory agencies, appropriate for the delivery of the government’s policy programme? This can only be assessed by an examination of the administrative design of the regulatory agencies, which requires, as a start, an audit of the number of organisations, their purpose, budgets and reporting frameworks. This may involve a review of the des-incorporation guidelines of 1992 (*Ausgliederungsrichtlinien* 1992) to determine if it provides a clear policy on the budget accountability, and organisation structure that is appropriate to the purpose of the regulatory agencies.

Recommendation 2.8. Undertake an audit to centrally record the names and functions of all regulatory agencies, including budgetary, staffing and reporting relationships. Identify which of these agencies have coercive or rule-making powers. Once established the database should be maintained and updated, and made available for public access. The goal should be to identify how they can be involved in the Better Regulation agenda, through for example, the inclusion by the parent ministry of requirements for Better Regulation initiatives in the mission/objectives statement of the regulatory agencies.

Background

The general institutional context

Box 2.1. Institutional framework for the Austrian policy, law making and law execution process

The executive

The Federal Chancellor heads the Federal Government (*Bundesregierung*). He/she is appointed by the Federal President and is responsible for forming the government. As the head of the Federal Chancellery, the Chancellor has the same rank as all other federal ministers (“department principle”). The principle of unanimity prevails in the Council of Ministers. As a *primus inter pares*, the Federal Chancellor chairs the Council of Ministers, but has no authority to issue policy guidelines nor instructions to the ministers.

The federal government is the single largest administrative organisation in Austria. Upon the Federal Chancellor’s proposal, the Federal President swears in the federal ministers and secretaries of state.² The resulting government then has to pass a vote of confidence by the National Council. The number of government members (and hence of the departments) is not laid down by the constitution.

Each federal minister’s department consists of a ministry (also called “central offices”) and the subordinate agencies. While the ministry prepares strategic decisions and orientations (*e.g.* draft bills), the subordinated bodies (*nachgeordnete Dienststellen*) fulfil disparate administrative tasks and expert functions. The size of individual departments varies greatly as a consequence. Appointed civil service heads hold their office for their appointed time regardless of changes in government.³

The legislature

Austria is a federal state, which means that it has legislative institutions both at the level of the Federation, and at the level of individual federal states (*Landtage*). The federal parliament comprise the National Council (*Nationalrat*) and the Federal Council (*Bundesrat*). Both chambers form the legislative bodies of the Federation.⁴

National Council (Nationalrat)

The National Council is the first chamber of the Federal Parliament. Its 183 members are elected directly by the people for five years by universal suffrage. If elected in the executive, members of parliament normally relinquish their mandate as parliamentarians, so that there is a personal separation between executive and legislative powers. There are no legal requirements or incompatibility rules on this subject, however. The basic tasks of the National Council are voting on federal laws; being (partially) involved in and scrutinising implementation; and serving as a forum for political debate. It may also propose legislation, but the great majority of laws emanate from the executive.

Two independent bodies report to and assist the legislature: the Court of Audit and the Ombudsman service (see below).

Federal Council (Bundesrat)

The Federal Council is the second chamber at the federal level, in principle representing the interests of the *Länder* in the development of federal laws and performance of scrutiny. In practice, it works as a “mirror” of the National Council, as its members rather align according to partisan membership – even building groups with the respective partisan MPs of the National Council - and less in terms of representation of their state’s interests.

The Federal Council has a right to object to the adoption of laws of the National Council, which it must assert within eight weeks of the legislative act being adopted. If this right is exercised, the National Council may confirm its original decision (“inertia decision”), against which the Federal Council has no

further recourse. The Federal Council has an absolute right of veto if the competence of the states is limited by constitutional laws.

The Federal Council is elected by the states parliaments. Its composition is based on the relative strength of the parties in the individual *Landtage*. The number of the members of the Federal Council is in proportion to the population of the individual *Länder*.

Federal Assembly (*Bundesversammlung*)

The National Council and the Federal Council jointly form the Federal Assembly, whose main role is to swear in each newly elected Federal President.

The Federal President

The Federal President is the highest representative of the State. As such, he/she represents the Republic to the outside world, although the official functions are rather ceremonial in nature. He/she is elected directly by the people for six years, renewable. The President has the right under the Constitution to appoint the Federal Chancellor, and the federal ministers that he/she proposes. Under certain conditions, the President can dismiss the federal government and dissolve parliament. The President certifies that federal laws have been adopted in accordance with the constitution. In principle, he/she concludes international treaties at the request of the federal government or of the federal minister empowered by it.⁵ The President is empowered to appoint senior federal civil servants, officers and judges; and is commander-in-chief of the armed forces.

The judiciary

Austrian law is based on European traditions and is primarily statute law, with a very limited role played by customary law. The independence of the courts is enshrined in the constitution. The court structures do not correspond to the territorial divisions of the country. The judges are not bound to take any instructions in exercising their office, and are virtually irremovable. The Federal Constitution Law assigns the judiciary exclusively under federal responsibilities. The *Länder* are therefore not allowed to set up any courts.

There are three supreme courts (*Höchstgerichte*) in Austria: the civil and criminal courts, with stages of appeal to the Supreme Court (OGH), the Constitutional Court and the Administrative Court.

The Constitutional Court (*Verfassungsgerichtshof*, VfGH) was established in 1920, it is the oldest constitutional court worldwide. It is the guardian of the Austrian constitution, comprises the President, Vice-President and twelve members, all appointed by the Federal President.⁶ Its formal and material responsibilities are laid down in the Federal Constitutional Law ("B-VG") and in the Constitutional Court Act ("VfGG"). VfGH decisions are normally taken by the full court.⁷ In principle, the VfGH does not act on its own initiative, only on application. Any court, an independent administrative panel, the Supreme Court, a Court of Appeal, the Administrative Court, the Asylum Court, the federal government, a state (*Land*) government, a local community/municipality, the Federal Public Procurement Office, the Ombudsman Institution or the Board of Audit may (some of them must) refer the question whether a norm is unlawful or unconstitutional to the VfGH. Everyone can invoke the aid of the Constitutional Court (objection to a decision of the Asylum Court or of an administrative authority of last instance if he/she is of the opinion that a decision infringes his / her constitutionally guaranteed rights or applies an unlawful/unconstitutional norm. An individual petition (request) against a regulation or law statute may be brought only if a such a norm (regulation/statute) infringes currently/actually and directly a person's rights. Over the last years, about 2 000 to 3 000 cases on average were brought to the Court annually. According to an amendment of the Constitution in 2008 establishing the Asylum Court the number of cases increased dramatically. The Court has to face an additional caseload of around 3 500 cases only dealing with asylum matters because it is the only Court reviewing decisions of the Asylum Court (the review of the Administrative Court has been excluded by the constitutional legislator). That means that the VfGH had to cope with a total of 5 500 new cases in 2009 (Activity Report 2009) and has to expect an equally important workload in the years to come. Still the duration of the Constitutional Court's proceedings (meaning those not dealing with asylum matters) would amount to eight months, which would be low in international comparison.⁸

The Administrative Court (*Verwaltungsgerichtshof*, VwGH) is responsible for the judicial scrutiny of the administration. Its members are independent, irremovable and non-transferable, like all other judges and Supreme Court judges. They are headed by the President and a Vice-President. They are appointed by the Federal President based on a proposal by the Federal Government, which in turn bases its proposal on proposals by the Administrative Court. The Administrative Court sits in panels.⁹ The membership of the panels and the areas that they deal with is decided annually in advance by the plenum (“allocation of duties”).

Supreme Court (*Oberster Gerichtshof*)

Under the Constitution, the Supreme Court (OGH) is the highest instance in civil and criminal cases. Usually, the Supreme Court sits in panels of five judges, one of whom presides. In legal issues of fundamental importance, an augmented panel of eleven judges hears the case. The Supreme Court decides on appeals against second instance judgements; nullity appeal against verdicts in criminal cases and to uphold the law; and Civil rights actions (since 1993).

Regulatory agencies

In the last decades, various legally independent entities were created from the federal administration. This occurred through the so-called “des-incorporation” (*Ausgliederung*) process, according to which a governmental establishment was converted into a legally independent institution or a company under company law on the basis of a special law. The des-incorporated entity enjoys separate staff and budgetary management independence, although forms of financing and control relationships with the relevant federal ministry continue to exist.¹⁰

Des-incorporated bodies are either privatised under civil law (usually as close-to-state enterprises or GesmbH) or des-incorporated into a regulatory authority or subordinate body. Des-incorporated bodies include “corporations” (usually 100% state-owned) and regulatory authorities (*Regulierungsbehörden*).

As a result, the *landscape* of the Austrian agencies is varied and relatively dynamic. Agencies have been established in various sectors, with different forms, status and mandates. They are not limited to specific activities. The Federal Constitutional Law establishes that specific agencies may be created that are not bound by the instructions of their superiors, notably the parental ministry. A right to supervise must nonetheless be guaranteed.¹¹ The Constitutional Service of the Federal Chancellery has issued guidelines for the establishment of agencies (*Ausgliederungsrichtlinien*) in 1992.¹² Agencies are established *ad hoc* at the federal level, and an overall figure of their number cannot be provided.

Local levels of government

The structure of the country is laid down in the Federal Constitution. Austria is divided into nine states (*Länder*) and 2 355 municipalities (*Gemeinde*) at the local level. Both the federal and *Länder* levels have law-making authority, while the municipalities have an area of jurisdiction of their own as well as one delegated from the federation or the *Länder*.

Sources: Federal Chancellery (2006; 2007a).

The Austrian public governance context

The Austrian political system has been classified as an extreme case of “consociational” (consensus) democracy and “neo-corporatism” (*Schmitter/Lehmbruch 1979*). While the latter term describes the particularly intertwined relationship of key stakeholders organisations (the Social Partners) in the political, economic and social life of the republic (see Box 2.2 below), the first term refers to the dominant position held by the two largest parties of in the political system of the country. The conservative Austrian People’s Party (ÖVP) and the Austrian Social Democratic Party (SPÖ) have formed most of the governing coalitions (based on the “historic compromise”) and until the

1980s they have accounted for more than 80% of the electoral votes. A relative exception occurred during the period of the conservative government of the ÖVP and the Freedom Party (FPÖ) (2000-06), which moved in the direction of a more conflict oriented system where the importance of the social partnership diminished.

Federal structure

Box 2.2. The federal structure and competences across the levels of government

Austria is a federal republic with some direct democratic features. It is based on the principles of a democratic republic (the law emanates from the people, it has an elected Head of State). Austria is a federal state and constitutional state (the administration of the State is carried out solely on the basis of laws). The fundamental rights and rights of personal liberty guaranteed in the Federal Constitution of 1920 were already incorporated in the Basic Law of the State in 1867.

The Austrian federal administrative structure consists of a four-tiered system comprising the federal government, the federal states (*Länder*), districts and municipalities. All political institutions established by the constitution are elected. Direct elections are held for the National Council (*Nationalrat*), the Federal President and the nine state parliaments (*Landtage*) and of municipal Mayors.

A number of instruments of direct democracy are used at the Federal and *Länder* level:

- *Referendum* – Introduced in 1972, referenda may be held on a law adopted by parliament. Their result is binding on the legislator.
- *Petition for a referendum* – A petition for a referendum differs from an actual referendum in that it involves collecting signatures. If a petition collects a minimum of 100 000 signatures, the National Council must take up the issue. However, it is not compelled to legislate on it. A petition therefore has no direct repercussions, but is mainly a political signal. It was introduced in 1973.
- *Consultations* – A consultation is held if the issue is of fundamental importance and concerns Austria as a whole, and the National Council decides to hold the consultation based on a motion by its members or the Federal Government.

The Federal Constitutional Law contains an exhaustive list of the competences conferred on the Federation, whereas the competences of the states are established by a general clause. The latter states that the *Länder* have the competence in a matter unless the Constitution expressly assigns it to the federal level. Overall, many legislative competences are conferred on the federal level while the *Länder* often play an implementing role, to the extent that Austria is sometimes described as a “centralised federal state”.

The Federal Constitution distinguishes four general types of competence:

- Both legislation and execution are the responsibility of the Federation (Article 10 of the Federal Constitution).
- Legislation is the responsibility of the Federation, execution of the States (Article 11 of the Federal Constitution).
- The Federation is responsible for legislative principles, the States for translating these principles into law and executing them.
- Both legislation and execution are the responsibility of the States (Article 15 of the Federal Constitution).

An overlapping of rule-making responsibilities is not legally possible, because the allocation of the various powers is understood to be exclusive. This means that an area is exclusively and unambiguously assigned to the competence either of the Federation or of the *Länder*. According to the Austrian Constitutional Law, it is unimaginable that both these levels are competent in a specific area. However, this does not remove the possibility of dispute over the competence among the federal government or *Länder*. In cases of dispute the Constitutional Court determines at the application of the federal government or *Länder* whether an act of legislation or execution falls into the competence of the Federation or the *Länder*.

Source: Responses of the Austrian Government to the OECD questionnaire; Federal Chancellery (2006;2007a); EUI (2008;2009).

Developments in the Austrian public governance context

Constitutional reform has been the main development. The Austrian Convention convened from May 2003 to July 2006 with the purpose of drafting the text of a new Constitution. The goal was to have more concise constitutional provisions while keeping the comprehensive character of the Charter, and to ensure a forward-looking, cost-effective, transparent and citizen-oriented fulfilment of the state's responsibilities. Consensus was nonetheless reached only on some areas and many issues remained unresolved. Among them, the division of powers between the federal government and the federal states were issues on which no agreement was reached due to the significant disparity in the positions of the federal government, the *Länder* and the municipalities and cities.

In the Government Programme of 2007, a group of experts was established at the Federal Chancellery to write up proposals for a comprehensive constitutional reform based on the work done by the Austrian Convention. Out of the three drafts put forward by the group, one has been implemented.¹³ Article 1 of the *Erstes Bundesverfassungsrechtsbereinigungsgesetz* of 2007¹⁴ amends the Federal Constitutional Law by modifying the provisions about changing the federal and/or *Land* boundaries; transferring competences to other states and inter-governmental organisations as well from other states to (Austrian) administrative bodies.

Developments in Austrian Better Regulation institutions

The structures in the Federal Executive have remained stable and broadly unchanged in the past years. Better Regulation has not led to the establishment of specific purpose organisational bodies in the Federal Chancellery or the Ministry of Economy, Family and Youth.

A certain evolution has occurred with regard to the institutional setting underpinning the e-Government strategy (see Box 2.1 above). In 2006, the Unit "Reducing administrative burdens for businesses" was set up as a part of the Directorate-General "Budget and Public Finances" of the Federal Ministry of Finance (see below).

No specifically dedicated administrative bodies have been created to serve the Better Regulation agenda. Because the reform approach at the federal level has been continuous and all-encompassing, the Austrian government points out that Better Regulation issues have been assigned over time to existing units (*e.g.* federal ministries, the Court of Audit, etc.), and no new organisational structure has been set up with that specific purpose. Special dedicated institutional arrangements have been established only in rare occasions, and until now only for a limited period of time. For instance, a minister for federalism and administrative reform was appointed from 1991 till 1994 and a ministry for public administration existed from 2000 till 2002. Even in those cases the then existing structures and their spheres of competence in the field of Better Regulation have not been altered significantly.

Table 2.1. Milestones in the development of Better Regulation institutions in Austria

1991-94	– Appointment of a Minister for federalism and administrative reform
1994	– Creation of State Courts of Audits at the <i>Länder</i> level
1998	– establishment of the Independent Administrative Tribunals in the States
2000-02	– establishment of a Ministry for public administration
2001	– appointment of the Federal Chief Information Officer (CIO) – establishment of the “ICT Board”
2003	– establishment of the Austrian Convention for the Constitutional reform
2005	– creation of the ICT Strategy Unit within the Federal Chancellery
2006	– setting up of the Unit “Reducing administrative burdens for businesses” the Federal Ministry of Finance
2007	– appointment of the expert group for the constitutional reform within the Federal Chancellery – creation of Ombudsoffices at the higher state courts

Key institutional players for Better Regulation policy

The executive centre of government

The Federal Chancellery

The Federal Chancellery (*Bundeskanzleramt*, BKA)¹⁵ is the body in the Federal Executive most involved in regulatory policy. Although there is no explicit, comprehensive federal Better Regulation policy or programme, the role of the BKA is central, as its portfolio combines tasks that in many other European countries pertain on the one hand to the Prime Minister’s office and on the other hand to the Ministry of Justice.

The BKA is the leading office of the government and at the same time a “normal” ministry with its own legislative tasks. Particular areas of responsibility *inter alia* are Co-ordination of the European Council, public administration, general IT policy, OECD-co-ordination, bio-ethics, data protection and media policy (with the exception of judicial media law and ethnic group matters). At the same time, the Chancellery is responsible for co-ordination of overall government policy.

The Chancellery’s Constitutional Service

Within the BKA, the Constitutional Service (*Verfassungsdienst*) takes a central function in securing regulatory quality at the federal level. The Service is required to be consulted on every draft proposal. Its tasks include overseeing the compliance of regulatory drafts with national constitutional law, European law and regulatory policies and also securing the clarity, comprehensibility and coherence of regulation – in conformity with the regulatory guidelines.

The Service prepares circulars (*Rundschreiben*) for adoption by the government that are then addressed to ministries. These non binding circulars include guidelines about consultation standards and legal drafting. The development of of new general regulatory policies and legislative guidelines,

the form and content of the introductory remarks (*Vorblatt*) and the explanatory remarks of a draft bill are also tasks of the Constitutional Service.

The Constitutional Service plays also a central role regarding the regulatory oversight of *Länder* legislation.¹⁶

The line ministries

The Federal Ministry of Finance provides consultation comments on important legislative proposals on distributive and redistributive policies. The Ministry is responsible for validating and agreeing on budgetary consequences of new regulations and projects. Furthermore, the Ministry is explicitly responsible for the co-ordination of reduction of administrative burdens for citizens. It supervises the SCM process of the initiative and monitors the *ex ante* calculations. It houses the unit “Reducing administrative burdens for businesses” responsible for overseeing the strategy.

The Ministry of Economy, Family and Youth is in charge of all measures related to the promotion of business and competitiveness. It also has a strong link to and therefore an excellent overview of EU-activities concerning Better Regulation due to its inner-austrian responsibility for the EU-Competitiveness Council.

The Ministry of Justice does not perform the typical tasks of most of its counterparts in other European countries. One important area of activity of the Ministry is the preparation of legislative acts in the field of civil and penal law.¹⁷ In addition, the Ministry secures the independence of the jurisprudence, and is responsible for international co-operation. The Presidential Section within the Ministry is responsible for co-ordination, internal revision, public relations, information technology and administration. Among other sections there is one for administrative and personnel affairs and one for “European integration”.

As a generalisation, each federal ministry is responsible for the implementation of those initiatives which fall within its field of duty.

Institutional support for e-Government strategy

The long-standing efforts to enhance e-Government practices at the federal level have led to a certain institutionalisation of the roles and responsibilities. The overall responsibility for Austria’s e-Government strategy lies with the State Secretary in the Federal Chancellery. The State Secretary is also responsible for media policy and co-ordination. He/she is supported by various co-ordination bodies as well as administrative units within the Chancellery, such as the ICT Strategy Unit responsible for the co-ordination of all federal ministries (see Box 3.2).

Box 2.3. Institutional support for e-Government strategies in the public administration

The platform “Digital Austria”

The platform “Digital Austria” (*Digitales Österreich*)¹⁸ is the central government strategic and co-ordination instrument for e-Government all levels of government. It pools together the former “e-Government Platform” set up in 2003 as part of the “e-Government Initiative” and the “ICT Board” created in 2001. The main tasks of the Platform are strategic decision-making, priority setting regarding the implementation of common e-Government projects, their co-ordination and monitoring and the communication of these activities.

The Platform is headed by the Chief Information Officer. It is supported by the ICT Strategy Unit based in the Federal Chancellery and a public relations officer. It is comprised of representatives of the federal government, regions, cities, municipalities, private and public sector bodies. At the political level,

the platform meets twice a year.

The Platform provides the operational umbrella for various task forces already active under the former federal ICT Board and the e-Co-operation Board,¹⁹ as well as for specific thematic working groups. The participation to all these groups is open to representatives of all levels of government.

The Federal Chief Information Officer

Since 2001, the Federal Chief Information Officer (CIO) advises the federal government at strategic and technical level; supports the formulation of its e-Government policies; chairs the Platform Digital Austria; and is responsible for its implementation. The CIO promotes Austrian e-Government solutions at the European and international levels. The CIO regularly reports to the competent State Secretary on ongoing activities.

The ICT Strategy Unit

This Unit is integral part of the Federal Chancellery since 2005. It consolidates the Operative Unit originally created to support the CIO and the former ICT Board. The Unit is responsible at the federal level for legal and organisational issues related to ICT; co-ordination of technical infrastructure; programme and project management; budget controlling and procurement; and international issues in the area of e-Government and security.

Operational responsibility, implementation, and support

The different line ministries and agencies assume responsibility for their own projects. Each federal ministry has a chief information officer.

The Federal Data Processing Centre (*Bundesrechenzentrum*, BRZ)²⁰ is a state-owned company that operates a number of government-wide e-Government systems, including the HELP portal.

The e-Government Innovation Centre (*e-Government Innovations Zentrum*, EGIZ)²¹ is a group of researchers that investigates innovative technologies and solutions for e-Government. It was established in 2005 and collaborates closely with the ICT Strategy Unit.

Founded in 1999 by the Federal Ministry of Finance, the Austrian National Bank, and the Technical University of Graz, the Secure Information Technology Centre (A-SIT)²² is an independent non-profit association whose mandate is the development of expertise in the area of technical information security to serve authorities, economy and citizens.

Multi-level co-ordination

Senior representatives of the state and local governments participate in the Platform Digital Austria for the elaboration of strategic developments of the e-Government policy in Austria. Furthermore, the Platform supports the elaboration, monitoring and implementation of horizontal e-Government roadmaps across all layers of government.²³ It is assisted by an e-Government Working Group of the federal, state and local authorities.²⁴

The open participation enables federal administration, the *Länder*, the Austrian Association of Cities and Towns and the Austrian Association of Municipalities to develop joint solutions for legal, technical and organisational issues.

Source: e-Practice, e-Government Factsheets. Austria, Edition 12.0, July 2009.

Co-ordination across central government

The competences of the federal ministries are laid down in the Federal Ministries Act 1986 – BMG.²⁵ Part 1 of the Appendix to this Law enumerates the competences for each ministry in a detailed and exhaustive manner. The Legal Service of the Federal Chancellery is responsible for the interpretation of this law and thus decides – if necessary – questions relating to the sphere of competence of the ministries concerned.

- If a business involves matters of the powers of more than one Federal Ministry, the Federal Ministries involved shall determine by mutual agreement which powers of which Federal Ministry are primarily affected by the business to be performed. This Federal Ministry will be in charge of performing the business. If the Federal Ministries involved are unable to agree within an adequate period of time which Federal Ministry will be in charge, such issue shall, upon request of one of the Federal Ministries involved, be decided by the Federal Government (see § 5 (1) Z 1 together with § 5 (2) of the Federal Ministries Act).
- If a business involves matters of the powers of one particular Federal Ministry (the Federal Ministry in charge of the matter), however touching also matters in the powers of one or more than one other Federal Ministry (Federal Ministries involved), the Federal Ministry in charge shall give the Federal Ministry (Ministries) involved opportunity for comments within an adequate term to be determined. If, however, the business to be performed by the Federal Ministry in charge requires actions in areas of the authority of a Federal Ministry involved, the Federal Ministry in charge shall proceed by mutual agreement with the Federal Ministry involved. If such agreement is not reached within an adequate term or if agreement is expressly refused, both the Federal Ministry in charge as well as the one involved – with which agreement is to be reached – may submit the matter to the Federal Government (see § 5 (1) Z 2 together with § 5 (3) of the Federal Ministries Act).
- Irrespective of the above said, the Federal Ministries shall keep the Federal Chancellery informed in due course on the progress in performing “common” business. In performing business within the scope of the subject matters assigned in accordance with the appendix to the Federal Ministries Act, the Federal Chancellery shall take such information into account (see § 6 of the federal Ministries Act).

This general system applies to all matters of federal policy (development of policies and preparation of legislation). As regards specifically the area of Better Regulation (which as a matter, is not explicitly mentioned in the appendix to the Federal Ministries Act), the Federal Chancellery – due to its competence for all matters of general government policy – is primarily concerned but has to co-ordinate with all other ministries when developing horizontal Better Regulation policies and more specifically with the Ministry of Finance (which is responsible for the administrative burden programme for companies) and the ministry for economy, family and youth (which is responsible for example for competition matters). For example, the Federal Ministry of Economy, Family and Youth holds an important co-ordination function concerning the Austrian preparation of the EU Competitiveness Council (this council consists of the parts Internal Market / Industry and Research), together with the Federal Ministry of Science and Research (which is responsible for the Council’s Research part).

Better Regulation and regulatory agencies

A general policy or framework for the design, functions and powers of agencies at the federal level takes the shape of the des-incorporation guidelines of 1992 (*Ausgliederungsrichtlinien 1992*).²⁶ There is a legal distinction (*i.e.* legal quality) between des-incorporated bodies: They are either privatised under civil law (usually as close-to-state enterprises or GesmbH) or des-incorporated as a regulatory authority. In Austria, there are mainly two different types of des-incorporated (*ausgegliedert*) bodies:

- Corporations (usually 100% state-owned).
- Regulatory authorities (*Regulierungsbehörden*).

Subordinate bodies (*Nachgeordnete Dienststellen*) are not separate legal entities. They form part of the respective ministry. As a rule, the Better Regulation policy and programmes set by the federal executive apply also to the agencies. Regulatory quality, however, is not an explicit part of any mechanism to evaluate the performance of the agencies or for assessing ministerial performance. Generally, all agencies operate under the following principles: transparency, minimisation of administrative burdens of their clients, annual reporting, consultation with stakeholders, process and quality management, and responsible interaction with their parent ministry. Depending on their specific role and structure, however, some of the agencies at the federal level also develop their own regulatory policy features.

An example of such initiatives are the “Principles for Writing Guidelines” that the Accreditation Council (*Akkreditierungsrat*) of the Federal Ministry of Science and Research has autonomously developed for its own internal procedures. Also the Austrian Research Promotion Agency (FFG), which is linked to both the Federal Ministry of Transport, Innovation and Technology and the Ministry of Economy, Family and Youth, has developed a relatively autonomous Better Regulation agenda, primarily focused on process quality management and assurance. This is shared by FFG’s parent agency whose agenda is aimed at better co-ordination of programmes, simplification and a more conclusive division of responsibilities between the ministry and the agency. A first set of indicators (*e.g.* time to contract) has been established in order to measure FFG’s performance.

In autumn 2009, the *Austria Wirtschaftsservice Gesellschaft GmbH* (AWS) and the FFG have carried out a special project on “Better Regulation in the subsidy area” in close co-operation with the Ministry of Economy, Family and Youth, with the aim of optimising the funding processes. The scope of their activities is nonetheless limited to administrative aspects, since neither the AWS nor the FFG have regulatory powers.

Better Regulation and the legislature

The parliament plays a partial role in regulatory policies. It maintains a website listing initiated legislative procedures and ongoing consultations, thereby contributing significantly to communication and consultation practices at the federal level. Moreover, the legislature has a formal role in the “e-Law” process and its involvement and contribution might be seen implicitly as a contribution to legal quality.

Overall, however, parliament’s role regarding regulatory reform is general and probably marginal. Overall political support for Better Regulation is modest. There is no specific role for the legislature in Better Regulation apart from the usual parliamentary debate on and parliamentary scrutiny of legislative proposals. Discussions on regulatory reforms are often promoted by individual

initiatives of MPs. There is no parliamentary committee or other internal body specialising in Better Regulation. However, the Court of Audit Committee that discusses the reports of the Court of Audit and the Ombudsman Board Committee that reviews the annual report of the Ombudsman are concerned with proposals for Better Regulation and do occasionally include them in their specific reports to the plenary.

There are also procedural challenges that hinder a sustained focus of the parliament on specific elements of regulatory reform. The majority of legislative proposals and government reports are only discussed once in a committee of the National Council, as committees do not convene on a regular basis. This allows only for the discussion and scrutiny of selected topics and will mostly be restricted to general political statements. The plenary debate and voting on the proposal very often follow within one to four weeks. Even if a committee decides to have an expert hearing on a legislative proposal, this will usually be followed by voting in the next meeting of the committee – which is usually held two or three days later. This time-span does not normally allow changes to the proposal according to experts' suggestions.

Since the mid-1990s, there have been several proposals by legal scholars, judges of the Constitutional Court and Presidents of the National Council to improve the quality of legislative proposals and assign specific roles to parliament.²⁷ They have especially focussed on the right of five MPs to start a legislative proposal or to move significant amendments of a legislative proposal in the second reading. Also, they have called for parliament to devote more time to discussion, especially when amendments are tabled. The criticism is that instruments can be used by the opposition to frustrate the government, and by the government to avoid public consultation procedures. It may moreover occur that legislative proposals are significantly changed without the possibility for further scrutiny by the government. Under these conditions, efforts for Better Regulation that precede parliamentary debate can be undermined. Such cases are, however, very seldom, as normally parliamentary amendments are drafted by the responsible civil servants of the lead federal ministry, and only formally introduced by MPs (due to the legal requirements of the constitutionally fixed legislative procedure).

This practice holds several challenges for the parliamentary administration that has to prepare voting and consolidate legal texts in the process of e-legislation.²⁸ There have been a number of proposals for reform within the parliamentary administration to assist in Better Regulation efforts during parliamentary procedures. However, nothing has been realised so far.

Better Regulation and the judiciary

Constitutional review refers to a court's power to enforce the Constitution. In Austria that function is carried out by the Constitutional Court.²⁹ The various powers include the decision on conflicts of jurisdiction, the decision on certain pecuniary claims (*e.g.* financial equalisation disputes), the control of elections and the decision on the (constitutional and penal) responsibility of high state officials (impeachment trial).³⁰ The Constitutional Court is the only court authorised to examine norms (laws, regulations), re-enactments of laws and state treaties. The civil and penal courts are not entitled to examine the validity of duly published regulations, nor promulgations of the re-notification of an act or treaty. Should a court have scruples against the application of a regulation on the ground of it being contrary to law, it shall file an application with the Constitutional Court for rescission/annulment of this regulation. Should the Supreme Court or a court of second instance competent to give judgment have scruples against the application of a law (statute) on the ground of its being unconstitutional, it shall file an application with the Constitutional Court for rescission/annulment of this law.³¹

Box 2.4. Core jurisdictions of the Constitutional Court

- Special administrative jurisdiction (*Sonderverwaltungsgerichtsbarkeit*), leading to *ex post* review complaints against decrees/decisions made by administrative authorities, only possible after all other stages of appeal have been exhausted.³² The complainant has to allege either the violation of constitutionally guaranteed rights or the violation of his rights by application of an unconstitutional statute, an unlawful regulation or also an unconstitutional/unlawful international treaty.³³ In the latter case the Court examines whether the impugned norm was in fact applied and a basis of the attacked decree/decision. If the Court shares the complainant's doubts about the respective norm or raises other doubts, it has to discontinue the proceedings and to start an *ex officio* review of the norm in question.³⁴ These complaints are by far the majority of the cases brought to the Court (this used to be for a long time 2500 cases per year on average – since 2008 the caseload has been more than doubled due to the exclusive and special complaints in asylum matters pursuant to Art. 144a B-VG).
- Review of norms (*Normprüfung*), *i.e.* the examination of regulations, re-enactments of laws, the laws themselves and state treaties. The Court decides on the conformity of federal or state (*Land*) laws with the Constitution.³⁵ If a norm is found to be unconstitutional, the Constitutional Court repeals it.³⁶ The Court may annul an entire statute (entire regulation) or parts of it; in this respect the Court is bound to the application starting the review procedure. Only in the rare case that a norm was issued by a legislator/administrative authority which lacked the power to do so or that a norm was illegally published or that a regulation was not at all covered by law the Court annuls the norm as a whole. The annulment of a statute becomes effective from the day of its publication in the respective Law Gazette unless the Court fixes a term which must not exceed 18 months.
- Conflict of jurisdiction (*Kompetenzkonflikt*), necessitating a clarification on whether a certain matter is to be dealt with by the Federation or by a state (*Land*) or if such a conflict arises among the *Länder*. The Court adjudicates jurisdictional conflicts between courts and administrative authorities, between regular courts and the Asylum Court or the Administrative Court, between the Asylum Court and the Administrative Court and the Constitutional Court itself and all other courts. In addition the Court decides on disputes regarding the extent of the review powers of the Audit Office and the Ombudsman's office.³⁷

Source: Response of the Austrian Government to the OECD questionnaire.

A particular feature of the system is that a bill can be reviewed before enactment if it is unclear whether an act of legislation or administration is a matter of the Federation or a *Land* (Art. 138.2). This has for instance happened in the field of environmental protection. The legal axiom being published in the official law gazette has the status of constitutional law itself (interpretation of the Constitution's provisions distributing the powers).

The Constitutional Court nonetheless only rarely deals with cases of jurisdictional conflicts between the *Länder* and the federal level. The highest numbers of cases are complaints procedures, when the Constitutional Court adjudicates on the decisions of the administrative authority of last instance. The highest number of cases (2 000-3 000 per year) concerns these complaints. Complaints alleging the application of an illegal norm give often reason to start an *ex officio* review of the challenged norms. Such an *ex officio* review of a statute or a regulation ends mostly with the norm's annulment.

Originally, the Administrative Court exercised sole legal control over the entire public administration. In 1998, the Independent Administrative Tribunals in the States (*unabhängige Verwaltungssenate in den Ländern*, UVS) were established to perform the same function. These tribunals are administrative authorities but enjoy a status similar to that of courts.

The administrative review is centralised in a single Administrative Court. The Austrian model restricts the Administrative Court's powers of review to specific types of administrative acts, generally to the review "rulings" (*Bescheide*) and in very rare cases "instructions". Probably the most important function of the Administrative Court is to pronounce on complaints that allege illegality of rulings by administrative authorities (*Bescheidbeschwerde*). In such complaints, a person alleges an infringement of his substantive rights by an illegal ruling.

Other important players

The Court of Audits

Since 1791, the Court of Audits (*Rechnungshof*)³⁸ has been the highest independent body for public finances control in Austria. Its task is to audit the administration with regard to legality, efficiency, effectiveness and proper use of resources. The Court exercises its control function for the National Council, the subnational parliaments and the municipal councils. The audits are exercised according to the principles of austerity, efficiency, expediency, correctness and legality. It roughly exercises 110 audits per year, 10% of these are special reviews on particular topics. The mandate encompasses the federal, provincial and local authorities as well as the conduct of all foundations, funds and institutions, which are publicly administered.³⁹ The Court is headed by a president elected for a 12-year term (not renewable) by the National Council and does not take instructions from any other body.

Besides its audit functions, the Court *inter alia* examines specific legislative proposals with particular regard to avoidable consequential costs, paying attention to the efficiency of implementation (this specific role is unusual in Europe). The Court is a regular active stakeholder in consultation and *ex post* evaluation practices (see below).

In addition, it plays an important role in promoting regulatory and administrative reform in Austria. Its contributions to the debate were first published in 2007 and included 206 proposals for reform (152 addressed to the Federation, and 54 to the *Länder*). The main goal was to raise the awareness of the necessity for structural reforms in order to ensure a sustainable and efficient allocation of public resources, notably in the areas of health, education and social policy. Most recently, the Court's position has been updated and a further 315 recommendations were published in its *Positionen, Reihe 2009/1*.⁴⁰

At the *Länder* level, nine State Courts of Auditors exist. They have been established since 1994. While the National Court of Audits can take up issues of both levels of government, the mandate of the *Länder* courts is restricted to each *Land*, and they are accountable to the respective *Landtag*. The *Länder* courts sometimes also exercise joint audits. According to the constitution, their assessment criteria correspond to those of the National Court of Audit: efficiency, effectiveness and new public management aspects. In some cases, the courts have assessed broader impacts of legislative proposals. In Upper Austria, for instance, the State Court of Audits assessed the impact of certain agricultural sector legislation on farmers.

Resources and training

Resources

Overall estimates of how many officials are directly/ indirectly involved in Better Regulation co-ordination and management are not available. Four officials are reported working part-time in the core Better Regulation team of the Constitutional Service of the Federal Chancellery. In the Federal Ministry of Economy, Family and Youth, one person is part-time responsible for the co-ordination of

Better Regulation in the EU context (Competitiveness Council). A further person works in the Permanent Representation of Austria in Brussels. In the Federal Ministry of Defence and Sports, twelve legal experts deal with legislation issues in two legislation divisions (intra-ministerial and extra-ministerial legislation) and are therefore involved in Better Regulation issues. One of these legal experts participated directly in the process of reducing administrative costs for enterprises.

Seven people staff the Unit in the Ministry of Finance are responsible for work on the admin burden reduction programme for businesses, the admin burden programme for citizens, the government business portal and the preparations for the new impact assessment regime. The Legal Department of the Ministry of Economy, Family and Youth is responsible for co-ordination of administrative burden reduction within the competences of the Ministry. The department is assisted by one person in each general directorate.⁴¹

Training

Participation in training depends on application and approval by the relevant superior. Officials can participate in seminars organised by the *Verwaltungsakademie des Bundes*.⁴² This is a part of federal administration. Organisationally under the Federal Chancellery, the academy is formerly a separate public-law institution. It offers training for civil servants of all levels of government and the municipalities. The diffusion of written guidance materials is considered an important channel for training. All guidelines and *Rundschreiben* of the Constitutional Service of the Federal Chancellery are available on the Internet. A special library also exists in the Ministry of Economy, Family and Youth (*Cluster-Bibliothek*).

Part of the training covers Better regulation related topics. Examples of such training are the seminars on “Transposing EU-law into national law”, and the “Workshops Better Regulation”. In some ministries, special in-house seminars take place on selected topics (such as public procurement law in the Federal Ministry of Economy, Family and Youth) – but not on Better Regulation principles in general, or RIA. Since 2006, the Federal Ministry of Finance has offered training of policy officers/legal officials. The seminars cover the application of the SCM methodology for *ex ante* measurements; the use of IT support tools; and guided trainings on practical examples. The Ministry also provides continuous support on methodological questions. Other ministries may not provide specific training on development of regulations, but the legal experts involved in legislation can participate in the seminars by the *Verwaltungsakademie*. Such is the case for example, of the Federal Ministry of Defence and Sports.

Apart from the civil service’s basic education, training in EU matters is restricted to the officials in the ministries concerned with this topic. A specific “EU curriculum” can be voluntarily followed by officials having an interest in that dimension. The review team was reported a general lack of resources and time for dealing with EU matters. Training (general and special courses) on EC law are provided to the judiciary. Training is provided for the auditors (National auditors and other staff members may also join these training sessions). A one-day training course has been provided to officials on the application of the climate impact assessment test. The review team was told by some interviewees that there is a lack of resources for training. Training is sometimes done on the own initiative of employees.

From August 2007 until June 2009, half-day training sessions on *ex ante* measurement of administrative burden was provided by the Ministry of Finance to more than 200 public officials. Written support on the “Reducing Administrative Burdens for Business” programme is provided in SCM guidelines, a SCM handbook, and guidelines by the Federal Chancellery on the formal integration in the drafting process and on the programme’s website.⁴³ Since September 2009, an

improved IT tool (administrative burden calculator) can be used to simplify the calculation of administrative cost, provide edit masks and automatically generate text blocks for the legal materials.

Notes

1. See: *Bundesministeriengesetz*, Part 2A 5b.
2. State secretaries can be appointed for political support and for representation in parliament or at European level.
3. See: Art. 20 (1) first sentence of the Federal Constitution: "Under the direction of the highest authorities of the Federation and the *Länder* elected functionaries, appointed professional functionaries or contractually appointed functionaries conduct the administration in accordance with the provisions of the laws."
4. For further information, see: www.parlament.gv.at/EN/AP/Inhalt_Portal.shtml (last accessed 6 April 2010).
5. The Federal President may empower the federal government or the competent members of the federal government to conclude particular categories of international treaties which are neither political nor amend or supplement the legislation.
6. The Federal President is bound to act on a proposal by the Federal Government for the appointment of the President, the Vice-President and six other members. The appointment of the other six Supreme Court judges is based on proposals from the National Council or the Federal Council (three members each).
7. For decisions by the full court to be valid, the presence of the President and at least eight voting members is required. In certain cases, the quorum may consist only of the President and four voting.
8. Cfr. www.vfgh.gv.at/cms/vfgh-site/vfgh/organisation.html (last accessed 9 December 2009).
9. Each of panel comprises five judges. In administrative penal cases, for decisions about procedural requirements and in simple cases, the panel may be composed of three members. If a decision involves a departure from case law to date, or if the legal issue to be settled is not answered in a consistent way in the existing case law of the Administrative Court, the five member panel is reinforced by another four members ("reinforced panel").
10. The spin-off process began in 1969 with the disincorporation of the government owned Postal Savings Bank and currently includes around 100 companies and institutions following the disincorporation of the postal service, museums and theatres, employments offices, banking supervisory authorities, all universities and many other government establishments.
11. See: Art. 20 of the Federal Constitutional Law.

12. See: www.bundeskanzleramt.at/DocView.axd?CobId=1659 (last accessed 10 December 2009).
13. See: www.konvent.gv.at/K/EN/Welcome_Portal.shtml (last accessed 13 December 2009).
14. See: FLG I 2/2008.
15. See: www.bka.gv.at/site/3356/default.aspx (last accessed 24 November 2009).
16. According to Art. 98 of the Austria Constitutional Law, all diet enactments shall immediately after they have been passed by a diet be notified by the Governor to the Federal Chancellery prior to their publication.
17. In particular, family law, inheritance law, contract law, company law, copyright, different aspects of procedural law, penal law, penal system and parts of media law.
18. See: www.digitales.oesterreich.gv.at/site/6497/Default.aspx (last accessed 9 December 2009).
19. The former served as a catalyst for co-operation between all the ministries, the latter was charged with the interface with the *Länder* and the municipalities.
20. See: www.brz.gv.at/Portal.Node/public (last accessed 9 December 2009).
21. See: www.egiz.gv.at (last accessed 9 December 2009).
22. See: www.a-sit.at/ (last accessed 9 December 2009).
23. See: e-Practice, *e-Government Factsheets. Austria*, Edition 12.0 July 2009, p.18.
24. See: <http://reference.e-Government.gv.at/> (last accessed 9 December 2009).
25. See: www.ris.bka.gv.at/Dokument.wxe?Abfrage=Erv&Dokumentnummer=ERV_1986_76 for the English version.
26. See: www.bundeskanzleramt.at/DocView.axd?CobId=1659 (last accessed 6 April 2010).
27. Cfr. Karl Korinek (1999), “Die Qualität der Gesetze – staatsrechtliche und legistische Verantwortlichkeiten im Gesetzgebungsprozess” in Michael Holoubek/Georg Lienbacher (eds.), *Rechtspolitik der Zukunft – Zukunft der Rechtspolitik*, Springer, Wien-New York, p. 21; Michael Spindelegger, the Vice-President of the National Council 2006-08 presented several proposals in February 2008, see *Der Standard*, 2 February 2008, p. 8. Heinz Fischer, long-time President of the National Council and Federal President since 2004 has initiated several discussions on this topic during his presidency of the National Council and only recently called for the earlier involvement of the Constitutional Court in the legislative process, see his opening speech of the 50th *Österreichischer Juristentag*, 6 May 2009, www.hofburg.at.
28. The parliamentary administration is perceived as being rather small, with roughly one officer per MP. The Parliamentary Head Office (*Parlamentsdirektion*) is responsible for supporting the national legislative organs and the Austrian parliamentarians of the European Parliament. The

- Office acts under the leadership of the president of the National Council, and consists of about 380 staff. Their main tasks are the assistance and documentation of the committee and plenary sessions, the provision of technical infrastructure and organisation and scientific research support. See: www.parlament.gv.at/SK/PD/Inhaltsverzeichnis_Portal.shtml (last accessed 9 December 2009).
29. See: www.vfgh.gv.at. An overview of the powers of the Court can be found at: www.vfgh.gv.at/cms/vfgh-site/english/jurisdiction1.html (last accessed 23 November 2009).
 30. Procedural regulations can be found in particular in the second part of the Constitutional Court Law (§§ 36a – 93 VfGG).
 31. See: Art. 89 Para. 2 of the Federal Constitutional Law.
 32. See: Art. 144 B-VG.
 33. See: Art. 144 B-VG; since 2008: Art. 144a: complaints against decisions of the Asylum Court may be brought to the CC only.
 34. Pursuant to Art. 139 or Art. 140 B-VG.
 35. See: Art. 139-140a B-VG.
 36. According to the jurisprudence of the Austrian Constitutional Court, the latter can also annul Austrian legal provisions as unconstitutional if such provisions are merely comprehensible for individuals who have a preference for solving riddles (see VfSlg. 12.420/1990, *Denksport-Erkenntnis*).
 37. See: Art. 138, 126a and 148f B-VG.
 38. See: www.rechnungshof.gv.at (last accessed 23 November 2009).
 39. Furthermore, the Court audits the conduct of enterprises run by these three levels of government alone or together with other legal entities subject to auditing, and in which, alone or together with the aforementioned legal entities, they hold at least 50% of the equity capital. It also audits the National Broadcasting Company (ORF) and the social insurance funds (*Sozialversicherungsfonds*).
 40. See: www.rechnungshof.gv.at/berichte/positionen/positionen/detail/vorschlaege-des-rechnungshofes-zur-verwaltungsreform-und-zum-buerokratieabbau.html (last accessed 25 November 2009).
 41. The figures mentioned above stem from the official questionnaire responses from the Austrian government.
 42. See: www.bka.gv.at/site/3493/default.aspx (last accessed 23 November 2009).
 43. See: www.verwaltungskostenken.at/English/_start.htm.

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).¹

Assessment and recommendations

Public consultation on regulations

Austria's public consultation approach is structured around formal and informal institutional relationships (including not least with the social partner) and the individual practices of ministries. The approach is robust in many respects, as the institutionalised relationships cover a wide range of relevant interests, and there is evidence of specific good practices. Some ministries for example, put consultation results on their websites. The consultation process has a pre-consultation phase, and an official consultation phase. There is no administration wide forward legislative plan to use as a practical starting point for citizen engagement. In the first phase the competent federal ministries are responsible for commencing the development of regulations, including initiating contact with colleagues in other ministries as well as with relevant stakeholders including the Social Partners, the *Länder* and the Court of Audit. This part of the consultation exercise is not public, but depending on the political salience of the issue, Ministries may use the internet or mass media to inform the public. The subsequent official consultation phase involves the circulation of a draft bill. It is understood that this should occur for a minimum of six weeks, but in practice this may vary from two weeks to six months. Administrative requirements exist for consultation with the Court of Audit, the Social Partners and the legal service of the Federal Chancellery.

Austria's aim for its consultation practices should be to enhance transparency in the regulatory environment in order to ensure that all relevant aspects and interests have been taken into account, and to improve the quality of regulation. Effective public consultation has systemic benefits including improving the evidence basis for regulation and promoting legitimacy and trust. Citizen engagement is an important part of improving the design of rules and promoting acceptance of and compliance with rules. However, increased public participation can also present political challenges and mean additional administrative delay to the legislative process. It therefore requires careful planning and preparation. It also usually requires culture change to be successfully integrated within the administration. The development of a policy on public consultation supported by clear guidance documents can assist in promoting a commitment to citizen engagement within the administration. It clearly expresses the government's expectation that civil servants will engage the public and also provides valuable technical guidance to public officials on how to design effective public consultation and integrate the views of the public.

The approach is largely dependent on formal and informal relationships with the social partners, which can raise issues of exclusion. Of itself the emphasis on consultation with the Social Partners is not necessarily detrimental to the development of good policy. The Social Partners can together claim membership representative of the majority of Austrian citizenry. The role of Social Partners at the pre-consultation stage is important for ensuring that representative views are taken into account in the development of regulations. But care is needed not to block out other interests. There is a risk that consultation processes do not provide opportunities to account for the views of all citizens, and may not pick up innovative perspectives. An effective system of public consultation must be able to assure the public that there is an opportunity for their views to be heard and considered outside the institutional relationships. The main challenge here appears to be to develop a systemic approach to facilitate early and open participation of citizens and other groups in policy development. The public notification of a forward plan of regulation can be beneficial in broadening awareness of forthcoming policy issues that members of the public may have an interest in (this is linked to forward planning which is addressed in Chapter 4).

Another key issue is how to ensure that there is consistent use of good practice across the administration. Although some ministries appear to be at the forefront of good practice, there are concerns that the conclusions drawn through consultation are not routinely made available to stakeholders. There is a demand for feedback about the results of consultation, in particular to understand how the information has been used, including from the Social Partners. In this respect it appears that binding guidelines are required to give a clear direction to ministries as to what approaches should be followed. Apart from selected specific requirements there are no administration wide binding guidelines for public consultation. General standards have been developed but these have not been translated into enforceable formal requirements on institutions. Under the auspices of an inter-ministerial committee, *Standards for Public Consultation* applying to policies and programmes were developed. These were "noted" by the Council of Ministers in 2008, but regulatory bodies are not obliged to follow them. As a result they tend to vary among institutions and could be improved through the establishment of more formalised arrangements applying across government. There are no committees in the parliament specialised on Better Regulation to make an assessment of whether consultation processes are being followed.

To be effective, guidelines need to be collectively agreed, and provisions made for monitoring and enforcement. The Federal Chancellery appears best placed to follow up on this as it already maintains and publishes a list of stakeholders that could be consulted in the preparation of rules. Current guidance, so far as it exists, extends to consultation on EU related matters. This should continue so as to ensure that the public administration is aware of procedures to be followed.

Austria's success in integrating its administrative procedures for rule-making with IT systems through the legal information system could be extended to public consultation. The spread of good practice can be encouraged by the use of IT tools. There appears to be considerable potential to make use of existing systems, to expand public access to early information about policy proposals. For example, other OECD countries have developed single consultation portals which enable government agencies to post notice of all forthcoming regulatory/policy initiatives at the one site including links to related background materials. This single portal approach reduces the transaction costs for government, business and citizens and can become the primary site for soliciting comment from all interested parties including citizens and organised groups. A portal of this type can also be used to manage the effective targeting of consultation to interested persons by allowing them to self select to be automatically notified when an issue falling within a category that interests them arises.

Recommendation 3.1. Draw up and adopt (through the Council of Ministers) comprehensive guidelines on public consultation, to set minimum good-practice requirements on ministries in the development of new regulations. These guidelines should address planning, timing and methods of consultation as well as feedback to stakeholders on. Minimum requirements should also include publication of a summary of the results of consultation, and making this summary a part of the explanatory memorandum attached to a proposed bill. The guidelines should continue to address consultation on EU related matters.

Recommendation 3.2. Establish how the guidelines will be promoted, monitored and enforced. Consider putting the Federal Chancellery in charge, including giving it the authority to return a draft regulatory proposal to the ministry if the minimum requirements have not been followed.

Recommendation 3.3. Expand the use of existing IT systems in the preparation of regulation including a clear link between public consultation and the drafting process. Develop a single consultation portal for use by all ministries to enhance citizen participation in the legislative process.

Recommendation 3.4. Ensure that all related policy materials, including all guidelines and instructions that may be required by a civil servant preparing draft legislation, are available electronically from a central repository linked to the e-Law system (or the new consultation portal – the portal should be accessible from outside the public administration, but the facility could provide that material that is relevant only to officials is able to be accessed separately).

Public communication on regulations

There are effective channels for the communication of regulations using electronic databases. The parliament plays an innovative role in promoting awareness of changes in the law. Austrian parliamentary practices involve the publication of material relating to all laws under consideration, including comments received from the public and interest groups. This is a good example of

parliament taking the initiative to communicate with the public about regulation. However, it is more of a communication than a consultation facility, as it remains the responsibilities of the Ministries to use the information collected by the parliament to influence the scope of legislative proposals. The requirement that all regulations have to be published on the Legal Information System of the republic of Austria (RIS) to have binding effect is a good example of using legal procedural requirements to ensure that the body of law is up to date, transparent and accessible to the public.

Background

Public consultation on regulations

Policy on public consultation by the Federal Executive

At federal level public consultation is not mandatory. Consultation procedures are sometimes regulated in specific statutes but there are no general legal provisions regulating public consultation.

The Austrian government reports that at federal-level “consultation is not mandatory but regularly used for government bodies and Social Partners between each other. Specialised agencies may also be asked for their opinion if a specific law foresees that. So far, public consultation procedures are only regulated in specific statutes and there are no general legal provisions regulating public consultation.”² The Federal Chancellery provides a non-binding consultation list of about 120 organisations. The Constitutional Service of the BKA has drawn up and maintains a “standard mailing list” of stakeholders which may be consulted. The list is mainly for administrative/technical purposes and facilitates the electronic mailing of draft regulations in the context of the federal electronic filing system (ELAK). Each lead ministerial department may choose from this list the relevant stakeholders it considers necessary to consult. It is left to the discretion of officials within the line ministries to use the list effectively and adjust it to their purposes.

In 1981, the National Council requested³ that the federal government lay down rules requiring every federal ministry to submit all draft laws and draft ordinances to the Court of Audits for comment. Through this the Court of Audit especially checks compliance with the requirement to present the financial impact of the draft bill.⁴ The Court also comments on the calculation of administrative burdens on business. The Court is also free to comment on its own initiative on draft legislation considered by the parliament.

Specialised agencies and the Social Partners may play a direct role in shaping public consultation. In some instances, their involvement is required by law (see Box 3.1).

Box 3.1. Mandatory consultation of Economic Chambers in Austria

A number of Austrian laws contain the right for specific stakeholders or institutions to participate in the consultation process. The mandatory “right to comment” of the Economic Chamber of Austria is consolidated in law. The public law on the Economic Chamber of 1998⁵ states that “proposed bills shall be submitted in advance to the respective Chambers concerned before they are introduced to the legislative body, permitting adequate time for comments. This rule is also applicable to drafts of subordinate legislation touching interests which the Economic Chamber organisations are to represent, (including) state treaties and agreements (...)”.

This means that the Austrian Federal Economic Chamber has to be consulted on each draft law at a federal level as well as most draft regulations. EU regulatory activity is also covered by the 1998 law: “The Federal Chamber shall be informed without delay on all proposals concerning new laws within the European Union and it shall especially be given the opportunity to comment on drafts of rules, regulations or recommendations of the European Union within adequate time”.

These provisions also apply to the subnational level, where the Economic Chamber of the relevant state has to be consulted. The time-span for reply is usually 8 weeks but often shorter. The content of the consultation is the draft law or regulation, as well as the related impact assessment. To this end, the Economic Chamber pays special attention to the declared impact of administrative burdens on enterprises according to the SCM approach.

Exchange of information is ensured in the process. The State Chambers submit their opinion directly, but must keep the Federal Chamber informed. In certain cases, they have to submit the opinion to the Federal Chamber, when this is formally in charge of the process.

Sometimes, an early informal consultation takes place, though this is not mandatory.

Source: Responses of the Austrian Government to the OECD questionnaire.

Beyond explicit legal provisions, the Austrian system has developed a particularly intense co-operation and interaction between the major economic and social interest groups, and between them and the government. The system of co-operation on economic and social issues, commonly referred to as “Social Partnership”, is a voluntary and informal arrangement not regulated by law. The social partnership does not deal only with industrial relations and collective labour and social agreements. It extends to practically all areas of economic and social policy, and has repercussions on the public consultation practices throughout the federal law-making process. For this reason, Austria is considered a typical example of corporatism, where formally recognised interest groups are represented comprehensively and involved extensively in decision-making (see Box 3.2).

Box 3.2. Austria’s Social Partnership

The development of corporatist features in the government-societal relationships have been essential for the reconstruction of Austria after the Second World War and have created the basis for further economic growth and social stability.

Austria’s “Social Partners” are the four largest representative organisations:

- *The Trade Union Federation (ÖGB)* is a non-partisan inter-branch interest representation for employed persons, with a membership of 1.2 million. Its most significant tasks relate to the representation of the employees’ interests in collective bargaining, the production of opinions on social and labour policy and codetermination;
- *The Federal Chamber of Commerce (Wirtschaftskammer Österreich)* is the federal level representative organisation of about 400 000 member enterprises. In the *Länder*, there are nine economic chambers, responsible for the direct member relations and subnational matters;
- *The Federal Chamber of Labour (Arbeiterkammer)* represents the interests of about three million employees. Consisting of a federal level peak organisation and nine subnational chambers, it covers the areas of employment, advanced training, qualification and socio-professional reintegration. It represents the employees as regards the topics of labour law, social law and consumer law. It is estimated that 90-95% of private-sector employees are covered by collective agreements; and
- *The Chamber of Agriculture (Landwirtschaftskammer Österreich)* represents the farming and rural interests of its members to the state and other professional associations. It also submits proposals and expert opinions to authorities, especially in draft legislation and regulations, and consultation with officials.

The essence of the social partnership is the commitment of these four interest groups to pursuing common long-term economic and social policy aims and their shared conviction that such aims are

better achieved through dialogue leading to co-operation and co-ordinated action than through open conflict.

These organisations are not merely interest groups in the narrow sense, but established institutions anchored in the political, social and economic system of the country. They are the leading representation organs of the economy and working life. Their representative basis is very wide. The ÖGB is organised as a registered society or association, whereas the three chamber organisations are self-administrating entities under public law with compulsory membership: it is obligatory to every enterprise to be a member of the Economic Chambers of Austria, and every worker has to be a member in the Chamber of Labour.

The aims and powers of the Social Partners are laid down in the Social Partnership Agreement of November 1992. With regard to legislation, they are included in all stages. They contribute to prompting regulatory initiatives, take part in pre-consultation rounds as well as in consultation in parliamentary committees and the plenum alike. Social partners play an important role in the implementation of regulation, as they are integrated in many committees, boards, advisory councils and commissions. At the individual level, the interface between them and the political realm is very porous. The executive boards of the chambers often included representatives of the government parties, who may also be members of parliament. Today, the position of the head of the chambers is no longer an MP but in former times even these positions were held by MPs.

Institutionally, a Parity Commission has been in place since 1957 gathering the top representatives of the Austrian government and the social partners. The Parity Commission is organised in four sub-committees: the Advisory Council for Economic and Social Affairs, the Sub-committee on International Issues, the Sub-committee on Wages, and the Sub-committee on Competition and Prices.

While the Commission originally dealt with price controls and inflation, today it also serves more as a platform for institutionalised dialogue and provides inputs for negotiation. The Advisory Council for Economic and Social Affairs for instance issues studies at the request of government or the social partners, and formulates unanimous recommendations.

The Social Partners are also present in the administrative domain. They are represented in numerous commissions, advisory boards and committees and thus exert influence in matters of, for example, the apprenticeship system, inspection of working conditions, issuance of certificates of origin, competition and anti-trust policy, labour market policy and public promotion and funding programmes.

In the domain of justice, the Social Partners nominate candidates to act as lay judges at labour courts and appoint assessors for the cartel court.

Source: Federal Chancellery (2006; 2007a); and motioned websites.

Based on the key political notion of “good governance”, Austria has promoted citizen involvement as an important element of modern policymaking and administration. Involvement helps build the citizens’ trust of political institutions, takes into account their interests and needs and substantially improves the quality of policymaking through innovative solutions. An inter-ministerial working group including representatives of interest groups, NGOs and experts drafted so-called “Standards for public participation” (*Standards der Öffentlichkeitsbeteiligung*).⁶ The working group was mandated by the Federal Chancellery and the Federal Ministry of Agriculture, Forestry, Environment and Water Management. The Standards were presented to the Council of Ministers, which “took note” of them in July 2008. As a result the standards are recommended to all federal and regional authorities involved in regulatory issues, but no legal obligation exists to follow them. Similarly, no sanctions exist if these standards are not obeyed. No formal monitoring mechanism exists but for 2010 the practice and use of the standard is scheduled to be evaluated. This was foreseen in an accompanying paper when the standards were presented to the Council of Ministers).

The standards compile best practices and give examples and supplement to regular consultation policy. They define notions such as “public participation” and the “public”, and provide indications of the intensity of involvement to be sought at various stages of the decision-making process. The standards are intended to apply to the adoption of policies, plans and programmes as well as general legal acts (laws and ordinances).

Consultation procedures and practices

The “pre-consultation” stage

Public consultation at the federal level usually follows along two distinct stages. It is not unusual that so-called “anticipated consultation rounds” (*Vorbegutungsverfahren*) take place on an informal basis. At this stage only the most central stakeholders (normally the social partners, the *Länder* and the Court of Audits), whose interests are going to be affected by the future law, are invited to talks by the line ministry. It was reported to the review team that the influence and pressure by the political class is relatively minor in these informal discussions. Quite the contrary, the bureaucratic initiative and autonomy was strong, with civil servants sometimes even second-guessing what kind of legislative proposal might be politically desirable.

Despite their informal and closed character, mass media and the public may be informed of such rounds, although only in the very political cases. The Federal Chancellery may also comment on proposals at this stage. A second pre-consultation round may be undertaken if many stakeholders are potentially concerned or where a politically contentious issue is at stake. In the case of the implementation of the EU Services Directive, discussions took place via e-mail some months before the official consultation commenced to sound out the different positions and prepare a first draft proposal.

In the field of profession law (*e.g. Wirtschaftstreuhand, Ingenieure, Ziviltechniker*), both for case and profession related issues, it is common practice to informally consult the relevant stakeholders (sometimes organised in legal committees within their chamber organisations) before the official consultation is launched. There is permanent contact with the authorities which implement the laws. So if any problems in implementation or new problems arise, the Federal Ministry of Economy, Family and Youth BMWFJ is given timely information and can react.

The consultation stage

The next step in the process is a more open and formalised consultation (*Begutungsverfahren*), in which a larger number of organisations are presented with the first draft of the new law (*Ministerialentwurf*) that came out of the pre-consultation process. The regulatory guidelines propose a standard consultation period of six weeks, but this may be extended if the regulatory proposal is very complicated or controversial, or it addresses a wide range of stakeholders. This has been the case for instance of the law implementing the EU Services Directive (so-called “Services Law”), whose consultation phase lasted at least eight weeks. Variations may cover a span from two weeks up to six months.⁷ On top of the organisations that have already been part of the pre-consultation process, a number of other actors are invited to voice their opinions. Although in most cases the core issues have already been addressed, sometimes the consultation process is seen as a second round of negotiations.

Each lead ministerial department usually puts its own regulatory proposals on its website. All regulatory proposals that are in the course of consultation are furthermore published on the website of the parliament (see below).

The civil servants responsible for drafting the proposal have full autonomy in assessing whether comments should be included in the draft law or not. For controversial issues, administrators may seek feedback from their minister. The extent to which comments are taken into account at this stage varies.⁸

Feedback and comments from consultation are considered by the lead ministry and integrated if appropriate when finalising the proposal for of the Council of Ministers decision. There are generally no obligations or rules about feedback and no special report is issued explaining why some of the contributions have been taken on board while other not. Feedback is normally provided informally to the stakeholders.

Prior to the submission of a draft bill to the government for decision, there is no central control of the quality of the consultations carried out. It is not expected that draft laws are returned for re-consideration if consultation has not been done correctly. On the other hand, some ministries have established a quality control unit formally checking *ex ante* (i.e. before the consultation starts) that the proposed consultation period is sufficient and that the stakeholders that need to have been consulted. The Legal Service unit within the Federal Ministry of Economy, Family and Youth, for instance, is engaged in the preparation of legal texts as a special quality control unit. Before public consultation starts, the Legal Service reviews the submitted drafts if they have been drawn up in accordance with the Regulatory guidelines of Constitutional Service of the Federal Chancellery (www.bka.gv.at/legistik). In this regard it scrutinises the legal language, legal technique and the formal set up of the draft. In addition the Legal Service formally checks that the proposed consultation period is sufficient and that all relevant stakeholders will be consulted (also according to the relevant guidelines of the Austrian Legal and Constitutional Service).

The role of the Federal Parliament in public consultation

Because the public consultation procedures mentioned above pertain to a pre-parliamentary stage, no specific legal provisions exist that assign a specific role for parliament. At the parliamentary stage normally no public consultation takes place. In few cases that concern politically sensitive and controversial draft regulation public and/or expert hearings have been organised by parliament.

It is an established practice that the Parliament contributes to publishing and diffusing information on draft proposals of the Federal Executive (see Box 3.3). When initiatives for new legislation stem from within parliament, the preparatory stage may nonetheless not be as open as in cases of “normal” preparation in federal ministries.

Box 3.3. The role of parliament in public consultation

On its own initiative, the Austrian parliament significantly contributes to the communication and consultation process at the federal level. Based on a National Council resolution of 1961, draft laws and comments made on them are sent also to the parliamentary staff by the ministries and the organisations participating in the consultation respectively, and distributed by the parliament's administration to the parliamentary groups. Since 1996, these materials have been made available on the parliamentary website along with (almost) each and every material pertaining to parliamentary procedures, including government bills, committee reports, plenary meeting minutes etc. In particular, for each law project there is a page displaying the actual stage of procedure together with links to all relevant documents. The parliament thereby fulfils a service function for the consultation process of the federal ministries in the interest of the public and of the MPs.

In selected cases, the commencement of the consultation procedure and a summary of the draft proposal are issued on the main page of the parliamentary web-portal. In any event, parliament also usually puts on line all comments on the draft proposal, irrespective of whether they come from institutions that are officially invited to comment or from other groups or private persons.

The parliamentary website on the draft proposal will always be linked to the site of the government bill that will be moved later on the basis of the draft proposal. However, since the federal ministries normally do not disclose summaries of the comments or the changes made on the draft proposal further to the consultation process, such material cannot be found on the parliament's website.

By so doing, parliament provides a public platform for the consultation process that is appreciated by all parliamentary groups, NGOs and the media as a valuable source of information.

Source: Responses of the Austrian Government to the OECD questionnaire.

Public communication on regulations

Communication on existing regulations

Since 1983, the “Legal Information System of the Republic of Austria” (*Rechtsinformationssystem*, RIS) serves as the database operated by the Federal Chancellery. It lists the legal texts to be published in the Federal Law Gazette (BGBl) as well as the information on the law of the Republic of Austria (*e.g.* in the form of a consolidated version of Austrian Federal Law).

The RIS was extended to the wider public in 1997, when it was upgraded and made available on the Internet free of charge.⁹ The RIS contributes to rationalising the administrative and the court systems and provides low-cost and simple access to the law for the citizens. It could be defined as “democratically and constitutionally required basic information on the legal system, prepared and made available by the public authorities”.¹⁰

By virtue of the Publication Reform Act of 2004,¹¹ legal texts which must be promulgated in the Austrian Federal Law Gazette are considered legally binding exclusively if published on the RIS.

Information provided by RIS is extensive. It includes online access to a vast majority of the domestic law, a link to the EU law and the decisions of the supreme courts, commissions and tribunals.¹² It contains also a selection of Austrian laws in English translation.

To facilitate the use of the RIS for users who are not accustomed to working with databases and wording queries, a comprehensive manual is offered for each application. The RIS is accessible to people with disabilities. Information documents about RIS and e-mail addresses for individual assistance are to be found on the RIS homepage.

Other communications channels are used at the federal level. The website of the Constitutional Service in the Federal Chancellery contains a wide range of information about the law making process and the drafting requirements (*elektronischer Rechtserzeugungsprozess*).¹³

Initiatives of individual ministries complement the RIS. The Federal Ministry of Economy, Family and Youth, for instance, established a central trade register (*zentrales Gewerberegister*) bringing together all data from trade authorities and the most important data of all trade enterprises established in Austria. Interested parties can find all relevant data of an enterprise in this register. In the case of sole traders which are not registered in the company register it is the only available source for authentic data.¹⁴

Other ministries publish on line all relevant legal texts (laws and regulations) in their sphere of competence (*e.g.* the Ministry of Defence and Sports),¹⁵ or make use of mailing lists, workshops, and meetings to communicate systematically. The latter is the case of the Ministry for Science and Research, which contacts affected parties before the law is drafted and stays in permanent contact with them when the new law is drafted.

Communication on proposed regulations

Organised interest groups and the general public can follow a number of channels to track the evolution of federal regulatory initiatives. In principle, each federal ministry prepares regulatory proposals within its respective competence and organises the related publication policy. During the consultation procedure, all proposals and accompanying explanatory remarks (including the RIA) are published on the webpage of the lead ministry¹⁶ as well as on the webpage of the Austrian parliament (see Box 3.3 above). After its adoption, the regulatory act is submitted via the e-Law workflow to the Federal Chancellery for publication. Business-relevant information is also available in the *Unternehmensserviceportal*, the central e-Government portal for businesses.

In general one should find on the webpage of a ministry the following information:

- regulatory proposals (in consultation procedure) of the ministry within its respective competences;
- regulatory proposals of the ministry within its respective competences already decided by government and submitted to parliament;
- published regulatory acts of the ministry within its respective competences;
- general information relating to important regulatory acts of the ministry within its respective competences; and
- information about other relevant web pages.

Notes

1. Procedures for rule-making (Chapter 4); codification (Chapter 5); appeals (Chapter 6).
2. Quoted from the official responses by the Austrian government to the questionnaire.
3. See: the Resolution of 19 March 1981.
4. In accordance with Section 14 of the Federal Budget Law (*Bundeshaushaltsgesetz, BHG*) and with the related ordinance of the Federal Minister of Finance, Federal Law Gazette BGBl. II No 50/1999 as amended.
5. See: Paragraph 10 thereof.
6. See: *Standards der Öffentlichkeitsbeteiligung*, adopted by the Council of Ministers on 2 July 2008.
7. See: Biegelbauer, P./S. Mayer (2007), *RIA or no RIA: The dialogue between policy-makers and stakeholders in the regulatory process in Austria*, ENBR Working Paper 10/2007, p.5.
8. In the case of the comprehensive pension reform of 2003, for instance, which was part of that year's budget law, only three weeks were set aside for the consultation process, and the Council of Ministers adopted the draft law just three days after the end of the consultation period. See Biegelbauer, P./S. Mayer (2007), *RIA or no RIA: The dialogue between policy-makers and stakeholders in the regulatory process in Austria*, ENBR Working Paper 10/2007, p.4.
9. See: www.ris.bka.gv.at (last accessed 18 November 2009). Previously, the RIS was accessible only to public administration staff on the Intranet.
10. Responses of the Austrian Government to the OECD questionnaire.
11. See: Federal Law Gazette I No. 100/2003.
12. The following applications are provided:
 - The Federal Law Gazettes from 1848 onwards, since January 1 2004 in legally authentic form, and those from 1780 to 1848 in the form of external data.
 - Evaluation draft bills and government bills.
 - Federal Law as amended as well as historical versions.

- Regional Law of all nine states as amended as well as some historical versions.
 - Regional Law Gazettes of eight states, with one application accessing external data.
 - Municipal Law (extracts) of the *Länder* of Carinthia, Styria, Vienna, Salzburg and Lower Austria.
 - Decisions of the Administrative Court, the Constitutional Court, the Federal Procurement Authority and of the courts of ordinary jurisdiction (Supreme Court, Provincial Courts of Appeal, Provincial Courts, District Courts).
 - Law of the European Union (external link).
 - Tribunals, commissions (*e.g.* Federal Communications Board, Environmental. Senate, Data Protection Commission).
 - Edicts of the Austrian Federal Ministries.
 - The norm list of the Administrative Court.
 - Austrian laws (selected Austrian federal laws in English translation).
13. See: www.bundeskanzleramt.at/DesktopDefault.aspx?TabID=3513&Alias=BKA (last accessed 18 November 2009).
14. See: www.bmwfj.gv.at/BMWA/Rechtsvorschriften/default.htm (last accessed 18 November 2009).
15. See: www.bundesheer.at/facts/gesetze/index.shtml (last accessed 18 November 2009).
16. See, for instance: www.bmwfj.gv.at/BMWA/Rechtsvorschriften/default.htm; www.bmj.gv.at/gesetzesentwuerfe/index.php?nav=13; or www.bmwf.gv.at/wissenschaft/national/gesetze/.

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

Trends in the production of new regulations

There is sustained use of regulation to achieve government policy goals, but no suggestion of regulatory inflation. Austria does not record changes in the overall quantum of the regulatory stock, but the review heard no evidence either of regulatory inflation or of significant trends in the decline in the use of regulation. Available data provided by reference to the publication of new laws in the federal gazette each year generally indicates consistency in the use of primary laws and subordinate regulation over the past decade, with a slight decline in the number of new laws published in the period from 2003 to 2007.

Processes for making new regulations

The forward planning processes for law making are somewhat fragmented in Austria but shows an intelligent use of electronic systems for maintaining standards and quality control in the production of legislation. Cross ministerial co-ordination of rule-making is weak in Austria, with regulations being autonomously conceived within each responsible ministry. As a result forward planning policies vary from ministry to ministry. The proponent ministry is also responsible for initiating consultation with affected ministers, according to its own priorities. When notified, the Ministry of Finance reviews the assessment of the budgetary implications and administrative burdens of the legislative proposal and the federal chancellery checks the legal quality of the draft proposal, the Court of Audit assess compliance with the requirement to report the financial costs and administrative burden.

*In this decentralised system, the e-Law system is intended to manage the quality control aspects of rule-making and promote the efficient management of the drafting of laws through a continuous electronic production channel, from the initial drafting to promulgation of the law. The e-Law system ensures that ministries remain consistent with the guidelines issued by the Federal Chancellery through the use of a template approach. The e-Law system is only accessible by password to staff of the federal ministries. This is an innovative approach to the electronic management of rule-making that is not yet in widespread use across the OECD. There is likely to be the potential to extend this electronic tool further in the legislative process to include amendments introduced in parliament and apply compatible tools for use at the level of the *Länder*.*

While Austria reports that forthcoming regulation can be anticipated to be consistent with the published overall programme of the federal government, there is no consolidated legislative plan. The Austrian government reported selected cases of forward planning of rule-making, including examples from ministries which published planned legislative projects, and internal planning tools used by the Federal Chancellery to manage legislative projects. This suggests fragmented practices across the government that could be improved through the application of a consistent planning discipline and notification procedure. The use of a consolidated forward planning schedule would aid transparency and the effective management of legislative drafting, and be useful for monitoring that other policy processes such as consultation and the preparation of impact analysis are being organised in a timely way. A forward planning schedule does need to be binding on agencies to be useful, and it should not be an impediment to the timely development of unanticipated but necessary legislative responses. A planning framework could build on the internal planning tools used by the Federal Chancellery and be linked to proposed regulatory measures identified in the forward budget estimates of agencies.

Recommendation 4.1. The Federal Chancellery should co-ordinate an annual formal plan of forthcoming legislative projects, as a communication and planning tool both for internal government use and to promote public transparency as well as better structure public consultation. This should include lists of all projects which Ministries have under preparation, even before they have reached the (pre)consultation phase.

Ex ante impact assessment of new regulations

In spite of the existence of important administrative provisions and signals of an emerging awareness of the importance of the tool, Austria has not developed integrated and formalised systems for the ex ante analysis of the impacts of proposed regulation. The procedural requirements include an obligation on officials to assess the financial economic, environmental and consumer effects of new legislation. Technically, officials are required to provide an account of these elements in the *Vorblatt*, a statement of effect that accompanies a legislative proposal. In the recent past, moreover, promising initiatives have been taken that signal an increased attention of the government to enhancing the RIA tool. The Austrian administration is aware of the need to strengthen arrangements in respect to the effective implementation of RIA. Particular mention deserve the debate on introducing the so-called Climate Impact Test and, more significantly, the new provisions included in the 2009 Federal Budget Law, which requires that from 2013 all “essential” impacts of future legislative proposal be assessed.

In practice, there are no effective systematic mechanisms for ensuring that officials formally undertake ex ante analysis of regulatory impacts during the development of a regulatory proposal. Notable areas of weakness include an absence of systematic guidance material on the calculation of costs and benefits of regulatory alternatives, and no effective oversight of the process to ensure compliance with RIA requirements. OECD analysis has found that RIA is unlikely to be effective in improving the quality of regulatory proposals unless it is supported by these systemic elements as well as training and political commitment. Simply having a procedural requirement for RIA will not produce the benefits of improved regulatory design that are expected from regulatory impact analysis. A potential deficiency of RIA that has been observed in practice in OECD countries is that it is often relegated to a check box exercise. To be effective RIA has to be incorporated early in the policy process and have the potential to influence policy outcomes.

The current arrangements are unlikely to ensure that officials have undertaken a thorough economic assessment of the costs and benefits of alternative regulatory proposals. Where there is a stronger focus on ex ante analysis is in respect to the calculation of the financial impacts of policy proposals. The Federal Minister of Finance has issued an ordinance on presenting and assessing financial impacts and the ministry appears to be alert to the proper assessment of financial impacts. This role is aided by the Court of Audit which examines regulatory proposals for compliance by ministries with the requirement to assess financial impacts. Similarly, with respect to environmental impact assessment, Austria has incorporated formalised practices including an innovative mechanism for assessing the carbon output of government programmes.

The Austrian administration is aware of the need to strengthen arrangements in respect to the effective implementation of RIA. Further to the new Federal Budget Law of 2009 ordinances as well as guidelines are planned to be issued by the Federal Chancellery and the respective Ministries to address threshold issues such as what impacts are to be considered and what methodology should be used. This is however, an area that requires further work in Austria. The current Handbook on Better Regulation (2008) does not provide an effective tool for guiding policy analysts on how to undertake RIA. Accordingly the construction of a clear and practicable framework for undertaking RIA and carefully assigning responsibility for assessing the quality of RIA will be critical to its effective contribution to policy development in the future.

Responsibility for oversight of the conduct of RIA in the rule-making process should be assigned to a function within the Federal Chancellery, with the role of preparing guidance on the use of RIA, engaging with ministries to ensure its performance (including through training and capacity building) and having some form of oversight and veto role on poor quality regulatory proposals. It is important that the regulatory oversight role is located at the centre of government to ensure that it has the necessary political authority to promote the effective contribution of impact analysis to policy development, and that it is integrated procedurally in the law making process. The Federal Chancellery seems to be the single best authority to take on this role, however, the skills of analytical staff allocated to the task cannot only be based in an assessment of legal quality, but must also include staff skilled in economic analysis and in particular the economics of regulation.

Some of the issues that will confront the Austrian administration are ensuring that all regulatory proposals with the potential for significant economic, environmental or social impacts are captured, and also balancing the use of scarce policy resources. One way of addressing this chosen by a number of OECD countries, is through the use of a two stage process, including a screening assessment to identify if a policy proposal requires a more elaborated RIA; a compliance cost calculator can help to streamline this process. It is likely to take some time to embed a RIA system in the rule-making process. Accordingly, the preparation of draft guidelines should be commenced without delay. The draft guidelines should be prepared in consultation with ministries to engage them with the scope and application of the guidelines and to encourage their use. However, at their root the guidance should draw on the OECD and EU best practices for RIA and relevant examples from other OECD jurisdictions. Critical aspects include a clear focus on defining the nature and extent of the problem to be addressed (risk analysis).

Another important methodological aspect is the consideration of potential of any regulatory proposal to impact positively or negatively on competition. The OECD Economic Survey of Austria identified that “the rules governing market entry and the creation of new corporations, as well as various sectoral regulations are not sufficiently supportive of competition, innovation and productivity growth.” (OECD 2009:12). This has undermined productivity growth in the services sector. The RIA system can assist in preventing the development of regulations that are welfare reducing restrictions on competition.

A further element is the integration of RIA with public consultation, as transparency and the incorporation of a diverse range of perspectives are integral to the credible use of RIA to ensure its effectiveness and legitimacy in evaluating alternative options. This will require officials to move beyond informal modes of consultation to use a more systematic inclusion of interests external to the government. Experience across the OECD demonstrates that implementing a system of RIA is not straightforward. It is a long-term endeavour requiring cultural change and capacity building. Accordingly, Austrian officials should anticipate that this project will require the reform of some existing practices and modes of working. To be effective it will be necessary that the procedural elements of RIA are clearly defined, integrated with the rule-making process and made mandatory by formalising the requirements of the guidelines.

Recommendation 4.2. Develop administrative mechanisms to support the incorporation of *ex ante* analysis in the development of regulatory policy including formal administrative requirements, the development of RIA guidelines and training and capacity building involving the ministries. Many OECD examples and models exist for the guidelines, but the implementation of the system is an opportunity for an interactive discussion with ministries and the establishment of a network of officials informed on how to use the RIA process effectively.

Recommendation 4.3. Establish a two-stage process for impact assessment including clear minimum threshold criteria to identify when a RIA is required and the use of compliance cost calculators to simplify the process of determining the extent of regulatory impacts.

Recommendation 4.4. Establish institutional oversight of compliance with RIA processes in the Federal Chancellery including economic analysis skills to assess and comment on the quality of the RIA documents, the role of preparing guidance on the use of RIA, engaging with ministries to ensure its performance (including through training and capacity building) and having some form of oversight and veto role on poor quality regulatory proposals.

Alternatives to regulations

*Austria has considerable experience with the use of co-regulation through the delegation of rule-making powers to public law chambers giving a regulatory role to the social partners. However, as currently formulated, the RIA processes do not appear to be effective in ensuring that alternatives to regulation are considered in the development of regulatory proposals. Formally, the *Vorblatt* requires ministries to consider alternatives, including the do nothing option in evaluation of the effectiveness of regulatory proposals. In general this is an area of regulatory quality where all governments find it is difficult to encourage rule makers to give serious consideration to alternative approaches once a policy decision has been made to use regulation. It is advisable to provide guidance and training on the use of alternatives in building the capacity of officials to use RIA effectively. The use of co-regulation through the delegation of rule-making powers to public law chambers giving a regulatory role to the Social Partners is a potential strength of the Austrian system. While this may create some risks of compromises to competitive efficiency, there is obviously potential for these measures to reduce regulatory costs and promote economically efficient outcomes which should be fully explored in RIA.*

Recommendation 4.5. Guidance and training to build the capacity of officials on the use of RIA should also address the use of alternatives in designing regulations, including an analysis of the most effective roles for the Social Partners having regard to the potential risks to competition.

Risk-based approaches

*There is no formalised policy on the adoption of risk-based approaches. There is likely to be considerable potential for improving the contribution of risk-based approaches to improving the efficiency of compliance and enforcement practices. This is particularly the case at the administrative level of the *Länder* through the identification and sharing of good practices (see the recommendation in Chapter 6 on the development of a principles based framework for assessing the quality of enforcement practices and the preparation of draft guidance for agencies).*

Background

General context

The structure of regulations in Austria

Box 4.1. The structure of regulations in Austria

General hierarchy

Austrian law is primarily statute law, with a very limited role played by customary law. The case law of the highest courts lays down important guidelines as to the application of the law, but it is not formally recognised as a source of law.

Individual forms of law have different derogatory power. Accordingly, the more difficult legislative procedure gives the constitutional law greater durability.¹

- The *guiding principles of the Federal Constitution* are the most important legal provisions in the structure of the legal system. They include the democratic principle, the principle of the separation of powers, the principle of the rule of law, the republican principle, the federal state principle and the liberal principle. In their entirety, these guiding principles form the basic constitutional order.
- *Primary and secondary community law* has autonomous effect. It takes precedence over national law, even over national constitutional law – with the exception of the constitutional principles.
- The “ordinary” constitutional law (“*einfaches*” *Bundesverfassungsrecht*) provides the “rules of the game” for political activity as it determines the legislative procedure, the status of the highest bodies within the State, the relationship between the federal government and the *Länder* as regards legislation and enforcement and the control of government activity by the law courts.
- *Federal law (Bundesgesetz)* is enacted by parliament according to the procedures stated by the Federal Constitution. Federal laws rank below constitutional law and, usually, provide the legal basis for ordinances executing and specifying federal laws (*Durchführungsverordnungen*).² Like ordinances, federal laws are directed at an abstract group of people. In contrast to ordinances, they are issued by parliament and not by administrative authorities.
- *Ordinances (Verordnungen)* are general legal provisions made by administrative authorities and mainly specify and implement other general provisions (mostly of ordinary laws). They are directed at an abstract group of people, whose individuals cannot be determined. Regulations which amend or supplement the law require express constitutional empowerment.
- *Orders (Bescheide)* are primarily administrative instruments to execute the law which are directed at one or more individually specified persons.
- *Decrees (Erlässe)* are general instructions (*generelle Weisungen*) addressed to the administration itself. They might have impacts outside the administration, but need not have such impacts.

International law

The Austrian constitutional law declares that the generally recognised rules of international law form part of federal law and it provides for international treaties to be incorporated into the Austrian legal

system (general and specific transformation). The ranking of the international treaty provision within the domestic legal system is determined by its content.

The *Länder* legal order

The structure of *Land* legislation essentially follows the federal example.

In accordance with the federal Constitution, the nine federal states have their own (constitutional) law in addition to the federal (constitutional) law. No order of precedence exists between federal and state legal provisions. The *Länder* have also been able since 1988 to conclude international treaties in matters within their own domain; as before, however, the federal government takes precedence in external matters.

Municipality regulations (*GemeindeVerordnungen*)

Municipal authorities can act as administrative authorities in areas where they are provided with sovereign power. In this cases, they can issue municipality regulations. This type of ordinances is directed at an abstract group of people.³

“Soft law”

The term "soft law" refers to quasi-legal instruments which do not have any legally binding force, or whose binding force is somewhat "weaker" than the binding force of law – e.g. according to the principle of legality. Soft law is not mentioned in the Federal Constitutional Law as a source of law in the structure of regulations and is not regarded as a particular category considered by Austrian legal theory. “Soft law” is therefore usually understood as having the status of *recommendation*. Examples of this type of instruments are:

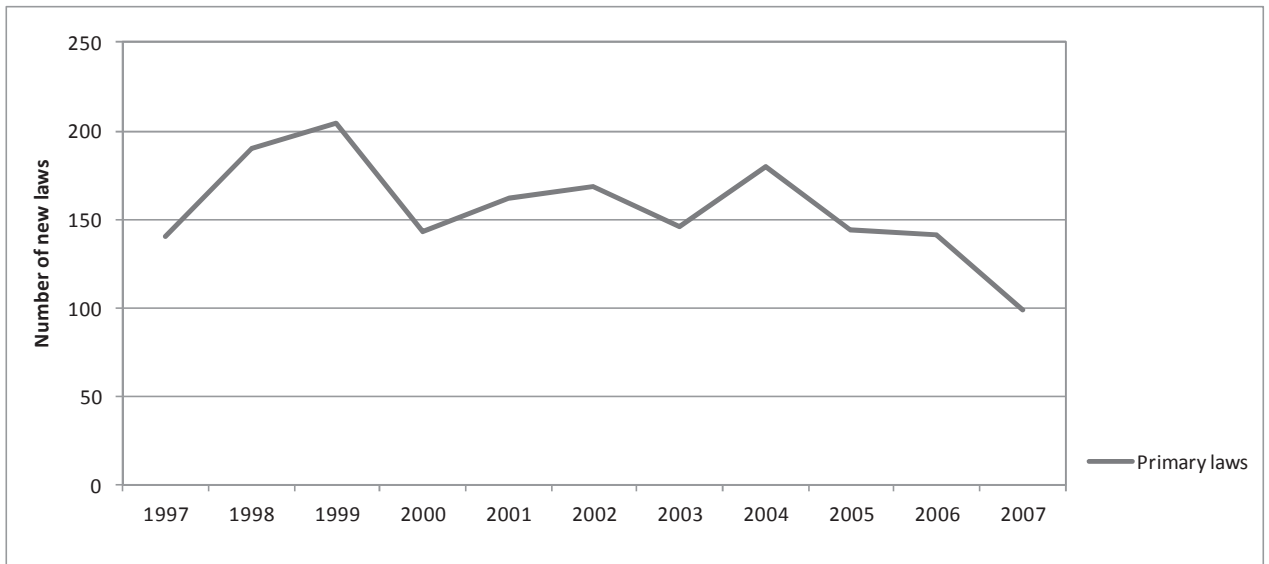
- General agreed standards and guidelines for technical, scientific, environmental etc. use (e.g. ISO-standards, Austrian standards so-called *Ö-Normen*).
- Circulars (*Rundschreiben*) (e.g. the circular letter issued by the Federal Chancellery launching the climate impact test).
- Self-regulating co-regulating instruments, although their use is not very common in Austria.

Source: http://ec.europa.eu/civiljustice/legal_order/legal_order_aus_en.htm (last accessed 23 November 2009); and Responses of the Austrian Government to the OECD questionnaire.

Trends in the production of new regulations

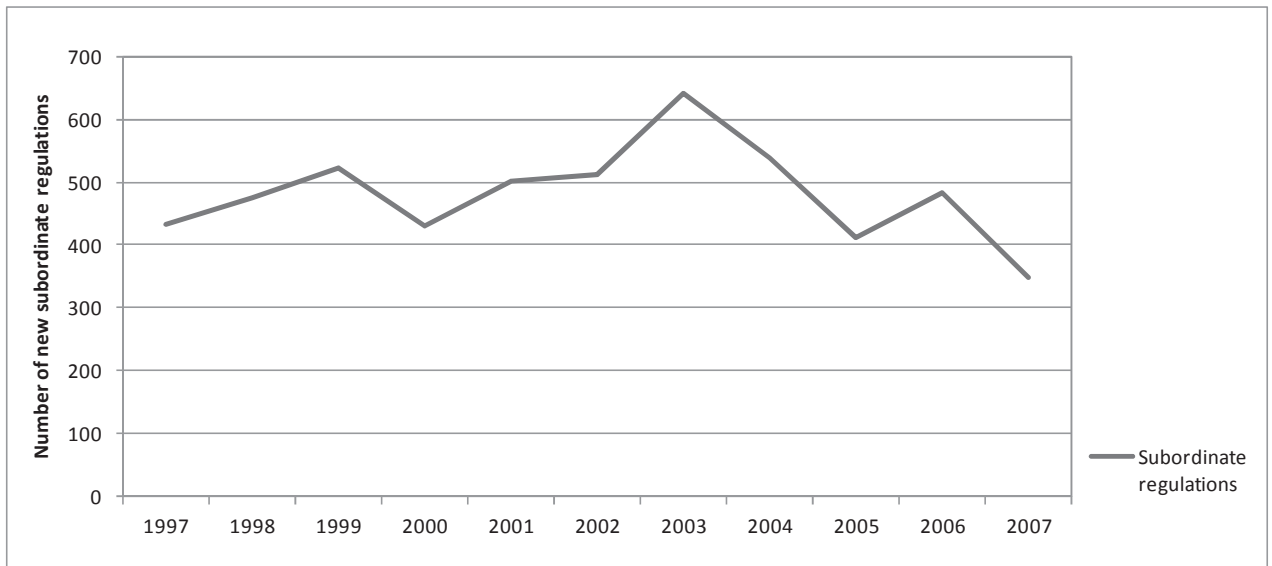
There is no formal, yearly calculation of regulatory inflation. Nevertheless, some data can be provided on the basis of the Legal Information System of the Republic of Austria (RIS). The number of laws existing on federal level can for instance be determined by the numbers of laws (and ordinances) published in the Federal Law Gazette every year. In 2009, 139 laws (including amendments) were published in Part I of the Federal Law Gazette and 447 ordinances (including amendments), mostly issued by Federal Ministers, were published in Part II of the Federal Law Gazette.

Figure 4.1. Number of new laws in force at the start of each year 1997-2007⁴



Source: Indicators of Regulatory Management Systems (OECD 2009).

Figure 4.2. Number of new subordinate regulations 1997-2007⁵



Source: Indicators of Regulatory Management Systems (OECD 2009).

Procedures for making new regulations

The law making process

The initiative for legislation at the federal level emanates in most cases (up to 90%) from the federal government (*Regierungsvorlage*). Other sources of legislative initiative are nonetheless possible in Austria. At least five members of the National Council or Federal Council may propose private members’ bills

(so-called “initiative applications”, *Initiativanträge*), and people’s petitions for a referendum may also lead to legislative initiatives (*Volksbegehren*). All forms are usually drafted by civil servants.

Government bills may either draw from the political agenda of a minister, or be initiated on the initiative of the civil servants themselves, who approach the appropriate minister’s private office.⁶ Once the necessity of taking action is approved by the minister, an official serves as the head of a team charged with drafting the law. Often, a single author is responsible for the dossier. This is not necessarily the highest-ranking person in the team, but often a jurist specialised in public law (*Legist*).

The appropriate bills must be adopted unanimously by the Council of Ministers and are then sent to parliament. Most legislative competencies are concentrated in the National Council, as the Federal Council enjoys the mere right to a suspending veto.⁷

The law making process at the federal level is outlined in more detail in Box 4.2. However, it is not followed systematically, as the drafting process varies across ministries. *Land* legislation is the responsibility of the *Land* authorities.

Box 4.2. The law-making process in Austria (federal level)

Preparation of a bill

The process for the preparation of laws is not set in any legally binding act. Regulations are normally drafted by the competent units in the lead federal ministry, on the basis of the regulatory guidelines issued by the Constitutional Service. This practice differs from the one at the subnational level, where drafting is often centralised in the state constitutional services. The drafts are first scrutinised by the internal legal department of the lead ministry.

The lead ministry organises the (pre)consultation as it best deems, publishing the draft on its webpage. The Ministry of Finance is brought in the loop at an early stage, notably when distributive and redistributive policies are at stake as well as in relation to information obligations for enterprises, as a part of the administrative burden reduction programme. The lead ministry also usually informs ministries with overlapping responsibilities in order to minimise the risk of vetoes in the Council of Ministers.

Beyond these practices, cross-ministerial co-operation is rather weak and occasional. A so-called *Begutachtungsprozess* exists between the ministries but there is no formal requirement for internal consultation. The main co-ordination task lies with the Chancellery.⁸

The Constitutional Service of the Federal Chancellery (*Verfassungsdienst*) nonetheless plays a pivotal role as it performs a number of checks upon the submission of the draft by the lead ministry. The checks include scrutinising the correspondence with national constitutional law and regulatory policies, and EU and international law. The service also checks the clarity, comprehensibility and coherence of regulation. The opinion of the Constitutional Service is not legally binding. Consultation with the Constitutional Service is obligatory as soon as the consultation mechanism (*Konsultationsmechanismus*) between the Federal and the *Länder* level is at work.

When assessed, regulatory impacts are reported in the introductory remarks (*Vorblatt*). This includes the results of the economic and financial analysis and of the *ex ante* measurement of administrative burdens. Essential environmental, social, gender and consumer protection impacts are also to be reported in the *Vorblatt*.

The responsible minister must see the draft law (*Ministerialentwurf*) before this is submitted to the Council of Ministers.

Adoption by the Council of Ministers

When discussed for adoption, the draft law has to contain the introductory statement (*Vorblatt*), usually of one page; the explanatory remarks (*Erläuterungen*); and a part where the old text is contrasted with the new version (*Textgegenüberstellung*). The *Vorblatt* provides a short summary and an overview of the proposed regulation. It may include the results of the regulatory impact assessment. The explanatory remarks provide deeper general information (*allgemeiner Teil der Erläuterungen*) on the draft piece of legislation and specific information on its particular provisions (*besonderer Teil der Erläuterungen*).

Once adopted, the text becomes a bill (*Regierungsvorlage*).

Decision of parliament

Because of the intense and strongly compromise-driven consultation rounds at the earliest stages of the preparatory phase, the majority of the bills presented to the National Council are passed without amendments or only small amendments. If needed, the civil servants who drafted the bill are invited to explain their draft, and make the appropriate amendments if necessary. Other experts and the representatives of the Social Partners after political negotiations may also be asked to present their views.

Authentication of the Act by the Federal President and counter-signature

Bills passed by the National Assembly must be submitted by the Federal Chancellor to the Federal President for authentication. Every bill passed by the National Assembly must be referred to a plebiscite before authentication, if the National Assembly so resolves or if the majority of the members of the National Assembly so demand. Additionally, every overall amendment of the Federal Constitution must be referred to a plebiscite.

The President's signature authenticates the constitutional enactment of federal legislation. The authentication must be countersigned by the Federal Chancellor.

Promulgation

Upon such certification, federal legislation is published in the *Bundesgesetzblatt*. Unless a federal act makes express provision to the contrary (retroactive effect or *vacatio legis*), it comes into force at the end of the day on which the issue of *Bundesgesetzblatt* containing the announcement is published and distributed.

Source: http://ec.europa.eu/civiljustice/legal_order/legal_order_aus_en.htm (last accessed 23 November 2009).

The importance of the preparatory phase in the overall decision-making process is remarkable, both with regard to the efforts to reach political compromise and in terms of formal quality checks of the legal texts. More than half of the bills adopted by the Council of Ministers are passed by parliament by consensus.⁹

Austria was a pioneer in the development of the application of ICT to the law making process. The Federal Chancellery has been one of the first public authorities in Europe implementing a completely digital system, which is used by all ministries (see Box 4.3).

Box 4.3. E-Government and the law making in Austria: The e-Law

The system called “e-Law” (*e-Recht*) allows for the electronic involvement of all institutional stakeholders and interested parties during a law making process. The system was introduced further to a decision by Council of Ministers in May 2001. It plays a vital role through the lifecycle of a legislative act, and is believed to bring about a fundamental cultural change in the Federal Executive.

The rationale behind the e-Law project is to have legal texts pass through a continuous electronic production channel. All stages are covered, from the initial drafting phase, via preparation and evaluation, to the adoption of the bill by the Council of Ministers, down to the debate in parliament and its authentic publication on the Internet.

The system not only ensures transparency with regard to the making of the text drafting throughout the entire process, but also facilitates the individual tasks and significantly speeds up the law making and publication procedure. The implementation of the project also allows for financial savings.

Each bill recorded in the e-Law system consists of meta-data (descriptive information) and the following documents:

- Draft bill (mandatory).
- Relevant documents (usually consisting of the introduction, comments, comparison of texts).
- Annexes.
- Opinions of bodies which were invited to evaluate a ministerial draft bill.
- Various cover notes.
- Other documents.

The creation of electronic texts within the law making process follows specific layout guidelines issued by the Executive Office for Constitutional Matters of the Federal Chancellery. MS Word-based templates were developed which facilitate the structuring of texts and the layout design for the federal ministries. Additional functions which allow for a more comfortable editing of the legal texts are made available to the users. The e-Law application consists of different components that allow a uniform standard information workflow from the federal ministries to parliament; central server-based conversion routines, and a full text retrieval system with a high-performance search engine for the publication of evaluation draft bills, government bills and Federal Law Gazettes on the RIS.

To date, only the staff of the federal ministries, using their user ID and password, can access the e-Law on the intranet of the public authorities.

Source: Responses of the Austrian Government to the OECD questionnaire.

Forward planning

Rule-making activity is determined by the overall programme of the federal government, which is publicly available on the Internet,¹⁰ compliance with EU and international legislation (such as implementing EU regulations and transposition EU directives), and might be influenced also by internal priorities arising from initiatives of the different ministries and external demands.

Beyond these broad indications, there are no annual formal and centralised forward planning procedure and legislative programme at the federal level. Individual ministries may have own practices,

though. The Ministry of Defence and Sports, for instance, lists planned legislation projects, including their degree of implementation and the time frame for their realisation semi-annually. The Federal Chancellery lists planned legislation projects on an annual basis. These lists are not publicly available. Other ministries do not have any system for forward planning.

The lack of formal forward planning is somewhat compensated by the relatively comprehensive and timely communication of initiated legislative dossiers on the websites of the government and the parliament, as outlined above.

Administrative procedures

The General Law on Administrative Procedure (*allgemeines Verwaltungsverfahrensgesetz, AVG*) of 1991¹¹ regulates the administrative *modus operandi* of the Federal Executive. The AVG includes general provisions on administrative procedures regulating how authorities have to execute law:

- *Part I: General Provisions* (e.g. authorities, persons involved and their representatives, communication between authorities and the persons involved, service, deadlines, definitions).
- *Part II: Investigation procedures* (e.g. objective and course, evidence).
- *Part III: Rulings* (e.g. issuance, contents and form).
- *Part IV: Legal protection* (e.g. appeal, special provisions at the independent appeal panels, public oral hearing).
- *Part V: Costs* (e.g. incurred by the persons involved, incurred by the authorities).
- *Part VI: Final provisions* (e.g. references).¹²

Since 1979, regulatory guidelines (*legistische Richtlinien*) exist at federal level that provide for a standard procedure for the development of draft primary and subordinate regulation. The guidelines were updated in 1990 and 1995 (the latter in the context of Austria's accession to the EU). The manual (*Handbuch der Rechtssetzungstechnik*)¹³ was issued by the Chancellery and adopted by decree of the Council of Ministers. This guidance material is binding for all federal ministries.

The Handbook “Better Regulation” (*Österreichisches Handbuch “Bessere Rechtsetzung”*) of 2008 also provides some practical guidance for a better regulatory practice. It strongly relies on international approaches and practices.

In addition, further internal guidelines for standard procedures have been issued for certain ministerial departments. An example of such guidelines are the standard procedures of the Ministry of Finance, which were revised in 2005 and became binding for all departments in the Ministry one year later.

Legal quality

The responsibility for ensuring the legal technical quality of regulations, including reviewing the legal basis and consistency with higher level regulations, lies primarily with the Constitutional Service (*Verfassungsdienst*) of the Federal Chancellery. The Service also updates existing and develops new regulatory policies and legislative guidelines on the matter.

Only some of the respective units in the Ministry of Economy, Family and Youth¹⁴ prepare circular letters (*Rundschreiben* and *Erlässe*) to simplify and guarantee a uniform application and implementation.

The role of the parliament

Parliament is an integral part of the legal quality scrutiny mechanisms in Austria. As a part of the e-Law system, when a government bill is transmitted to parliament or when a members' motion is moved, the parliamentary administration checks the technical standards of the legal text according to the guidelines issued by the Federal Chancellery. It is also responsible for the integration of any amendments that will be resolved during parliamentary procedures. Whenever inconsistencies are found,¹⁵ these are reported back to the parliamentary group that motioned the proposal or to the lead federal ministry. The parliamentary administration also checks legal sanctions and coming-into-force clauses so as to take account of possible retroaction. A review of the rights of the Federal Council with regards to specific legislative proposals is also carried out. All these tasks are nonetheless primarily technical. Only under exceptional circumstances does the President of the National Council ask the parliamentary administration to review the legal basis and consistency with the valid and applicable statutes that shall be amended or with constitutional law.

Ex ante impact assessment of new regulations

Development of Impact Assessment

A first step in the development of RIA was the Federal Budget Law of 1986,¹⁶ which mandated the estimation of costs of new regulations with respect to fiscal aspects. Responsibility for undertaking this assessment lay with the lead ministry responsible and the scope had to include the national, state and municipal level. The law did not apply to regulations initiated by parliamentarians (*Initiativanträge*).

An important milestone was a 1999 decree of the Ministry of Finance which widened the obligation stated by the Federal Budget Law to include operational accounting as well. An agreement between the Federation and the states was also signed establishing a procedure for the estimation of costs and benefits as well as shared consultation procedures for all administrative levels.¹⁷

In the same year, the scope was also widened to include a more complete assessment of regulatory impacts, notably the effects on the competitiveness of the Austrian economy and on the employment situation. A circular of the Federal Chancellery was issued¹⁸ to provide guidance to ministry officials concerning the formal presentation of their estimates in draft legislative papers (*Vorblätter*).

The widening of the scope of analysis and its embedding in legally binding provisions occurred with the latest legislative revision of the legal basis for RIA in Austria - the Deregulation Act of 2001.¹⁹ The Act mandated the assessment of essential financial, economic, environmental, social and consumer protection impacts of new legislation. In contrast to older legislation, the requirement was not exclusively directed at ministry officials but at “all officials concerned with the preparation of acts of federal legislation”.²⁰

However, unlike other regulatory provisions for the preparation of bills, the requirements set by the Deregulation Act 2001 were never detailed in an implementing circular and the new inclusive approach did not substantially alter the structure of the legislative process and the RIA practice. Commentators conclude that the Deregulation Act, as a result, leaves civil servants with a huge task but does not provide them with the necessary instruments to fulfil it.²¹ Similarly, while the formal obligations seem to be fulfilled, the quality of assessments or estimations is often questionable.²²

Environmental Impact Assessment (EIA) has been conceived and implemented separately from RIA, and the tool is more sophisticated and better rooted in administrative practice. EIA is partly realised in legislation,²³ further to the Strategic Environmental Assessment Directive of the EU.²⁴ EIA is for the time

being mandatory only for plans and programmes with relevant effects on the environment (as provided for by the directive and the Austrian law), but discussions among experts are ongoing about the possibility of widening this obligation to also include legislative acts.

Current policy on impact assessment

In the recent past, tools and practices for the assessment of policy and regulatory impacts in Austria have evolved. The so-called “Climate Impact Test” (*Klimaverträglichkeitsprüfung*, KVP) was introduced in October 2008. This new tool seeks to make the Austrian Climate Strategy operational, since it should help to address climate impact aspects of new regulations (aspects of mitigation and adaptation).

More significantly, parliament adopted a new legal basis for RIA in Austria. The new Federal Budget Law (*Bundeshaushaltsgesetz*, BHG) of December 2009 proscribes an “efficient impact assessment of all regulatory and other relevant proposals” (*wirkungsorientierte Folgenabschätzung bei Regelungsvorhaben und sonstigen Vorhaben*).²⁵ The law will enter into force in 2013. Under the new system, federal ministries will have to assess all “essential” impacts, be they linked to financial, economic, environmental, consumer policy, social and gender aspects, as well as to administrative burdens on citizens and businesses. Financial impacts are always to be assessed. The explanatory remarks to the budget law (BHG 2013) lay down that a two stage process for impact assessment including threshold criteria is foreseen; but only essential impacts have to be assessed in-depth.

The law will have to be complemented by guidelines issued by the Federal Chancellor in accordance with the Ministry of Finance. The guidelines should not only clarify the scope and methodologies to be applied for the future assessments, but also establish criteria to determine when impacts have to be considered “essential” or not.

Some efforts to develop a more structured approach have also been made in some states. The *Land* governments of Upper Austria and Vorarlberg, for instance, have developed their own RIA models (see below).

Austria has not yet developed a full RIA system, and the implementation of forms of impact assessments is still not systematic. The provisions concerning impact assessment or part of that process are split among a number of legislative acts and bureaucratic responsibilities. They blend with other forms of legislative procedures, including pre-consultation practices, making it difficult sometimes to state which elements can really be counted as RIA.²⁶

Institutional framework

Responsibility for assessing regulatory impacts is de-centralised. In preparing the legislative drafts falling under their respective competences, each lead ministry has to comply with the regulatory guidelines (*legistische Richtlinien*) of the Federal Chancellery, including the provisions therein on impact assessment.

No RIA specific guidelines have been issued to assist officials in the process. The regulatory guidelines of the Federal Chancellery were issued in 1979. They generally refer to RIA, but do not provide detailed and concrete guidance.²⁷ Strikingly, the updated version of 1990 no longer includes the same degree of instructions on how to prepare RIAs.

There is no central oversight body responsible for regulatory quality across the whole federal government. However, there are units within the ministries responsible for overseeing the RIA process. Often, these are the ministry’s legal units or departments and work closely with the minister’s cabinets and the director general on the legal drafting.

With regard to quality control and *ex post* evaluation of the RIA process, on an annual basis the Austrian Court of Audits examines the level of compliance of the individual ministerial departments with the RIA requirements. Such analyses are partly performed on an *ad hoc* basis, putting emphasis on the financial impacts. Beyond this scrutiny, there is no further formalised quality oversight.

Methodology and process

Each legislative draft has to include explanations on “impacts” in its introductory remarks. Particular importance is given to assessing and presenting the financial impact of new legislation.²⁸ Special attention must be given to administrative burdens imposed on enterprises and citizens. They must be estimated using the SCM methodology. Nonetheless, ministries must also take in to account sectoral impacts. For example, the Ministry of Economy, Family and Youth especially considers impacts on SME and the internal market.

Although overall there seems to be little diffusion of quantification methodologies such as Cost-Benefit Analysis, specific assessments are supported by written guides. Guidelines on assessing and presenting the financial impact of new legislation have for example been issued by way of ordinance of the Federal Minister of Finance.²⁹ Legal guidelines on the calculation of administrative burdens for business have been in place since September 2007 for businesses and since September 2009 for citizens. The Climate Impact Assessment Guidelines and Tables were established in October 2008 to support the climate impact assessment (see Box 4.4).

Box 4.4. Assessing impacts on climate: The new impact assessment tool in Austria

Since 2008, the Climate Impact Test (*Klimaverträglichkeitsprüfung*, KVP) should assess the potential effects of the regulation with regard to emissions of greenhouse gases (“mitigation”); and the expected effects on vulnerability as well as the contribution to climate change response measures (“adaptation”).

According to the Climate Impact Assessment Guidelines and Tables accompanying this assessment, the KVP shall follow the overall principle to exhaust positive effects (emission reductions, reduced vulnerability/increasing adaptive capacity) and avoid negative effects to the extent possible.

The methodology foresees a number of assessment steps that the responsible authorities have to follow when preparing new regulations or an amendment:

- the examination of the effects on climate relevant goals and measures (Austrian Climate Strategy);
- the estimation of the effects (with regard to greenhouse gas emissions – in tones CO₂ avoided/produced and contribution to climate change adaptation);
- if relevant, adverse effects can be expected, possible alternatives have to be elaborated and assessed in terms of their potential impacts;
- at best, the most “climate friendly” alternative shall be chosen; and
- in any case an explanatory statement has to be indicated in the law materials.

Source: Responses to the Austrian Government to the OECD questionnaire; and mentioned website.

Methodology and competition enforcement

Sometimes, the relatively small size of the Austrian market is brought forward as a justification for less formal and standardised procedures for communication. The Austrian Federal Competition Authority (FCA), for instance, estimates that Austrian “competition community” is small enough to be easily overviewed. Elaborated techniques and sophisticated instruments are therefore not believed to provide added value in many cases but, on the contrary, probably create additional costs. The communication channels between the FCA administrators and the relevant stakeholders would therefore remain short and often informal, and hence cheap. Moreover, individual, *ad hoc* initiatives may be better suited to enhance the efficiency and effectiveness of competition enforcement. Nevertheless the FCA also considers more formal assessments and it is currently implementing the evaluation of past remedies applied in competition cases.³⁰

Public consultation and communication

No specific procedure and requirement is in place to organise public consultation in the framework of RIA. However, because of its strong corporatist character, the pre-parliamentary consultation process involves at an early stage not only ministries, agencies, political parties and the Social Partners, but also experts close to several of the aforementioned groups. The information gathered in this process, besides being used to reach political compromise and consensus, includes analyses of estimated effects. It therefore displays elements of RIA.

Because all parts of the legislative proposal are submitted to the stakeholders for comment, the impact assessment also forms part of the consultation process, generally included in the introductory remarks (*Vorblatt*). If there are special studies, these are also included in the consultation procedure. This documentation is usually posted on the webpage of the lead ministry and of the parliament (see above).

Ex post evaluation

The obligation to carry out *ex post* evaluation of the law is not systematic but is included in an increasing number of laws. In several policy fields, *ex post* evaluation has become standard practice even if there is no legal requirement. Examples of policy fields which use *ex post* evaluation are higher education, research, technology and innovation policies.³¹

In the consultation process, the Court of Audits looks at whether a proposed new regulation implements a recommendation made in earlier audits of the Court. In the course of its audits, the Court has repeatedly pointed to the need for new regulation or streamlining existing regulation in different spheres of law. In addition, the Court conducts special reviews of the impact and the implementation of regulation. Examples of such reports are those related to the “Reform of the Pension Systems for Civil Servants at Federal and *Land* Level”, and the “Austrian Pension Insurance Agency: Implementation of the Federal Act on Nursing Allowances (*Bundespflegegeldgesetz*)”.

While new findings during the implementation phase and afterwards are collected and considered in future amendments of regulations, *ex post* monitoring and evaluation of impact assessments does not take place in a systematic manner. An example is the general evaluation study of the impacts on enterprises of the Amendment Act 2002 to the Trade Act (*Gewerberechtsnovelle 2002*).³² In the context of the Balance Sheet Accounting Law (*Bilanzbuchhaltungsgesetz*), it was agreed that the Ministry of Economy, Family and Youth provide an evaluation report two years after the entry into force of the law, which was on 8 January 2008.

The Courts of Audit of the *Länder* may also perform *ex post* evaluations. The Upper Austrian Court assesses whether the *Landtag* has taken up its recommendations. These *ex post* evaluations may be more influential than the Court’s comments during the consultation phase.

Alternatives to regulation

Normally, consideration of alternative policy options is a requirement and the introductory remarks (*Vorblatt*) accompanying the proposal should describe it, including the “no action” scenario. The alternatives are intended to be considered before the law-making process starts. In general, a discussion on the range of possible instruments should also take place within the lead ministry, and involves the various departments, the director general and the minister. Most of the time however, no alternatives are considered. Approaches based on other than legally binding instruments are considered to be in contrast with the legality principle (rule of law, *Legalitätsprinzip*) enshrined in the federal Constitutional Law.³³

Because of the strong corporatist character of the Austrian system, co-operative arrangements exist with semi and/or non-governmental bodies, such as industry associations and public corporations (see Box 4.5).

Box 4.5. Delegation of regulatory powers in Austria: The public law chambers

So-called public law chambers are a manifestation of the principle of self-government – *i.e.* the idea enshrined in the Austrian Federal Constitution that groups of people characterised by common features (such as their profession) can be joined together by law in a corporation in order to perform duties which lie in their exclusive or predominant common interest and which are suitable to be performed by them. It is therefore parliament which creates public law chambers. Parliament not only provides groups of people with a means to administer their own affairs but also realises the principle of subsidiarity insofar as it creates an administrative entity charged with administering affairs which otherwise would have to be managed by the state itself.

The delegation of such powers must be explicitly referred to in a law. Public law chambers are always provided with a sphere of autonomy (their own sphere of powers) in which they are free to pursue their tasks (among those the right to enact regulations) without government intervention. State officials and members of the government cannot instruct public law chambers. The sphere of autonomy is nonetheless always correlated with state supervision aimed at ensuring that the public law chambers do not over step the boundaries of the law in their dealings.

Parallel to their autonomously pursued activities, public law chambers often function in certain areas as administrative entities of the state insofar as they are charged with administering certain administrative duties. In this assigned sphere of powers they are bound by instructions issued by government officials and members of government.

An example of public law chamber is the Austrian Federal Economic Chamber. Regulation can thus be delegated to it. So far, delegation has occurred in the fields of certification of the origin of goods; issues concerning apprentices; the examination for the master craftsman’s certificate; regulations about exams according to trade law; and the commission responsible for accountants. The responsible minister has directive power and can review the decisions of the Economic Chambers. It is not possible to delegate the power of law-making itself. Only regulations and decisions can be issued by the designated bodies.

Source: Responses of the Austrian Government to the OECD questionnaire.

Another example of delegated regulatory functions is the Austrian Standardisation Institute (*Österreichisches Normungsinstitut, ON*),³⁴ a not-for-profit organisation under the aegis of the Federal Ministry of Economy, Family and Youth aiming at increasing the efficiency of economic actions, the

compatibility of products and services, and the facilitation of the national, European and international exchange of goods and services.

Risk-based approaches

In general, there is no formalised process of risk assessment in the preparation phase of proposals. Risk assessment, management and communication tools do form an explicit part of the overall regulatory management policy of the Ministry for Science and Research. In accordance with the current regulatory guidelines, the introductory remarks (*Vorblatt*) have to evaluate alternative policy options for achieving the objective aspired by the respective regulatory act. The quality of the collection and use of scientific advice in the decision-making process is secured by studies from university professors and/or the Ministry works together with scientific experts for the drafting and content of a law. This however is not standard practice.

Notes

1. “A federal constitutional provision thus normally requires a majority of two thirds of the votes in the National Assembly, with at least half of the members being present. Additionally, the provision produced in this manner must be expressly designated as a “constitutional law” or “constitutional provision”. A valid resolution on federal legal provisions in the National Assembly, on the other hand, requires the presence of at least one third of the members and an absolute majority of the votes cast.”, quoted from http://ec.europa.eu/civiljustice/legal_order/legal_order_aus_en.htm (last accessed 23 November 2009).
2. See: Art. 18 Para. 2 B-VG). Therefore, federal laws rank above ordinances, with the exception of ordinances amending or supplementing federal law, which need a special constitutional empowerment (*e.g.* see Art. 18 Para. 3 B-VG).
3. According to the principle of legality, the entire public administration shall be based on law and every administrative authority – including municipal authorities – can, on the basis of law, issue ordinances within its sphere of competence (Art. 18 Para. 1 and Para. 2 B-VG): *e.g.* local police ordinances issued by municipal authorities according to Art. 118 Para. 6 B-VG).
4. *Source:* Austrian government, indicators questionnaire, 2008. The data provided are based on the Legal Information System of the Republic of Austria (RIS). The number of new law/regulations in 2008 account until 30 July 2008.
5. *Source:* Austrian government, indicators questionnaire, 2008. The data provided are based on the Legal Information System of the Republic of Austria (RIS). The number of new law/regulations in 2008 account until 30 July 2008.
6. See for instance: Pelinka, A. (2008), “Gesetzgebung im politischen System Österreichs”, in W. Ismayr (ed.), *Gesetzgebung in Westeuropa - EU Staaten und Europäische Union*, Wiesbaden, VS Verlag, p.431-462.

7. Except for constitutional amendments and treaties directly concerning the competencies of the *Länder*.
8. In the case of the EU Services Directive, the responsible unit for negotiating on EU-level within the Federal Ministry of Economy, Family and Youth is also responsible for the co-ordination of the implementation into national law.
9. From Federal Chancellery (2007a).
10. The government programmeme for the 24 Legislature is available online at: www.bundestkanzleramt.at/site/3354/default.aspx (last accessed 6 April 2010).
11. See: BGBl. 1991/51.
12. For detailed information, see: www.ris.bka.gv.at/Dokument.wxe?Abfrage=Erv&Dokumentnummer=ERV_1991_51 (last accessed 6 April 2010).
13. See: www.bundestkanzleramt.at/DocView.axd?CobId=1657 (last accessed 23 November 2009).
14. In particular Units I/7 (trade law) and I/8 (trade related environmental law).
15. For instance obviously wrong references within the text or inconsistent use of definitions, obviously lacking parts of the proposal etc.
16. See: Art.14 of the *Bundeshaushaltsgesetz*, BGBl 213/1986.
17. See: BGBl II 50/1999, and BGBl I 35/1999, respectively.
18. See: Federal Chancellery, *Legistik und Begutachtungsverfahren; Auswirkungen von Rechtssetzungsvorhaben auf die Beschäftigungslage in Österreich und auf den Wirtschaftsstandort Österreich; Gestaltung von Vorblatt und Erläuterungen*, Rundschreiben GZ 600.824/0-V/2/99, 19 February 1999.
19. See: *Deregulierungsgesetz*; BGBl I 151/2001.
20. See: BGBl I 151/2001 Art. 1 Z 2.
21. See: Bußjäger, P. (2004), “Symbolische Gesetzgebung als Realität und Rechtsproblem: Das Deregulierungsgesetz 2001”, in *Österreichische Juristen Zeitung*, Vol.19(43), p.701-705; Konrath, C. (2006), *Nachhaltigkeit und gute Gesetzgebung*, Thema des Monats 2/2006, at: www.nachhaltigkeit.at/article/articleview/72128/1/25614 (last accessed 1 December 2009); and Biegelbauer, P. (2007), “Learning from Abroad: The Austrian Competence Centre Programme Kplus”, in *Science and Public Policy*, Vol.34(9), p.606-618.
22. See: Kostal, T./Obermann, G. (2005), „Finanzielle Auswirkungen von Gesetzen: Eine Evaluierung der Kalkulationsverpflichtung des § 14 BHG“, in *Wirtschaftspolitische Blätter*, Vol.2/05, p.208-216.
23. See for instance: the *Strategische Prüfung im Verkehrsbereich (SP-V-Gesetz)*, BGBl I 96/2005.
24. Directive 2001/42/EC.

25. See: Federal Law Gazette No 139 from 30.12.2009, at:
www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2009_I_139/BGBLA_2009_I_139.pdf
(last accessed 6 April 2010).
26. See: Biegelbauer, P./S. Mayer (2007), *RIA or no RIA: The dialogue between policy-makers and stakeholders in the regulatory process in Austria*, ENBR Working Paper 10/2007, p.13.
27. See: www.bundeskanzleramt.at/2004/4/15/richtlinien1979.doc (last accessed 2 December 2009).
28. According to section 14 of the Federal Budget Act (*Bundeshaushaltsgesetz, BHG*), every draft budget act must be accompanied by an agreement pursuant to Article 15a Federal Constitutional Act or by a financial impact assessment.
29. See: Federal Law Gazette BGBl. II, No 50/1999, last amended by the Federal Law Gazette BGBl. II No 348/2001.
30. For example, the programme of investigation into the liquid fuel markets was discussed with the automobilists associations and the social partners. Their main proposals have been taken on board. (Information provided by the Austrian government in its responses to the questionnaire.)
31. See: Biegelbauer, P. (2007), “Learning from Abroad: The Austrian Competence Centre Programmeme Kplus”, in *Science and Public Policy*, Vol.34(9), p.606-618.
32. See: www.bmwffj.gv.at/BMWA/Schwerpunkte/Unternehmen/Gewerbe/2_evalgewo.htm.
33. See: Art. 18 B-VG.
34. Further to the Austrian Federal Act on Standardisation of 1971 (BGBl. Nr. 240/1971). See: www.on-norm.at/ (last accessed 1 December 2009).

Chapter 5

The management and rationalisation of existing regulations

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 sun setting 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 SMEs. 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.¹

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

Simplification of regulations

The Austrian government has undertaken various general simplification initiatives to keep the stock of regulation up to date. These have been mostly for the purpose of removing outdated provisions and repealing ancient regulatory stock and have been applied across the ministries. Co-ordinated approaches include the first Federal Repeal Act (1999) guillotined rules dating before 1946, the Deregulation Law (2001) which requires federal authorities to examine the relevance existing law and the effect of any proposed amendment, and the Deregulation Law of 2006 which repealed legal provisions made obsolete by the accession to the EU. The use of sun setting provisions is not routine in legislation although there are cases of its use among agencies.

The fuller use of *ex post* processes to evaluate adopted regulations and to ensure that the regulatory stock is kept fully up to date should be considered. This can be achieved for example, through the incorporation of sunset clauses in legislation and targeted regulatory reviews. It is noted that the new Budget law foresees a compulsory internal evaluation of regulations and projects which when implemented could also provide a basis for systematic review.

Recommendation 5.1. Develop a policy framework for the *ex post* review of regulation drawing on the RIA methodology to ensure that the regulatory stock is kept up to date, and meets policy objectives efficiently and effectively. Relevant programme features for consideration should include: the systematic use of sunset clauses; the use of review clauses in primary and subordinate legislation; scheduled reviews of regulation in sectors, targeting those areas of high economic value, and; the use of external reviewers (independent of the ministries administrating the regulation) to conduct periodic reviews.

Administrative burden reduction for businesses

The identification and reduction of administrative costs is a strong feature of the Austrian system. The administrative burden reduction programme is sensibly based on the achievement of a *net target* of 25% of administrative burdens on business. The programme demonstrates a good balance of central oversight and devolved responsibility. It is managed from within the Ministry of Finance, and each individual ministry has been assigned the responsibility for achieving its own reduction. The design of the programme has been intelligently informed by a review of similar European programmes. Like a number of these programmes it included a baseline assessment of the regulations in force (not including the *Länder*). The programme commenced in 2006, initially focusing on business. In September 2007, *ex ante* assessment was introduced of the burdens of new regulatory policies above a certain threshold. In 2009, the programme was expanded to include the 100 most burdensome obligations on citizens (in conjunction with the Federal Chancellery). It is estimated that achieving the target will bring about more than EUR 1 billion in savings by 2012.

The goal of reducing administrative costs is aimed both at ensuring the efficient operation of the Austrian administration and reducing administrative burdens on business. The first objective is reflected in a requirement on ministries to calculate and report the costs to government of any new administrative activities as a consequence of regulation. These requirements are likely to have aided the performance of the administrative burden programme by avoiding the hidden problem of ministries meeting their administrative burden target objectives by bringing administrative functions in house, instead of removing or reducing them.

Austria has been progressive in the use of ICT solutions to support its administrative burden reduction programme. Since September 2009, the administration of the programme has been supported by the use of sophisticated ICT tools for the calculation of administrative burdens using the standard cost model and integration with the “e-Law” system. General guidelines have been provided and training is offered by the Ministry of Finance. The ordinance on the use of the standard cost model is binding on ministries and provides the methodological and procedural rules for ensuring that the burden is calculated and reported in the introductory remarks (*Vorblatt*) of the regulatory proposal. Austria has also implemented a number of ICT solutions that have reduced the transaction costs of administrative requirements. This includes the integration of information and transaction services for all levels of government in a single portal for business, which is being progressively implemented from 2010 to 2013.

The programme is apparently on track to achieve its net target. The Ministry of Finance regularly monitors new burdens and reduction measures by Ministries and publishes them in an excel table on the programme website. Future budget materials are planned to contain a performance report on the status of burden reduction by all Ministries. Being held to account against performance targets sharpens the incentives for achieving burden reductions. Effective reporting on the outcomes of the programme also helps to assess its overall performance and identify areas of success, and allows the merits of the programme to be fully communicated to business. To a large extent the merits of administrative burden reduction programmes can be expected to come from ministries achieving their targets by imitating and adapting the successful reform experiments of other ministries. Sharing experience therefore can be potentially very helpful. Finally, the functional role of the Ministry of Finance in combining budget discussions with a consideration of measures for reducing the burden of regulatory proposals could be explored, following the experience of other EU countries.

An evaluation of the effectiveness of the programme against the original goals and the scope for broadening its reach to cover full compliance costs would be timely. Part of this assessment should be to assess perceptions of business of the effectiveness of reductions in administrative burdens. Related to this, the merits of the burden reduction strategy including its aims and aspirations should be strategically communicated to business to secure support. There appears to be potential for expanding the use of the existing ICT tools used for calculating the SCM, as well as to calculate broader compliance costs. This could be combined with better use of reporting frameworks (the *Vorblatt* in particular) in accounting for an analysis of the economic impacts of regulatory proposals. An expansion of the programme to this effect should build on the collaborative relationship that is in place between the Ministry of Finance, including the role of staff currently overseeing the administrative burden reduction programme, and the Federal Chancellery to provide support to ministries in assessing and reporting on the design and costs and benefits of regulatory measures. It is noted that the future assessment of compliance costs is part of the discussion of the new impact assessment procedures being planned for under the current budget reforms.

The administrative burden reduction programme measures do not extend to the information obligations imposed by the Länder. The potential for a co-ordinated programme including the *Länder* could be explored to take advantage of the opportunities for shared practices and lessons among the *Länder*, in particular this would be expected to address the burdens imposed through the enforcement of federal laws.

Recommendation 5.2. Promote the success of ministry activities at achieving their individual net reduction targets, to include providing information on the performance of ministries against their targets and sharing of information about practical measures that can be implemented and adapted among ministries. Consider the use of incentives for compliance by associating performance with budget decisions (for example, rewarding the achievement of burden reduction targets with discretionary budget measures, or requiring an evaluation of regulatory costs in conjunction with budget bids).

Recommendation 5.3. Establish a framework to evaluate the success of the administrative burden reduction programme in reducing burdens on business. Include an assessment of the perceptions of business of the most successful burden reduction initiatives.

Recommendation 5.4. Consider how processes may be adapted, expanded or joined up more closely with *ex ante* impact assessment processes to improve the evaluation of substantive compliance costs of regulation in the future.

Recommendation 5.5. Develop collaborative programmes with the *Länder* to extend the administrative burden reduction programme, including sharing good practices and common ICT tools for the calculation of administrative burdens on the basis of the standard cost model. Consider the use of central reporting of overall burden reduction measures achieved at the federal level and at the level of the *Länder*.

Administrative burden reduction for the administration

A number of e-Government programmes have been developed in response to demands for improving internal administrative efficiency. However, there is no co-ordinated administrative burden reduction programme to counter the growth of regulation inside government.

Recommendation 5.6. Consider whether there is a need for a distinct policy to address administrative burdens inside government.

Background

Simplification of regulations

Legislative initiatives to streamline and simplify regulations (so-called *Rechtsbereinigungsgesetze* and *Deregulierungsgesetze*) are launched both at the federal and the *Land* level, although on an irregular basis. Their main objective is to reduce the existing legislative stock and thus the aggregate burden of regulation. Simplification does not unfold according to targeted sets of policy areas, as the approach is comprehensive. While the respective ministry is responsible for simplifying specific legislation falling in its portfolio, the Federal Chancellery takes care of horizontal simplification measures. Examples thereof are the First Federal Constitutional Cleansing Act (*Erstes Bundesverfassungsrechtsbereinigungsgesetz*) and the First Federal Cleansing Act (*Erstes Bundesrechtsbereinigungsgesetz*).

The rationale for the first type of simplification instrument (*Rechtsbereinigungsgesetze*) is well anchored, and for historical reasons also concerns the Austrian constitutional law. In the year 1945, the reborn Republic of Austria did not create a new constitution but enacted the main constitutional documents dating from 1920 and before.² Because constitutional provisions do not have to be incorporated in a main constitutional documents and are therefore scattered all over the law, attempts to review, revise and codify the (federal) constitutional law existed from the beginning of the Republic. Nonetheless, the results were poor, and only in 2003 the Austrian Convention (*Österreich-Konvent*) started to evaluate the Federal Constitution and to formulate proposals for a constitutional reform. In 2007, a Commission of Experts was established and presented its first report on clearing up the vast body of constitutional laws. Parts of these proposals were adopted in December 2007 and led to the First Federal Constitutional Repeal Act (*Erstes Bundesverfassungsrechtsbereinigungsgesetz*).³

Rechtsbereinigung applies also to ordinary laws. It means in this context to review, update, rearrange, repeal and consolidate with the idea of simplifying and clarifying the legal situation and especially to confirm the applicability of ancient provisions. In recent years, *Deregulierungsgesetze* have been issued partly to amend and partly to complement the simplification process (see Box 5.1).

Box 5.1. Legislative simplification Austria: *Bereinigungs – and Deregulierungsgesetze*

Attempts to simplify the federal regulations have been continuous in Austria, but especially in the last decade a more comprehensive approach has been taken.

The First Federal Repeal Act (1999)

A First Federal Repeal Act (*Erstes Bundesrechtsbereinigungsgesetz*) was passed in 1999, with the declared purposes of “cleaning up” the federal legislative stock by eliminating the outdated provisions and repealing especially ancient statutes that were no longer in use or necessary (so-called “formal cleaning”). The Act also sought legal clarification by reordering and rearranging related texts and amendments (“structural cleaning”) and to produce consolidated legal texts (“cleaning of content”).

The Act applied the so-called legal “guillotine technique”. Federal laws and ordinances (*Verordnungen*) published before a certain date (1 January 1946) expired by end 1999 if they were not included in the exhaustive list attached in the appendix of this act. The expiration included the original act and subsequent amendments. The appendix also provides also the possibility to maintain singular laws for a certain time. In the preparation of this act, and in co-operation with the concerned ministries, the Constitutional Service of the Federal Chancellery reviewed about 500 federal legal acts (about 300 laws and 150 ordinances), *i.e.* about 20% of the total Austrian federal legislative stock. For this purpose, the different laws were grouped systematically, following an official “Index of federal law”, published by the Federal Chancellery and also found in the mentioned appendix.

The effect of the First Federal Repeal Act was an important gain of legal security. The goal to repeal pre-constitutional provisions (dating from before 1867) and laws enacted between 1938 and 1945 was largely achieved.

The Deregulation Law (2001)

According to the *Deregulierungsgesetz* 2001, before proceeding to any legal amendment, the federal legislative authorities are obliged to check every time if the law or certain provisions thereof are still necessary and up-to-date, and if the pursued effects could be also reached otherwise. This requirement is wide-reaching and includes the transposition and implementation of EU directives, for which the prescribed standards should not be exceeded without cause (“gold-plating”). Additionally, the Law states that all organs involved in the preparation process of federal legislative acts have to take into account the essential consequences of laws under financial, economic, environmental and social aspects and such of consumer protection policy. The proportionality of the administrative burdens provoked by the planned regulation has to be examined.

The Deregulation Law (2006)

The *Deregulierungsgesetz* 2006 continued the process of *Rechtsbereinigung*. Despite its title, it has so far served “only” as an amendment to the first repeal act and has not produced technical de-regulatory effects. Austria’s accession to the EU had made a number of legal provisions obsolete, and those unnecessary regulations should be repealed by this law. In this respect, the *Deregulierungsgesetz* 2006 should realise the initiative “Less and Better Regulations” of the European Commission by reducing and improving legal provisions under formal, linguistic and substantive aspects.

The legislative technique of the Repeal Act 2006 differs from the one used by the First Repeal Act 1999. Instead of applying the regulatory guillotine, the Act enumerates explicitly 29 federal laws including some constitutional provisions (in its Article 1) and 136 ordinances (Article 2) which expired with the end of the year 2006. While in 1999 the focus was on the federal law dating from before 1946, the object of this repeal act is also the federal law since 1946, and it includes federal constitutional law.

Source: Responses of the Austrian Government to the OECD questionnaire.

In addition to the general legislative acts mentioned above, specialised commissions (*Rechtsbereinigungskommissionen*) exist at the federal and at subnational level and work on “cleaning up” and simplifying specific legal matters, such as social security law.

Legislative simplification may be pursued also by non-legislative authorities. The so-called “re-notification” or “re-publication” technique (*Wiederverlautbarung*)⁴ empowers the Federal Chancellor jointly with the competent federal ministers to restate with binding effect federal laws, with the exception of the Federal Constitutional Law, and treaties published in the Federal Law Gazette in their valid version by publication in the Federal Law Gazette.⁵

Re-publication authorises only to declare – and not create – existing law and to adapt the terminology and spelling. Only formal changes and no substantive amendments are allowed. The Federal Chancellery has adopted directives for the re-publication of federal laws.⁶

Review and sunset clauses

Review or sunset clauses are not systematically used in the Austrian legal order. Nevertheless, individual legislations contain such provisions, and ministries are familiar with these techniques. The Federal Trade Act (*Gewerbeordnung*) is renewed rather than codified, which implies simplification. A further example of predetermined evaluation are the review clauses applied to the pension system, where proposals for new pension expenditures are made by the Pension Commission regularly (every three years) to the Federal Ministry of Labour, Social Affairs and Consumer Protection (BMASK). Upon the BMASK report, the federal government informs the National Council on the financial situation of the pension system and on policies to ensure its sustainability.

Sunset clauses are applied in some secondary regulations of the Ministry of Economy, Family and Youth, such as those related to price marking law. A similar approach was taken by BMASK, which set the sunset clause to the year 2005. 50% of the legislation was not re-notified. The Federal Ministry of Defence and Sports especially applies sunset clauses in all the regulations concerning the *Flexibilisierung* of its units.⁷

Administrative burden reduction for businesses

Policy on administrative burden reduction for businesses

The national administrative burden initiative started in 2006, initially addressing burdens on businesses, exclusively. In 2009, the programme was complemented by a strategy covering burdens on citizens (see below). Both initiatives are designed in close synergy with the government's e-Government strategy.

The federal government set a reduction goal for each ministry of 25%. This is estimated to bring about more than EUR 1 billion in savings by 2012. Reductions in administrative burden from national legislation need to be achieved by 2010, and reductions in administrative burden induced by the EU by 2012, according to the timeframe of the EU Action Programme. All sectors are covered by the programme, which considers both the stock and the flow of regulations. The target therefore is a net target.

An overall baseline measurement of all federal legislation was performed between November 2006 and June 2007. The measurement was made on all regulations in force by 31 December 2006, and was co-ordinated by the Federal Ministry of Finance. The baseline measurement collected data on information obligations for businesses resulting from federal and European legislation. Information obligations in EU regulations and directives were measured only if national legislative implementing acts were made or necessary. Only businesses with domicile in Austria were considered.

Austria has drawn from other practices internationally, not least from the experiences of the Netherlands, Denmark and the United Kingdom.

Information obligations are defined as those obligation for businesses “arising from regulation to collect, compile and provide information and data to the public sector or third parties. An information obligation does not necessarily mean that information has to be transferred to the public authority or third parties, but may include a duty to have information available for inspection or supply on request”.⁸ Each information obligation consists of one or more data requirements. A data requirement is “each element of information that must be provided when complying with an information obligation”.⁹

Not included in the baseline measurement were regulations at *Länder* level; federal regulations addressed to state-owned enterprises (with a share exceeding 50%), NGOs, private interest groups and international organisations (such as the UN and OPEC); and regulations containing information obligations causing less than 500 hours or less than EUR 20 000.¹⁰ Overall, 561 legal provisions with 5 687 information obligations have been analysed and measured.

Ex ante measurement of administrative burdens of new federal regulatory policies has been done since September 2007. The threshold for *ex ante* measurement for administrative burden for businesses is EUR 40 000 or 1 000 hours a year.

Institutional framework, guidance and support

Operational responsibility is de-centralised to all federal ministries. Since September 2007, all Ministries must calculate the administrative costs of any new draft legislation. This obligation is stated in a law and put into operation in the so called Standard Cost Model Guidelines (SCM).¹¹ Individual ministries are responsible for their 25% reduction target. This includes the identification and measurement of the burdens as well as the elaboration and submission of the related reduction measures.

The Federal Ministry of Finance co-ordinates the overall initiative, takes care of the comparability of the results, and oversees each ministry's compliance to common standards. The Ministry also undertakes a

“plausibility check” using a base data set from *Statistik Austria*, the Austrian statistic office.¹² A dedicated unit exists within the Ministry and consists of seven officials. The functions of the Unit are:

- to co-ordinate measures for reducing administrative burdens on business and citizens;
- to ensure the coherence of the baseline measurements;
- to supervise the baseline measurement, the planning and the implementation of measures;
- to raise awareness inside the public administration as well as amongst the wider public for administrative burdens on businesses and citizens;
- to analyse and develop further methodological concepts for assessing administrative costs for business and citizens (standard cost model); and
- to participate in international networks and initiatives and implement international benchmarking projects.

An inter-ministerial working group with representatives from all ministries has been set up for the purpose of steering the initiative. For the elaboration of reduction measures further working groups have been set up, which vary in size and composition across the ministries. The Ministry of Finance, for instance, has a standing working group between auditors and the tax administration.

General guidelines on the SCM have been issued in the form of an ordinance to support administrators in this task. Training for policy and legal officers is offered by the Ministry of Finance. The standard cost model ordinance is an internally binding document first published in September 2007 and updated in 2009. It provides the methodological and procedural rules of *ex ante* measurement. This includes definitions of information obligation, citizens, businesses or the obligation for civil servants to present the findings of the *ex ante* measurement in the introductory remarks (*Vorblatt*) and a special SCM-form. Since 2006 the Federal Ministry of Finance has offered comprehensive training of policy officers/legal officers. The seminars cover the application of the standard cost model methodology for *ex ante* measurements, the use of IT support tools and guided trainings on practical examples. The training is not mandatory.

Methodology and process

According to the SCM ordinance, every legislative proposal has to include an information note on its impact on the administrative burdens for citizens and businesses; the yearly amount as well as the reasons for its necessity and the expected advantages of the legislation. A threshold approach has been introduced to allow a rational and proportionate use of administrative resources. If the administrative burden exceeds the threshold (1 000 hours or EUR 40 000), the results must be reported in the legislative comments and transmitted to Ministry of Finance in a standardised SCM-form generated by the admin burden calculator. If this threshold is not exceeded, the calculation must only be made of the information obligation causing the highest burden imposed through a requirement to provide documentation.

The Standard Cost Model (SCM) methodology was applied to carry out the baseline measurement. Face-to-face interviews with businesses were the primary method to measure administrative costs (90%). Additionally, so-called expert panels were established to complete the measurement (5-7% of the administrative costs) and to cross-check the results from the interviews programme. Only 3% of the administrative costs were assessed by expert estimations. The baseline measurement was carried out by external consultants.

Since September 2009, the so-called “Administrative Burden Calculator” was introduced for measuring the burdens, and its use is mandatory for the ministries. This IT tool is simple and easy to use and therefore increases the acceptance by administration in performing the task. It also increases the quality and transparency of the process (for instance, through a simplified presentation), providing comprehensive and user-friendly information for parliament and the public. The tool also allows for higher standardisation. Via the “e-Law” system, the results of the administrative burden assessment are directly and automatically transferred into the legislative proposal.

Simplification measures are identified according to their burden reduction potential. This process is co-ordinated by the Federal Ministry of Finance, but the ministries themselves are in charge of proposing the measures, the related timetables and potential reductions. This happens through an iterative process between the lead ministry, the stakeholders, and other ministries, and benefits from input from so-called “measure finding workshops”.

The results of the *ex ante* measurements are no longer entered into the database holding the baseline measurement data as this was too complicated. Instead the Ministry of Finance keeps track of the results and publishes a report on its website. The Ministry of Finance ensures the overall co-ordination of the initiative, guaranteeing coherence and comparability of the results.

Public consultation and communication

Several workshops with trade associations and chamber of commerce, among others, were organised in the early phase of the business reduction programme. Also in the successive stages of the programme, stakeholder groups were consulted by individual ministries. The ongoing participation of business representatives is considered an essential element in both the elaboration and implementation of the measures. For instance, in case of the business portal programme, the secretary general of the Austrian Chamber of Commerce participates in the programme’s executive board.

The Austrian Federal Economic Chamber defines itself as active partner in applying the SCM in the impact assessment process. To this end, all draft legislation is scrutinised in order to avoid excessive administrative burdens for business. Often, the Chamber is asked on an informal basis to provide its expertise in estimating administrative burdens for enterprises.

Use of e-Government

The administrative burden initiative will benefit from enhanced e-Government services, and the “Service Portal for Businesses” constitutes the flagship-project of the strategy. An e-Government portal was planned from January 2010, borrowing from experiences in other countries, such as Norway. The portal will provide business with a single entry point towards government in order to fulfil their federal information obligations. The concept is based on high quality “tailor-made” information and transaction services (see Box 5.2). The website of the programme was comprehensively updated during spring 2010.¹³

Box 5.2. Cutting red tape through e-Government: The Service Portal for Business in Austria

The Austrian businesses are estimated to provide data derived from the 5 700 information obligations scrutinised by the national programme 230 000 000 times each year. This communication is addressed to public agencies or to third parties. Despite an already highly developed e-Government services in Austria, notably the common public portal network (*Portalverbund*), too few interconnecting elements between the large services are available. The administration of the various roles and rights for each service causes a high degree of effort within the businesses.

Austria has committed to establish a central e-Government one-stop shop for communicating with the public sector (*Unternehmensserviceportal*). The portal Help for Businesses was shut down in January 2010 and replaced by the *Unternehmensserviceportal*, which will integrate information and transactional services from all levels of the administration. It is intended as a single-sign-in solution as well as a personalised one-stop shop. The portal should contribute significantly to reduce costs for businesses, in particular, by:

- allowing simple and uniform identity- and access-management (single sign-in);
- allowing access to comprehensive and business-oriented information, including information on alterations of procedures or their legal basis;
- optimising procedures and integration of related information obligations;
- creating one single standardised gateway for machine-to-machine communication (e.g. via ERP software); and
- ensuring data security.

The portal will benefit also the public administration, since it improves the quality of incoming data and of reporting in general; reduces duplication of data; diminishes costs of data storage and processing (less paperwork), and streamlines and centralises the systems.

The government estimates that the potential benefit amounts to EUR 100 million per year on a short term basis, raising up to more than EUR 300 million per year, depending on the number of integrated services.

The new portal is explicitly mentioned in the work programme of the current government. It is a joint programme of the Ministry of Finance and the Federal Chancellery. The Austrian Federal Economic Chamber is one main project partner and also content provider. All federal ministries are involved in the Service Portal programme. Two *Länder* are also represented in the executive board of the portal, while *Statistik Austria* and business groups are consulted on its development. The programme started in spring 2008 and is currently being developed. A first version of the *Unternehmensserviceportal* providing comprehensive information for businesses is on line since January 2010. The functionalities of the portal will be progressively expanded until 2013.

Source: Responses of the Austrian Government to the OECD questionnaire; and mentioned website.

One of the main goals of the new portal is to offer information on new regulatory information obligations at an early stage. To this end, the editorial process of content management within the administration will be overhauled, as provided for by the law enacting the e-Government portal.¹⁴ A central editorial unit ensures the quality of drafted texts.

Achievements so far

Further to the baseline measurement exercise, the government set specific reduction targets for individual ministries in November 2007. As a result, a list of 133 reduction measures was adopted by the Austrian government in March 2008. In the framework of the discussion for the 2009 budget, progress was examined by the Federal Ministry of Finance with the relevant ministries, resulting in an updated list of approximately 186 measures. A first progress report and all measures up to date were published as a supplement to the 2009 budget materials. The reduction proposals designed so far are also published on the programme's website.¹⁵

According to the report, the Austrian economy faces administrative burdens amounting to EUR 4.3 billion. This equals to 1.6% of the country's GDP. 70% of the overall burden is caused by regulations from the Ministry of Finance, the Ministry of Justice and the Ministry for Economics and Labour all together. The areas of tax law, employment and social insurance law, as well as trade and commercial law cause a cumulated burden of EUR 2.7 billion. In comparison, statistics "only" cause 41 million EUR, although businesses perceive statistical declarations as very burdensome. From the report it appears that the proportion between national versus EU-induced burdens on business has a 53-47% ratio (EUR 2 281 million from national versus EUR 2 025 million from EU legislation).¹⁶ In June 2010, almost 80% of the planned savings for the 2010 target were achieved (EUR 460 out of 560 Million).¹⁷

Some examples of current simplification measures include:

- Set-up of the national e-Government portal for businesses: *www.usp.gv.at – online already.*
- Opportunity of electronic submission of the balance sheet to the local tax office – *released already.*
- Simplification of statistical declarations (*e.g.* in the range of Research & Development or in the range of road transport and rail transport statistics) – *released already.*
- Adaption of analogic control to digital control systems of trucks – *released already.*
- Simplification of the motor vehicle registration certificate – *released already.*
- Simplification of tax declaration (*e.g.* providing taxpayers with pre-filled information) – *partly implemented, to be continued.*
- Extension of opportunities to file former paper tax declarations electronically via *FINANZOnline* (*e.g.* Tax declaration concerning trucks) – *to be implemented.*
- Amendments of Commercial Law (*e.g.* increase of thresholds to categorise businesses, increase of threshold requiring businesses to comply with accounting rules) – *released already.*
- Modernisation and harmonisation of commercial and fiscal accounting rules – *planned.*
- Improvement of Professional Register by e-Government – *planned.*
- Simplification of the heavy-labour declaration – *planned.*¹⁸

Other simplification measures for businesses

Fostering the business location (*Standort*) and SMEs is one of the main focuses of Austria's National Reform Programme. Reducing start-up costs as well as easing formal requirements in combination with providing sufficient protection for creditors is considered the key issues for the planned reform of the legal form of GmbH.¹⁹ Efforts are put to liberalise and simplify the process of starting up businesses, not least through the enhanced introduction of ICT. The authorities in charge have been linked electronically, which enables them to immediately transfer trade registrations and official information electronically. One-stop shops facilitate and accelerate the start-up process. So-called *Gründerservice* run by the local Economic Chambers offer the possibility to electronically register a business according to trade law. In principle, a sole trader should be able to become established within 15 minutes. For private limited companies, it ideally takes 24 hours to start the business. Information concerning all aspects of starting a business can be found on the Internet.²⁰

In the context of the implementation of the EU “Goods Package”,²¹ the Ministry of Economy, Family and Youth established the Product Contact Point, which aims to provide enterprises with information about technical requirements, security standards and responsible authorities in an un-bureaucratic manner.²²

Austria Wirtschaftsservice Gesellschaft, a state-owned (Federal Ministry of Economy, Family and Youth and Federal Ministry of Traffic, Innovation and Technology) company under bank-law, works towards promoting the business environment in Austria, improving customer satisfaction and reducing administrative costs.²³ The company launched the programme “Micro loans for small companies” in July 2006 to support companies with fewer than 50 employees that have been newly set up or taken over, and facilitate small loans (up to EUR 25 000). The programme was extended pursuant to the SME Promotion Act (*KMU-Förderungsgesetz*, *KMU-FG*) until the end of 2010.

A series of legislative programmes came into force in 2008 with the aim of improving the economic environment, particularly for SMEs.²⁴ Among the most important programmes are the Company Law Amendment Act (*Unternehmensrechts-Änderungsgesetz*, *URÄG*), and the 2007 Small and Medium Enterprise Finance Act (*Mittelstandsfinanzierungsgesellschaften-Gesetz*, *MiFiG-Gesetz*). Amendments have been brought to a wide range of relevant legislation, including liberalisation of opening hours.²⁵ Tax benefits have been introduced for the self-employed. In addition, inheritance and gift tax expired on 1 August 2008, accounting for EUR 140 million. This measure is expected to facilitate company successions.²⁶ The introduction of a voluntary unemployment insurance scheme for the self-employed, effective from 1 January 2009, sought to improve social security for entrepreneurs.

Statistics show a positive trend in terms of the number of annual business start-ups over the past 15 years. The government claims this is positive proof of the effectiveness of Austria’s policy of actively encouraging the creation of new businesses. The record number achieved in 2005 (31 001 sustainable business start-ups) was repeated in 2007 – some 30 300 companies were newly established in that year, representing a 4.1% increase compared to 2006. In the first half of 2008, the highest half-year figure since 1993 was reached, with 16 300 new start-ups. The Austrian Reform programme for growth and jobs reports that, after Slovakia, Austria showed the highest increase (+ 20.4%) in the number of self-employed between 2000 and 2005.²⁷

Administrative burden reduction for citizens

In April 2009, a programme was started on the reduction of administrative burdens for citizens. It is co-ordinated by the Federal Chancellery and the Ministry of Finance and consists of two elements: “fast track actions” on birth, death and marriage, co-ordinated by the Federal Chancellery – and a SCM process run by the Ministry of Finance. Instead of a full baseline measurement, a focused baseline approach targeting the 100 most burdensome information obligations was taken. Those obligations were determined by legal analysts.

Fast track actions

On the basis of a study commissioned by the Federal Chancellery in 2008 to an external research institute,²⁸ fast-track actions were launched in the areas of birth of a child; primary school registration; marriage; single parents; people with disabilities and people requiring care; pension; and death. Initial general estimates indicate that citizens spend 10 million hours per year on the seven mentioned “life situations”. There is no formal reduction target for citizens. Administrative relief in the range of 3.8 million hours (minus 38%) has been mooted but is considered ambitious.²⁹ Likely measures may include inquiring into the need for procedures and requirements, reducing the need for documentary evidence, automatically initiate procedures, establishing single points of contact, and enhancing co-operation with public organisations and bodies.

Methodologies and process for the Standard Cost Model approach

The 100 information obligations considered to be most burdensome were selected on the basis of international experiences (notably the Netherlands and Belgium), and with the help of legal officers within the relevant ministries. The SCM methodology was adapted to the needs of citizens (SCM for citizens). Accordingly, administrative burdens are measured in time and direct costs.

In the baseline measurement, the model was enriched with qualitative elements. The completion of an information obligation is structured in several phases (orientation, completion etc.) and the measured minutes are converted into “quality minutes”, while the overall amount remains the same. This approach indicates which phases are most annoying for citizens and thereupon aspects of service quality can be considered in the measurement finding process. The baseline measurement of administrative burdens for citizens is carried out by opinion poll takers. Citizens are interviewed personally and by telephone. Results are validated in stakeholder panels. Between October 2009 and February 2010, approximately 4 000 interviews with citizens were conducted. A measure finding process was launched in March 2010, based on the results on the time and costs efforts as well as qualitative aspects. The process includes workshops and focus groups. Reduction measures for citizens are scheduled to be implemented from 2010 onwards.

Administrative burden reduction for the administration

Austria has not yet developed an administrative burden reduction programme explicitly addressing public administration internal transactions. Nonetheless, the internal efficiency of the bureaucratic machinery has received increasing attention by the federal government in the past few years. This concern was one of the drivers for the implementation of administration internal e-Government projects. Examples of such projects are:

- *The Electronic File System (Elektronischer Akt, ELAK)* – The *ELAK im Bund* project was introduced to replace the paper-based filing and archiving in all Austrian ministries. The project started in 2001 and was completed in 2005. Since then, ELAK is being used by some 8 500 users. An electronic file is created for every written notification requiring an answer as well as for every internal work of possible further interest. This facilitates the audit of every procedure, as well as inter-administrative transactions that can now be processed using just one medium. Since the introduction of the electronic file system significant savings have been already observed. The Federal Chancellery expects up to 15% reduced transaction times and a cost reduction of 38% related to the procurement of paper. Several provincial administrations also introduced similar electronic file systems with about 40 000 users all over Austria.³⁰
- *The electronic legal communication (ERV)* – This is used by the Federal Ministry of Justice in its communication between the court and the involved parties (lawyers, firms etc). By 2005 nearly all lawsuits are exchanged among the BMJ and the professionals and filed electronically. This was made possible by allowing and enabling the cashless payment of court-fees.³¹

Reliable centralised data sources are one of the main enablers for administrative burden reduction. Better data quality and more accessible sources are required for the simplification and increased efficiency of procedures. Authorities increasingly query data from in-house registers instead of asking it from citizens or businesses, as an attempt to reduce costs. The challenge is to stay within the boundaries of data protection regulation and attribute the information held in registers to the correct citizen or business. Therefore mechanisms for unique electronic identification are required and have to be part of the strategy. Austria has engaged in such an approach. The central trade register (*zentrales Gewerberegister*) run by the Federal Ministry of Economy, Family and Youth, for instance, is a database bundling the data from the de-centralised trade registers of district authorities. It makes it possible to overview all valid applications

for a trade in the country. The *Unternehmensserviceportal* – the one-stop e-Government Portal for businesses will, among other things, contain a project to provide differing government departments with harmonised business master data.

Notes

1. Programmes to reduce administrative burdens may include the review and simplification of whole regulatory frameworks or laws, so there can be some overlap with policies aimed at simplification *via* consolidation etc. There may also be some overlap with the previous chapter on the development of new regulations, as administrative burden reduction programmes are often conducted on a net basis, that is, taking account of the impact of new regulations in meeting target reductions.
2. For instance, the basic human rights guarantees enshrined in the *Staatsgrundgesetz* of 1867.
3. See: FLG I 2/2008. The scope of the simplification is remarkable. Article 2 of the law lists more than 200 constitutional laws and constitutional provisions which are declared obsolete and/or repealed. Others 22 were maintained but lose their formal quality as constitutional provisions and were transformed into “simple” federal law.
4. See: Art. 49a FCL.
5. In the promulgation regarding the re-notification, obsolete terminological expressions can be rectified and outdated spelling assimilated to the new manner of writing; references to other regulations which no longer tally with current legislation as well as other inconsistencies can be rectified; provisions which have been nullified by later regulations or otherwise rendered void can be declared no longer valid; title abridgements and alphabetical abbreviations of titles can be laid down; the designations of articles, sections, paragraphs, and the like can in case of elimination or insertion be correspondingly altered and in this connection references thereto within the text of the regulation be appropriately rectified; and interim provisions as well as earlier still applicable versions of the federal law (treaty) can by specification of their purview be recapitulated and simultaneously with the republication be separately issued.
6. See: *Bundeskanzleramt* (ed.), *Handbuch der Rechtssetzungstechnik. Part 2: Richtlinien für die Wiederverlautbarung von Bundesgesetzen*, 1990.
7. “*Flexibilisierung*” of a unit is a legal instrument offered by the Austrian budgetary law to grant a distinct unit of the ministry the possibility to administer its budget in a certain independence with periodical reviews.

8. Quoted from: www.verwaltungskostensenken.at/English/Methodology/InformationObligations/_start.htm (last accessed 5 December 2009).
9. Quoted from: www.verwaltungskostensenken.at/English/Methodology/DataRequirements/_start.htm (last accessed 5 December 2009).
10. See: www.verwaltungskostensenken.at/English/Methodology/_start.htm (last accessed 5 December 2009).
11. Further to Law § 14a *Bundeshausaltsgesetz*, BGBl.Nr.213/1986 in its current version.
12. See: www.statistik.at/web_en/statistics/index.html (last accessed 5 December 2009).
13. See: www.verwaltungskostensenken.at (last accessed 31 March 2010).
14. See the: *Unternehmensserviceportalgesetz*, at: <http://ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20006310>.
15. See the reports at: www.bmf.gv.at/Budget/Budget20092010/Budgetbericht_2009_2010.pdf and www.verwaltungskostensenken.at/Deutsch/Service/Downloads/Beilage_Verwaltungskosten_senken_publiziert.pdf (last accessed 31 March 2010).
16. See: www.verwaltungskostensenken.at/English/Initiative/Results/_start.htm (last accessed 5 December 2009).
17. Information provided by the Ministry of Finance.
18. See: www.verwaltungskostensenken.at/English/Measures/_start.htm (last accessed 5 December 2009).
19. A "GmbH" or "GesmbH" (*Gesellschaft mit beschränkter Haftung*) is a company whose ordinary share capital is divided into company shares with capital contributions. The company is a legal person with a legal status of its own, able to acquire rights. Different to other bodies, a "GmbH" can be established by only one person. The minimum capital requirements are EUR 17 500 (paid-in cash). A "GmbH" or "GesmbH" equates the most with a PLC or Ltd.
20. See: www.help.gv.at (last accessed 8 December 2009), now complemented and upgraded by www.usp.gv.at.
21. The EU “Goods Package” is a harmonisation initiative in the goods sector to enhance the European internal market and its competitiveness.
22. See: www.bmwff.gv.at/BMWA/Service/Produktinfostelle/default.htm (last accessed December 2009).
23. See: www.awsg.at (last accessed 8 December 2009).
24. For more detailed information, please refer to the Government’s *2008 Economic Report Austria* (p. 116ff), presented on 30 June 2008 in Vienna, at:

www.bmwfj.gv.at/Wirtschaftspolitik/Wirtschaftspolitik/Documents/wb2008.pdf
(last accessed 6 May 2010).

25. Cfr. in particular amendments to the Trade Act (*Gewerbeordnung*, GewO) and the Opening Hours Act (*Öffnungszeitengesetz*). Moreover, cfr. amendments to the Law on Accountant Bookkeepers (*Bilanzbuchhaltungsgesetz*, BiBuG), the Law on Professional Accountants (*Wirtschaftstreuhandberufsgesetz*, WTBG), and the Act on Chartered Engineering Consultants (*Ziviltechnikergesetz*, ZTG).
26. Cfr. amendment of the Business Start-up Promotion Act (*Neugründungsförderungsgesetz*, NeuFÖG).
27. All data from Federal Government, *Second Austrian reform programme for growth and jobs 2008-2010*, 7 October 2008, p. 26-27.
28. See: KDZ Zentrum für Verwaltungsforschung (2008), “*Administrative Belastungen von BürgerInnen in Österreich Zeiteinsatz von BürgerInnen bei ausgewählten ‘Behördenwegen’*”, Final report, Vienna.
29. See: Federal Chancellery (2008), “*More convenience – less hassle*” for citizens. *Administrative Reform*, Vienna, p.4.
30. See: www.digitales.oesterreich.gv.at/site/5286/default.aspx (last accessed 8 December 2009).
31. See: www.brz.gv.at/Portal.Node/public?genetics.am=PCP&p.contentid=10007.26947 (last accessed 8 December 2009).

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,¹ and the adoption of rules to promote responsiveness, such as “silence is consent”.² 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

Some regulatory agencies have coherent strategies for compliance and enforcement that are well managed. The OECD review heard of examples of good practice; for example, the comprehensive risk-based strategy employed by the Austrian tax office. It was also suggested that fiscal constraints limiting the resources for compliance and enforcement have provided an incentive for the *Länder* to develop risk-based

approaches and apply efforts in the most effective way. In addition it is reported that the *Länder* have already engaged in a discussion of the establishment of national uniform quality standards for maximum waiting times for citizens and as well performance targets for satisfaction with service standards.

Austria could benefit from the development of a framework approach to compliance and enforcement. A focus on improving compliance and enforcement strategies is a relatively new field for the Better Regulation agenda. However, it has considerable potential for reducing the burden on business of regulatory activity and improving the effectiveness of the design of regulation and its implementation, thereby resulting in improved outcomes for citizens and lower costs for the state. A comprehensive and strategic approach to improved compliance and enforcement can help to improve efficiency. This can be achieved in part through sharing good practices among ministries, agencies and jurisdictions with regulatory missions. Furthermore, by focusing on those activities which presents the greatest risk to the achievement of policy objectives, and on those businesses that present the greatest risk of non compliance, the resources required for enforcement by the government and for compliance by business can be allocated more efficiently.

The enforcement of regulation is a principal responsibility of each Land, which allows for wide variance in practices and resultant inefficiencies. This suggests that there is considerable potential for sharing information on new strategies for improving compliance taking account of technical innovations and potential synergies from common practices across the *Länder*. There is no suggestion that the rates of compliance in Austria are low, but Austria does not collect and report statistics on general compliance rates. Accordingly, as a starting point it would be prudent to collect information on compliance problems across the *Länder* to develop a strategic picture of any underlying trends and difficulties, based on the information already collected by regulatory agencies.

The Länder Courts of Audit would benefit from having a principles based framework for assessing the quality of enforcement practices and draft guidance for agencies on the adoption of risk-based approaches (see Chapter 8). This should be supported by a survey of the range of compliance problems across the *Länder* and be grounded in the experiences of regulatory agencies at the level of the *Länder*. Reference to practical examples from within the EU and other countries from within the OECD also merits study as a basis for comparative approaches (in particular, examples from the Netherlands, Denmark, the U.K. and Australia).

Recommendation 6.1. Undertake a survey using the records already compiled by agencies to develop a strategic assessment of the underlying trends and difficulties with compliance and enforcement practices.

Recommendation 6.2. Engage the Länder Courts of Audit to jointly develop a principle-based framework for assessing the quality of enforcement practices and the preparation of draft guidance for agencies, with reference to good practices within Austria and examples from other jurisdictions.

The institutional arrangements of the Austrian appeals system are comprehensive and appear to function well, supported by a system of arbitration tribunals and the independent ombudsman's office. In addition Austria has developed an extensive IT network which promotes the efficient administration of the judicial system and electronic access to the records of legal proceedings free of charge on the Internet, as part of the Federal Legal Information System (RIS).

Background

Compliance and enforcement

General context

In Austria, there is an institutional distance between the preparation of legislation and its implementation or execution. Execution of a law may first involve the adoption of secondary regulations, before the law can be applied and enforced. As a rule, the implementation of federal laws is primarily a task of the subnational authorities, notably by the *Länder* governors (*Landeshauptleute*) and the corresponding offices. According to the principle of so-called “indirect administration” (*mittelbare Bundesverwaltung*), the responsible federal minister may issue circulars (*Erlässe*) addressed to the governors on how to interpret the law to ensure its uniform practical application across the *Länder*. The other option is direct federal administration of federal laws. Direct federal administration is only admissible in select exhaustively listed matters and constitutes the exception.³

To a large extent, the enforcement of federal legislation is with the *Länder*. The Federal Constitution allows for “administrative execution” of federal tasks by the *Länder* through the *Landeshauptmann* (indirect federal administration). It also provides for mandatory administration by the *Landeshauptmann* of specific federal economic affairs such as the planning, construction and administration of highways, and official buildings. Enforcement mainly involves administrative activities. Prior to execution, however, in many fields these tasks include the enactment of secondary legislation by the *Länder*.

As a result of this institutional arrangement, the authorities responsible for the preparation of legislation are essentially different from those responsible for its execution. Whenever the application of federal legislation is left to the *Länder*, the federal authorities do not have direct access to information about the application and the practical effects of federal legislation. A number of vertical and horizontal co-ordination mechanisms are in place to make this constellation work.

Both the *Länder* and the federal level are supervisory authorities for the municipal level.

Compliance

The modalities for monitoring compliance vary considerably. In price marking law, for instance, the Ministry of Economy, Family and Youth establishes controlling programmes addressed to the states for implementation. The programmes are issued every year in general, and every two months for special types of enterprises. Issues concerning implementation and results are reported by the states to the Ministry and discussed in meetings on a yearly basis.

The fiscal authorities by contrast do not measure taxation compliance rates directly, but observe several indicators. The Ministry of Finance estimates the percentage of overall compliance for instance by considering the share of citizens whose tax liability does not change after controlling their case. This random test exhibits some weaknesses, as it covers only a fraction of all tax payers and auditing cannot be complete in each case. Nonetheless, it is believed to give a good overview for general trends.

In some sectors, compliance is considered difficult to examine by the relevant ministries. This is the case of the Trade Law (*Gewerberecht*) and the Foreign Trade Act (*Außenhandelsgesetz*), for which there exist no special compliance rate data in the Ministry of Economy, Family and Youth because the acts are either generally executed by the *Länder* (in the first case), or executed by customs and judicial authorities (in the latter case, with regard to sanctions and fines).⁴ The Cartel Court oversees competition law

enforcement by setting fines and forbidding a specific behaviour. The FCA applies the fines and determines also their maximum amount.

Enforcement

Enforcement of federal regulations

District authorities (*Bezirksverwaltungsbehörden*) enforce federal and *Länder* law. There is a right of supervision for federal authorities to guarantee a lawful and equal administration at the level of municipalities. At the *Länder* level, independent Administrative Courts (*unabhängiger Verwaltungssenat*) exist.

Box 6.1. Enforcement regimes in selected sectors

The Ministry of Economy, Family and Youth is the Austrian accreditation body for certification, examination and inspection bodies. All information related to contact persons, form sheets etc. is available on the Internet.⁵

Regular inspections are performed by the Ministry for Labour, Social Affairs and Consumer Protection. In 1993, a law on labour inspection was passed. The Labour Inspection section of the Ministry consists of 19 regional inspectorates and one inspectorate for construction. 500 staff members are employed, of which 300 operate in the field checking 210 000 workplaces.

Further to the Metrology Act, continuous inspections are carried out by the verification offices – e.g. in supermarkets to ensure that measuring instruments display the correct value of quantity and are used properly (*eichpolizeiliche Revision*).

The mining authorities have a lot of duties concerning regulatory enforcement and supervision to ensure safety at the workplace, public health and the protection of the environment. In the case of increased dangers as well as in the case of underground mining they have to inspect the site at least once a year.

Source: Responses of the Austrian Government to the OECD questionnaire.

With regard to risk-based enforcement, forms of risk assessment in monitoring have to be applied because of the very limited resources devoted to enforcement. Trade authorities normally act in reaction to problems and inputs from stakeholders. In competition policy, the Federal Competition Authority determines the fines in cases of infringements. In this process, the risks (understood as the damage to society caused by an anti-competitive behaviour as well as the possible signals sent out by non-punishment) are a regular part of the assessment process. The evaluation of risks plays also a role in the case selection process within the authority.

Enforcement of Land regulations

The discrepancies in enforcement practices from one Austrian federal *Land* to the other are “sometimes enormous”,⁶ and point to the need for nationwide uniform quality standards. In response, the Federal Chancellery and the Federal State of Styria called a conference on the topic in the autumn of 2007. Examples of such standards are a maximum waiting time for clients in the citizens’ offices (*Bürgerbüros*) or a target % of satisfied clients on their first contact with the administrative authority. A brochure on “Quality standards for citizens and business” was published on the occasion of the conference, offering an introduction to “quality standards” and discussing international trends and the Austrian state of the art.⁷

Appeals

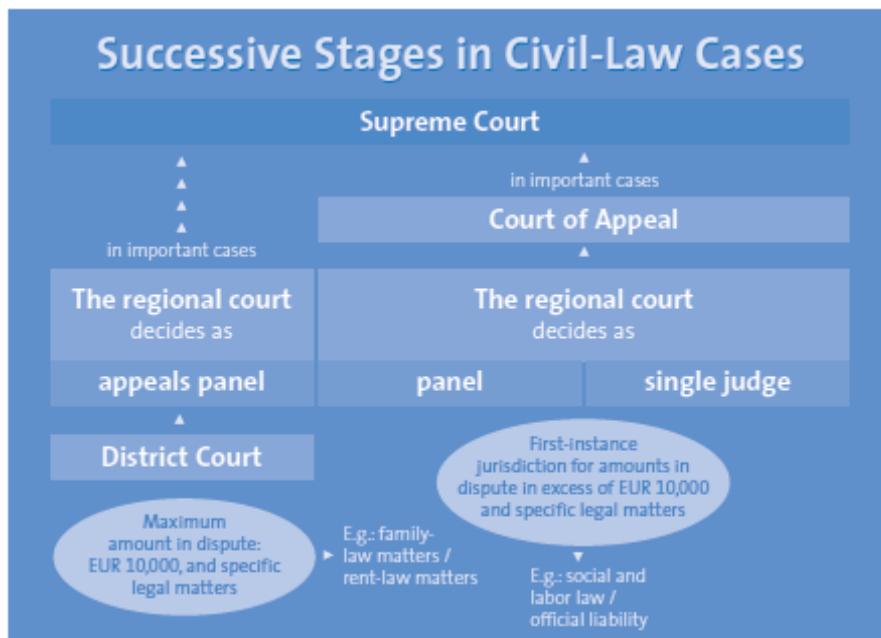
General context

The Austrian Federal Constitution Law grants the individual citizen the right to a trial before a legal judge. It also stipulates that judicial and administrative powers shall be separate at all levels of proceedings. This seeks to ensure the independence of the respective jurisdictions.⁸

The ordinary jurisdiction (*ordentliche Gerichtsbarkeit*) covers civil law and criminal law matters. The court system consists of 140 district courts (*Bezirksgerichte*), 20 state courts (*Landesgerichte*), four state courts of appeal (*Oberlandesgerichte*)⁹ and one Supreme Court (*Oberster Gerichtshof*). Various types of legal remedies exist, including ordinary appeals, recourse or nullity appeals and complaints.

- The district courts are often the first-instance courts.
- Appeals against their decision can be lodged with the higher level state court (*Landesgericht*), where an appeal panel rules in second-instance. Whenever state courts act as first-instance courts, appeals against their rulings are handled by the court of appeal as a second instance.
- The courts of appeal are second-instance courts for all civil and penal-law cases. In addition, these courts play a special role in the administration of the judicial system. The president of a court of appeal is the director responsible for the administration of all courts in his/her court district. In this function, his/her only and immediate superior is the Federal Minister of Justice.
- In cases requiring a decision on legal issues of fundamental importance, a further appeal is also possible to the Supreme Court (*Oberster Gerichtshof*) in Vienna. There are therefore three successive stages in civil-law cases (Figure 6.1). No further (domestic) remedy is possible against its decisions.

Figure 6.1. Successive stages in the Austrian civil-law cases



Source: Federal Ministry of Justice, The Austrian Judicial System. Institutions – Agencies – Services, January 2009, p.12.

With regard to constitutional issues, the federal and the subnational governments can challenge legislation of the other level. A constitutional review of norms requires a “one-third motion” of the members of the National Council, the Federal Council or *Länder* council. Other institutions which can apply to the Constitutional Court are inter alia the Administrative Court, the Supreme Court, the appellate courts or the Independent Administrative Panel and the Independent Federal Asylum Panel. In addition, the Constitutional Court itself may initiate a constitutional review proceeding. This occurs very often during the review of a decree. Individuals can file an application to have a piece of legislation or a regulation reviewed if they are directly affected and if it is unreasonable for them to choose another path to protect against the claimed violation of law.

Appeals to agencies’ decisions and regulations

On a general basis, administrative decisions and regulations can be challenged in court. The procedures and institutions involved vary according to the status of the agency (whether it has regulatory character or not), and the type of administrative act the appeal is filed against. Regulations issued by regulatory agencies may be challenged ultimately before the Constitutional Court (*Verfassungsgerichtshof*).

If the agency concerned is only competent for regulatory enforcement, its decisions can be challenged ultimately before the Administrative Court (*Verwaltungsgerichtshof*) and the Constitutional Court. This is for instance the case, for the transport and public procurement sectors, where decisions can be challenged before the Federal Administrative Court and the Constitutional Court. Recourse to one of these courts depends on the matter, as they have different competences. The main task of the Administrative Court is to review the legality of administrative acts.¹⁰ The Constitutional Court examines administrative acts for compliance with fundamental rights and reviews the constitutionality of laws and the legality of ordinances.¹¹

In certain cases, the second instance entity is the parent ministry or other sectoral institutions. For instance a challenge to the decisions by Austro Control can be made to the Minister of Transport. In the energy sector, the body of appeal against decisions of Energy-Control Ltd is the Energy-Control Commission. In the telecommunications field, appeals against the Austrian Communications Authority (*KommAustria*)’s decisions can be submitted to the Federal Communications Senate (BKS) in the second instance. Third instance (*i.e.* appeals against the latter decisions) is the ultimately again the Austrian Administrative Court.

The use of ICT in the judicial system

Austria has developed an extensive IT network supporting its judicial system. Electronic legal correspondence has increased work efficiency, facilitating the communication of almost all types of submissions to the courts and the electronic service of documents by the courts. A data base on decrees was designed and can be accessed free of charge. It lists insolvency proceedings, court auctions, decrees derived from penal and civil cases, publications, custodianships and the service of documents.¹²

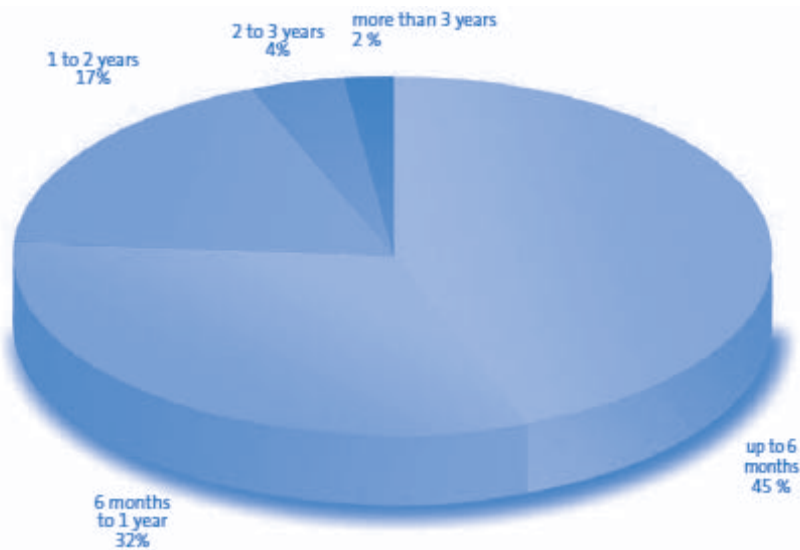
The documentation of the judicial case law is also available free of charge on the Internet, as part of the Federal Legal Information System (RIS).¹³ A web site allows easy access to court-certified expert witnesses, interpreters and translators.¹⁴ A central data base archiving documents has been set up. The Austrian government reports that it will be possible to use the data base for all kinds of applications and proceedings, especially for the *land* and the trade registers.¹⁵

Performance of the system

The quality of court decisions is reported to have improved in recent years. The Federal Ministry of Justice reports that surveys indicate general satisfaction and trust in the work of the judges by the public opinion. This is also reflected in the acceptance of court rulings. With reference to first-instance decisions, not only is just one decision every fifth is challenged by resorting to a legal remedy, but the majority of challenged decisions are then confirmed by the appellate court.¹⁶

The courts system works expeditiously. Almost half of the cases are finished after only a few months (see Figure 6.2).¹⁷

Figure 6.2. Average length of proceeding in Austria (%)



Source: Federal Ministry of Justice, The Austrian Judicial System. Institutions – Agencies – Services, January 2009, p.34.

Alternative dispute settlement mechanisms

Arbitration tribunals

Arbitration is frequently used in Austria. It plays a major role for instance in commercial exchanges. Arbitral tribunals differ from ordinary courts, as they are private judicial institutions. The parties involved accept the ruling of an arbitral tribunal in a specific litigation in accordance with the so-called “arbitration agreements”, upon which these tribunals are based. The decisions of arbitral tribunals are binding upon the parties involved. However, in case of grave procedural mistakes, applications to repeal an award may be lodged with the ordinary courts.

The private arbitral adjudication offers a series of advantages. The parties may nominate persons of their confidence to reach a decision; the decisions (“awards”) can be taken by special experts who may take equity-based decisions without being bound by strict regulations; and such proceedings are (possibly) conducted with expediency. Problems may arise in connection with the arbitrators preserving their objectivity and the often high costs of arbitral proceedings. The jurisdiction of arbitral tribunals is limited to the extent that they have no power of punishment or enforcement. They cannot impose any punishments

and cannot enforce their rulings by applying coercive measures. This is reserved exclusively to the state, *i.e.* the ordinary courts.

The Ombudsman's office

Independent ombudspersons were introduced in Austria in 1977, based on the Scandinavian model. The National Council is responsible for appointing ombudspersons for a six-year term of office, and they may be re-elected once. The Ombudsman's Office is a panel with collective responsibility and comprises three ombudspersons, who chair the board in rotation. Their task is to examine alleged or suspected maladministration. Anyone, irrespective of age, nationality or place of residence, who has a complaint about the Austrian administration, and who is personally affected by a grievance can contact the service. The Ombudspersons can also act *ex officio*, *i.e.* without a complaint being lodged, if it suspects maladministration.

On 1 November 2007, the Austrian judiciary introduced ombudsoffices¹⁸ to offer Austrian citizens an improved information and complaint service. Anyone involved in court proceedings may turn to the ombudsoffice if they have questions or complaints concerning the work of the courts. They are located at the higher regional courts and are headed by experienced judges. Ombudsoffices, however, must not interfere with pending proceedings nor do they constitute another type of appellate court.¹⁹

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. See: Art. 102 Para 2 Federal Constitutional Law. Tax administration is an example.
4. The Federal Ministry for Economy, Family and Youth (BMWFJ) has the responsibility to issue licenses for export, transit and brokering of goods and certain services as well as technology with a security context. Upon export the customs authorities merely check the existence and the legitimacy of those licenses. This is done in by a supervised electronic system (so called E-Customs) with almost no more direct checks at the border. Valid licenses issued by BMWFJ are indispensable preconditions for customs clearance. Legal authorities are involved only in cases where fundamental penal regulations of the Federal Trade Act (AußHG 2005) are disregarded or contravened. Those are usually cases that could not be noticed by the BMWFJ, because no application for a license was made, either out of negligence or by ignorance, many times also because of non awareness of interdictions based on directly applicable international law, *e.g.* sanctions. The legal authorities act only, if these acts are reported to them (*e.g.* by

the customs authorities or in some cases by the BMWFJ, if it gets informed about them) and if these acts are criminal and/or liable to prosecution.

5. See: www.bmwffj.gv.at/BMWA/Schwerpunkte/Unternehmen/Akkreditierung/AkkreditStelle/default.htm (last accessed 9 December 2009).
6. Quoted from: Federal Chancellery (2009), *Turning the administration upside down!*, Vienna, p.12.
7. See: Federal Chancellery (2007), *Qualitätsstandards für BürgerInnen und für die Wirtschaft*, Beiträge zur Österreichischen Bezirkshauptleutekonferenz von 20.–21. November 2007 in Graz, Vienna.
8. See: Art.s 83 (2) and 94, respectively.
9. They are located in Vienna (covering Vienna, Lower Austria and Burgenland), Graz (covering Styria and Carinthia), Linz (covering Upper Austria and Salzburg), as well as Innsbruck (covering Tyrol and Vorarlberg).
10. See: Art.s 130ff of the Federal Constitutional Law.
11. See: Art.s 137ff of the Federal Constitutional Law.
12. See :www.edikte.justiz.gv.at (last accessed 1 December 2009).
13. See: www.ris.bka.gv.at (last accessed 18 November 2009).
14. See: www.sdgliste.justiz.gv (last accessed 1 December 2009).
15. This refers to the paper-less foreign trade administration via PAWA database, see: questionnaire completed by Austria p.11.
16. See: Federal Ministry of Justice, *The Austrian Judicial System. Institutions – Agencies – Services*, January 2009, p.33.
17. The OECD review team heard that the high volume of appeals in the context of applications to determine refugee status was putting considerable strain on the resources of the Constitutional Court. It was suggested that would require more resources to prevent the emergence of long delays and impediments to other work by the Court. However, this type of matter is not strictly within a consideration of the role of the appeals system in promoting Better Regulation objectives.
18. This institution is only related to affairs independent of the judiciary, to which the *Volksanwaltschaft* is not allowed to interfere (the *Volksanwaltschaft* being strictly limited to the administration of justice).
19. See: www.bmj.gv.at/internet/file/8ab4ac8322985dd501229ce2e2d80091.en.0/die_justiz_eng_05.09.pdf, p.42 (last accessed 31 March 2010).

Chapter 7

The interface between member states and the European Union

An increasing proportion of national regulations originate at EU level. Whilst EU regulations¹ 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

As in other EU countries the influence of EU regulations in Austria is significant and a well structured institutional framework is in place to co-ordinate EU affairs. Austria appears to have established wide-ranging and effective co-ordination mechanisms for the management of EU affairs including the transposition of EU directives, with leadership from the federal government but also allowing for the *Länder* to take responsibility and exert influence within their sphere of administrative competence. Austrian officials are conscious of the need to have an effective influence in the negotiation stage of EU legislation. Within the federal government the internal co-ordination of EU affairs is led by the Ministry of Foreign Affairs (MFA) and the Federal Chancellery, but each ministry within the government leads on EU dossiers within its area of responsibility.

Binding guidelines for all federal ministries and the Länder relating to the negotiation, transposition and infringement phases have been in place since 2003. In 2003, the Ministry of Foreign Affairs (MFA) and the Constitutional Service of the Federal Chancellery produced binding guidelines. The 2008 Better Regulation handbook references the EU Better Regulation programme. The system appears to work well as regards transposition deadlines. In general the speed of transposition does not appear to be an issue.

Transposition procedures may not be dealing effectively with the issue of unnecessary administrative burdens. In general, Austria practices the incorporation of directives into the existing stock instead of creating new implementation laws. Despite this, EU regulations are considered to have a potential negative

impact on the quality of national regulations through burdens they cause. An internal network of officials from each of the ministries meets regularly to discuss issues that arise with transposition. However, there is no specific procedure for supervising the consistency of Austrian legislation with EU law. The relevant ministry is responsible for ensuring transposition and the removal of inconsistencies and there is no mechanism established to evaluate the burdens that may be caused by EU regulations. It seems clear that there should be a procedure for supervising the consistency of EU law with Austrian national regulation, and a process to consider the costs and benefits of alternative means of incorporating EU directives without creating unnecessary regulatory burdens. The Ministry of Finance anticipates that the regime of the Budget Law of December 2009 – coming into force in 2013 – will strengthen the financial impact assessment of draft EU law.²

Recommendation 7.1. Produce guidelines to apply impact assessment to EU regulations at the transposition stages, to ensure that the incorporation of EU directives does not duplicate Austrian law or create unnecessary burdens.

The Länder are also closely involved in the process of consultation and negotiation. The Länder have a constitutional right to comment on legislative drafts, and if they have implementation responsibility at the federal level, they also co-ordinate and represent Austria at the EU in Brussels. The ministries and the Länder have to inform the Chancellor on a regular basis about their progress with transposition. If a state fails to comply punctually the federal government may acquire responsibility for the implementation of a transposition obligation.

However, the rapid evolution of EU legislation is a particular challenge for federalist countries and Austria is no exception. First, the Austrian authorities (Federation and Länder) have to organise themselves in order to enable them to participate actively and effectively in the preparatory stage of the EU legislative process. Secondly, they have to take into account that the often short deadlines fixed for the transposition of EU legislation necessitates an optimal co-ordination between the authorities at the federal and at the Länder level. In practice, the involvement of the Länder authorities could be more systematic and, take place earlier in the legislative process. It would benefit from clearer institutional arrangements providing the necessary time for legislative and administrative measures at the Länder level. Furthermore, there seem to be different practices and rules with regard to the formal legal drafting procedures of the integration of EU legislation into national law.

Recommendation 7.2. Consider formalising the processes by which the representatives of the Länder are informed about and involved in the early stages of the legislative process at the EU level. Establish clear and uniform legal drafting techniques regarding the integration of EU legislation into national law at the federal and the Länder levels.

Background

Negotiating EU regulations

Institutional framework and processes

The Ministry of Foreign Affairs (MFA) and the Federal Chancellery have the overall responsibility for EU affairs. While there is no specific ministerial structure devoted to the EU within the line ministries, the relevant ministry normally leads on the EU-dossiers linked to its responsibility.

The MFA is responsible for the inter-ministerial co-ordination of COREPER work in Brussels. Co-ordination between the ministries is ensured by weekly meetings (normally on Mondays), of the EU

co-ordinators from the different ministries. The liaison office of the *Länder* is entitled to attend these meetings. The MFA collects all the ministerial opinions on the agenda items of COREPER I and II³ and refers them to the permanent representation in Brussels.

The Constitutional Service of the Federal Chancellery and the MFA published in 2003 an updated version of guidelines on EU co-ordination (the so-called *EU-Rundschreiben*), which cover issues related to the negotiation, transposition and infringement phases of the process.⁴ The guidelines are binding upon all federal ministries, the *Länder* and all bodies concerned.

The Austrian Government assesses the overall, co-ordination between the sectoral ministries in these matters as being good, conflicts between the different ministries only arise occasionally. In such cases, the MFA and especially the Federal Chancellery take an arbitration function, but there is no legal possibility to enforce a consensus or a special solution. They can just act as a mediator. If divergence persists, no Austrian position is expressed at the COREPER meeting (the ambassador abstains).

General co-ordination functions pertain to the EU department located within the co-ordination section of the MFA. When it comes to general strategic questions on EU, including institutional matters, the Federal Chancellery and the MFA take decisions by mutual consent. The co-ordination of the European Council and of the former Lisbon strategy (now Europe 2020) is done in the Federal Chancellery. Legal aspects related to the EU affairs mainly belong to the constitutional section of the Chancellery.

The division of tasks between the federal and the *Länder* level in EU matters corresponds to the national distribution of competences set out by the Constitution. In principle, if the *Länder* are responsible at national level, they also co-ordinate and represent Austria in Brussels. The degree of involvement in EU affairs varies from one *land* to the other. Three or four *Länder* tend to be particularly active.

Constitutionally, the local authorities (*Länder* and municipalities) have the right to comment on EU legal drafts, if these touch upon their legal competences or could otherwise be of interest to them. To this end, the Federation must inform the *Länder* without delay on all relevant EU initiatives. The Federation determines a reasonable period for the *Länder* to present their views. The same holds good for the municipalities in so far as their own sphere of competence or other important interests of the municipalities are affected.

If the local authorities seize this opportunity, and if there is a “uniform comment” (*einheitliche Länderstellungnahme*) by the *Länder*, the federal authority is obliged to transmit this document to the relevant European authorities.⁵ The states are also represented in Brussels and a Brussels Liaison Office of the *Länder* exists since 1990 attached to the Austrian Permanent Representation.

The federal ministries or the *Länder* take direct part in the negotiations on EU initiatives in Brussels, if concerned by them and within their respective competences. The rules for co-ordination and competence dispute settlement are stated in the Federal Constitution Law.⁶ National co-ordination normally takes place in the forefront of meetings, either in the framework of inter-ministerial meetings or through written exchange of opinions.

The role of the regulatory agencies

In Austria, agencies at the federal level are involved in the negotiation as well as in the implementation of EC regulations. In the negotiation phase, the agencies might be the representatives of the Republic of Austria in the respective Council Working Group or advisory bodies of the European Commission. The agencies may well be involved in the development of EC regulations like any other stakeholder. Usually stakeholders participate in the development of EC regulations via the consultation

process (directly via Brussels if they are part of a network or via the responsible ministry or the *Länder* if the latter organise a consultation process of new EC regulation.

In the field of telecommunications, for instance, the National Regulatory Authority for Broadcasting and Telecommunications (RTR) is the only “agency” currently established, in accordance with the European Framework for electronic communications networks and services. RTR provides assistance to the Ministry for Transport, Innovation and Technology in the context of the development of EC regulations (consultations concerning draft EC legislative acts, recommendations, guidelines.....).

The role of Parliament

The Austrian Parliament plays a role in implementing EU legislation, since national laws are necessary to formulate the provisions of EU directives. Constitutional law authorises both the National Council and the Federal Council to take part in internal Austrian preparations for negotiations at EU level.⁷

This implies, in the first place, that the responsible member of the federal government must inform the National Council and the Federal Council without delay of EU initiatives. Both chambers then have the possibility to formulate their opinions on Austria’s negotiating position. In principle, the member of the Austrian Federal Government elected to the Council of the European Union is bound by such opinions, and is permitted to depart from them only after consulting with parliament, or under strictly limited circumstances.⁸

Ex ante impact assessment (negotiation stage)

There is no systematic process of impact assessment as such of draft EU regulations. However the Austrian position is informed by consultation of key stakeholders. For example, the law sets out the right to be timely informed and to comment on all new EU proposals conferred upon the Austrian Federal Economic Chamber.⁹

In some *Länder*, such as Carinthia, the impact assessment accompanying state legislative proposals also includes next to the economic effects the points of the contact with the EU legislation and the principles.

Transposing EU regulations

Institutional framework and processes

In a multi-level context like the Austrian system, EU legislation affects all levels of governance. Whether EU law has to be transposed at the federal or *Land* level is determined by their respective competence to regulate the subject matter as laid down in the Constitution (see above).

The corresponding federal ministries and, respectively, the *Länder* within their autonomous sphere of competence, are responsible for transposition and implementation of EU laws. Some directives have therefore to be transposed at federal level as well as by the states. In many *Länder*, the Constitutional Service is responsible for the transposition process. There is no specific distinction between the requirements and the procedures regulating the states with regard to transposition and those regulating the federal ministries.

There is no general legally binding rule on when to start the transposition process. Usually, the formal transposition process (*e.g.* parliamentary procedures) does not start before the publication of a directive in the EU official journal. The respective ministry or state government is responsible for launching the

drafting and consultation phases at an earlier stage in order to comply with the transposition deadlines set by each directive.

The appointment of transposition officials in the different ministries at a high level was implemented in 2003. A so-called “Transposition Commission” (*Umsetzungskommission*) meets regularly (two to three times per year) to discuss issues that arise in the context of the transposition of EU directives. The members of this Commission are mainly representatives (*Umsetzungsbeauftragte*) of the ministries and the states. They have to be informed about the transposition requirements of their respective authorities and serve as internal and external contact persons.

The Federal Chancellor is competent to “facilitate the complete transposition of directives in due time”.¹⁰ This competence comprises co-ordination powers but no responsibility for the actual transposition of the directives. To that end, the individual ministries and the *Länder* have to inform the Chancellor on a regular basis about the Community legislation that has to be transposed within their field of competence and about the legal form and planned time tables for meeting the transposition obligations.

Should a state fail to comply punctually with this obligation and this be established against Austria by a European court, the competence for such measures, in particular the issuance of the necessary laws, passes to the Federation. However, the resulting federal norm becomes invalid as soon as the infringing state takes the necessary action.¹¹

The guidelines for drafting legislation (*Handbuch der Rechtssetzungstechnik*) of the federal government also contain general rules for the transposition of directives including an *EU Addendum*, but no specific guidebook for the implementation of EU law exists.¹²

Special further guidance will be drafted in connection with the new transposition and implementation database launched by the Federal Chancellery (see below). The future guidelines will benefit from the experience with the new system.

There exists no specific procedure for supervising the consistency of Austrian legislation with EU law. It lies within the responsibility of the respective ministry or state to ensure correct transposition and remove inconsistencies.

The transposition and implementation of European law has become increasingly important for the subnational level, including municipalities. It is estimated that between 60 and 70% of all regulations concerning municipalities have their origin in decisions of the EU-Institutions.¹³ Such regulations cover, among other, the limitation of deficits, competitive trade, right of domicile and acquisition of private property for EU citizens.

The relevant municipal departments of the Vienna City Administration review all new EU regulations in order to guarantee that existing Viennese subnational law is consistent. Once a month, the municipal departments have to submit a list to the Chief Executive Office notifying that consistency is ensured and the need for implementation.

Legal provisions and the role of parliament

Austria’s overall rationale for transposition consists in seeking to incorporate the provisions of EU directives into the existing body of Austrian law, instead of passing new implementation acts. This has generated the concern that the quality of national regulations is downgraded by EU regulations. A special law binding the federal level contains a prohibition of “gold plating” Community law without special reason. National transposition measures must not exceed the necessary level required by the relevant EU legislation. Some ministries such as the Ministry of Finance are reported to have identified gold-plating

and addressed the issue with the relevant ministry. The (business-related) Social Partners are said to put pressure so as to avoid over-implementation. The states are bound by a similar decision.

Because both at the federal and *Land* level the amendment of government bills during the parliamentary procedures is an exclusive prerogative of the parliament, the executive has no means to intervene in these cases. If over-implementation is committed there is no sanction mechanism in place. When occurring, gold-plating is said to mainly cause transposition delays.

The role of the regulatory agencies

Regulatory agencies are directly involved in transposition if they are responsible for the enforcement of an EU regulation. The decision about their kind of involvement depends to a great extent on whether the agency has regulatory powers, or whether it is tasked only with enforcement in a specific field (in this latter case, transposition and implementation is the responsibility of the federal ministry or the *Land*).

The Austrian Federal Competition Authority is for instance fully embedded into the European Network of Competition Authorities (ECN). It implements EC regulations directly, as European competition law is executed in a parallel by the European Commission and the authorities of the Member States, following the principle of the “best placed authority” (at least for cartel and abuse of dominance cases).¹⁴

The Energy-Control Ltd. and Energy-Control Commission must fulfil the duties allocated to regulatory bodies under the directives 2003/54/EC and 2003/55/EC. They also have to enforce Regulation 1228/2003/EC on electricity cross border trade and Regulation 1775/2005/EC on gas transit.

In the field of telecommunications, RTR has the power to issue various types of implementing ordinances. It can also be consulted on implementing questions related to the electronic communications markets.

Public consultation on transposition acts

Generally, sectoral associations, businesses and civil society are given the opportunity to voice their interests during a consultation linked to the transposition process, before the implementing act is adopted. The consultation practice usually follows the same procedures as for domestic legislative initiatives.

Ex ante impact assessment

The tools and procedures for preparing legal acts transposing and implementing EU law do not differ substantially from the normal administrative process (*i.e.* the one followed for domestic proposals). This suggests that the application of RIA in this context has not been systematic in the past. The Budget Law of December 2009 starting in 2013 proscribing a new system for impact assessment requires the analysis of the essential impacts and the financial impacts also of this kind of legislative proposals.¹⁵

Monitoring transposition

There is an internal notification system. Throughout the transposition process, the federal ministries concerned and the *Länder* have to provide on a regular basis to the Federal Chancellery information on directives (still) to be transposed, including timetables. The Federal Chancellery collects this information and operates a database for that purpose.

At present, the Chancellery forwards a monthly list with new directives published in the EU official journal and asks the ministries and states to fill in the competent department for the transposition along

with a time schedule. The list is not publicly available. A second list is forwarded on a regular basis, showing for each ministry and each of the states how many directives still need to be transposed. These lists are also used as a basis to identify ministries (or states) with a conspicuous transposition deficit. In these cases the services are contacted by the Chancellery to discuss the reason for the delays, in order to help with solving the problems.

At present, however, there is no national, consolidated database on the status of transposition of directives. A new web database (*EU-Richtliniendatenbank*) is scheduled to be operational from October 2010. It should facilitate the transposition and monitoring process, including an early warning system.

As a rule, correlation tables are not used. The Austrian Government considers them an instrument that hinders consistent transposition into the Austrian legal system, causing unnecessary administrative burdens without helping to facilitate the transposition process. So far, however, no horizontal mechanism has been created to evaluate the burdens caused by EU regulations.

Box 7.1. Austria's performance in the transposition of EU Directives

AT	Nov-97	May-98	Nov-98	May-99	Nov-99	May-00	Nov-00	May-01	Nov-01	May-02
Transposition deficit as % in terms of Internal Market Directives	10.1	5.2	4.2	4.5	3.7	3.6	2.9	3.2	2.9	2.1
	Nov-02	May-03	Jul-04	Jul-05	Dec-05	Jul-06	Nov-06	Jul-07	Nov-07	Jul-08
	2.9	3.4	1.7	1.8	1.5	1.4	1.1	1.4	0.9	1.2
	Nov-08	Jul-09	Nov-09							
	0.9	0.9	1.1							

Interface with Better Regulation policies at EU level

Austria is strongly committed to international co-operation as participation in the large scale e-Government pilots of the European Commission under the CIP ICT-PSP shows. The Federal Chancellery is a partner in the STORK eID project as well as in the SPOCS project for the improved implementation of the Services Directive. A number of Austrian authorities are also partners in the PEPPOL project for e-procurement and the EPSOS project for eHealth.

The Austrian government reported to the OECD review team that consultation practices at the European level have sometimes lacked coherence and focus. With respect to the impact assessment strategy of the European Commission, the Austrian government is of the opinion that it leads to analyses that sometimes are not relevant for Austria.

Notes

1. Not to be confused with the generic use of the term “regulation” for this project.
2. *Source*: § 17 (5) Federal Budget Law 2013.
3. COREPER (from the French *Comité des représentants permanents*) is the Committee of Permanent Representatives within the Council of European Ministers. Its task is to prepare the meetings of the European Council. It consists of two formations, the so-called COREPER I (composed by the deputy heads of mission and dealing largely with social and economic issues); and the COREPER II, whose members are the heads of mission (with usually the rank of ambassador). The COREPER II deals political, financial and foreign policy issues.
4. See: www.bundestkanzleramt.at/DocView.axd?CobId=10413 (last accessed 6 April 2010).
5. See: Art.23d Federal Constitutional Law.
6. See: Art.s 23d ff.
7. See: Art.s 23e and 23f of the Federal Constitutional Law.
8. See: www.parlament.gv.at/EN/PE/AINFO/show.psp (last accessed 6 April 2010).
9. See: Para. 10 of the public law on the Economic Chamber 1998.
10. See: The Federal Ministries Act (*Bundesministeriengesetz*) of 1986.
11. See: Art. 23d Para. 5 Federal Constitutional Law.
12. Guidelines on EU affairs have been set up for the Austrian Presidency of the European Council.
13. According to the Austrian Association of Towns, presentation of 19 October 2009 in Vienna.
14. National competition authorities are generally involved also in the process of changing or developing new regulations and guidelines at a very early stage.
15. See: Federal Law Gazette No 139 from 30.12.2009, at: www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2009_I_139/BGBLA_2009_I_139.pdf (last accessed 6 April 2010).

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

The Austrian Constitution contains the basic rules relating to the allocation of legislative powers. The Constitution identifies where the Federation has the exclusive responsibility for legislation and execution, where the execution of federal legislation is left to the *Länder*, and where the *Länder* have their own legislative and executive powers. However, not all provisions concerning the allocation of legislative powers between the Federation and the *Länder* are integrated into the Constitution, leading to some apparent difficulty in delimitating the legislative powers of the Federation from those of the *Länder*.

The Länder have a critical role in regulatory management in the federation as they are responsible for the execution of most federal law. In Austria the execution of federal legislation is in many fields left to the *Länder*, and in the fields where the legislative powers of the Federation are limited to the principles, the *Länder* are also responsible for the enactment of secondary regulations as well as the application and enforcement of federal laws. More broadly, two thirds of public employment is at the *Länder* and municipal level, and the *Länder* are responsible for delivering significant programme activities including the delivery of health and education services. The OECD Economic Survey of Austria identified that assuring the efficient functioning of the *Länder* is critical to the development of the credible fiscal consolidation measures that are required in Austria (OECD 2009:12). It also noted the potential for differences in *Länder* regulation to reduce market competition, with reference to the effects of regional planning rules restricting retail trading arrangements (OECD 2009:45). Given their size and influence, further investment in efforts to improve the development and delivery of regulation by the *Länder* are therefore warranted.

The implementation of federal legislation by the Länder can involve the enactment of secondary legislation by the Länder. This creates an institutional distance between the preparation of legislation and its execution. This distance is possibly one of the reasons why Austrian legislation is quite detailed: in order to achieve a more or less uniform interpretation and application by the *Länder* authorities, the federal legislator tends to be rather precise. On the other hand, this distance makes it more difficult for the federal authorities to know what happens once legislation is enacted. In other words, they lack the information necessary to know if federal legislation proves to be implementable and achieves its goals or if it needs to be adapted.

Their significant regulatory responsibilities mean that the Länder should in practice be closely associated with the preparation of new legislation at the federal level. The participation of the *Länder* in the legislative process at the federal level fulfils two important functions: it contributes to the quality of legislation and it strengthens the *Länder* as constituent element of the Federation. In addition, the consultation of the *Länder* permits them to better co-ordinate their own legislative activities (in fields falling within their residual powers) with the legislative activities at the federal level. In this sense it may also contribute to the overall coherence of national legislation. The *Länder* are consulted before legislative decisions are taken in policy fields where they are responsible for the implementation (in a broad sense) or for the execution (in a narrow sense) of legislation, because federal legislation must take into account problems of practicability which are best assessed by the authorities at the level of the *Länder* or even the municipalities.

However, in spite of its practical and institutional importance, the participation of the Länder in the legislative process at the federal level is not regulated in a comprehensive way. There are some fragmentary provisions, partly in the Constitution (for example, Article 14b, Para. 4), partly in primary legislation (especially in the context of Austria's membership in the EU), partly in administrative instructions, but the modalities are essentially governed by administrative practice and may vary from case to case and from ministry to ministry. Various inter-governmental bodies set up to facilitate the horizontal (among the *Länder*) and vertical (between the *Länder* and the Federation) co-operation play a major role in this context.

Recommendation 8.1. Set up clear legal rules concerning the participation of the *Länder* in the legislative process at the federal level in order to determine which organs participate, when in the process and how the results are communicated.

Legal and administrative arrangements that guarantee a minimum level of reporting about implementation and effects should also be strengthened. They are particularly important in federalist countries to ensure the quality of legislation. This may be done in various ways (setting up of organs with

special monitoring or reporting tasks, introducing evaluation clauses in federal legislation, using the existing inter-governmental bodies in order to get more reliable and relevant information about the implementation of federal legislation, etc.). Monitoring implementation and evaluation of the effects are the necessary complements to regulatory impact assessments (RIA) or prospective evaluations undertaken in the preparatory stage of the legislative process. At the moment, a clear institutional responsibility is missing and the resources are insufficient.

Recommendation 8.2. Improve monitoring of the implementation of federal legislation by the *Länder* and the evaluation of the effects of legislation.

*There has been a change in culture over that last decade to improve the quality of customer services that the *Länder* governments provide.* This review has not had the benefit of a comprehensive survey of Better Regulation Initiatives at the *Länder* level, but officials report a change in culture, and a sample of activities shows evidence of a focus on administrative efficiency and improving the delivery of services to citizens. There appear to be examples of good practice; programme responses vary across the *Länder* and some have developed impact assessment requirements and administrative burden reduction programmes. Overall, however, these are not comprehensively applied. The *Länder* are not linked to the federal administrative burden reduction programme and implementation of impact assessment, for example, has tended to follow from the initiative of individual civil servants. The relatively few resources specifically dedicated to RIA in a few *Länder* is considered to be one of the underlying reasons why it has been difficult to sustain efforts to introduce the tool. While the impacts of regulatory proposals on administrative costs are often assessed, broader cost benefit analysis is not routinely undertaken.

*Austria needs to ensure that the effect of different administrative and regulatory arrangements within *Länder* does not impose barriers to entry or high transaction costs impeding the efficient operation of businesses across the federation.* In principle, this suggests the need for an assessment of the areas of regulatory responsibility of the *Länder* that may be of concern to businesses operating across different parts of the federation, and an analysis of the number of such businesses. This could be best performed by the national statistical agency.

Recommendation 8.3. Undertake an assessment of the areas of regulatory responsibility of the *Länder* that may be of concern to businesses operating across different parts of the federation, either because of unnecessary transaction costs or possible barriers to entry.

*The vertical and horizontal co-ordination arrangements between the federal government and the *Länder* appear to be a notable strength of the Austrian federation.* Co-ordination mechanisms are usually a particular challenge for multilevel governance. In Austria's case, conferences are regularly convened between representatives of the nine *Länder*. These conferences (*Landeshauptleutekonferenzen*) are informal meetings of the nine state governors and have important political impact. The nine state governors discuss common positions and develop common strategies – the chair alternates. They are supported by a permanent liaison office of the *Länder*. Besides the *Landeshauptleutekonferenzen* there are also informal preparatory meetings at technical level: the *Landesamtsdirektorenkonferenz*. Representatives of the federal government are regularly invited to both of these conferences (political and expert level respectively).

Austria should use its sophisticated co-ordination mechanisms to promote a common strategy for Better Regulation at the sub-federal level. This should include the incorporation of impact assessment principles for improving enforcement and compliance and sharing of good practices among the *Länder*. The *Länder* Courts of Audit already play an important role in assessing the efficiency of *Länder* programmes. There appears to be considerable potential for expanding this role to include the sharing of good practices among the *Länder* and promoting improved regulatory performance. This could be done for

example, through the various *Länder* Courts of Audit jointly developing a principle-based framework for assessing the quality of enforcement practices, particularly risk-based approaches, and drafting guidance for regulatory agencies, such as has been done by the audit offices of a number of OECD governments (see for example, Australia and the United Kingdom).

Recommendation 8.4. Use co-ordination mechanisms with the *Länder* to encourage a Better Regulation strategy for the *Länder* governments, including a focus on developing and sharing best practice to improve enforcement and compliance strategies. Encourage the *Länder* courts of audit to develop a principles based framework to assess enforcement practices.

A special feature of Austrian legislation is its rather detailed content, which makes normative density of primary federal legislation rather high. This may be due to legal requirements (quite a strict conception of the principle of legality); the specifically Austrian legal drafting culture or style, and; the endeavour of the Federation to guarantee a uniform or at least a largely harmonised implementation (secondary legislation enacted by the *Länder* and execution) at the subnational levels by leaving only quite a small margin to the implementing authorities. This may favour legal security and make state action more easily foreseeable, but it can also make legislation more rigid and more difficult to understand. If legislation is too detailed, the need grows to change it frequently, potentially compromising its stability. In addition, the very detailed character of many pieces of Austrian legislation contributes to the overall quantity of norms. Reducing normative density would have positive qualitative and quantitative effects.

Recommendation 8.5. To reduce the overall normative density of federal legislation in Austria, make efforts to avoid unnecessary details and to limit provisions to the essential normative content in primary federal legislation.

Background

Structure, responsibilities and funding of local governments

Structure of local governments

Alongside the central level, the Austrian federal structure comprises nine federal states (*Länder*)¹ and 2 359 municipalities. Vienna enjoys a special status in the Constitution as it appears as a state and a municipality. The system includes also a network of 99 administrative districts, which are not independent territorial authorities but are rather organisationally integrated in the federal state administration (as district authorities) or within the larger cities.

The *Land* level

Each *Land* has its own constitution, parliament and government. Unlike the federal administration, the administrative apparatus of the nine *Länder* is not organised according to the branch system. Instead of ministries there is a common State Government Office (*Amt der Landesregierung*). The statute of the State Government determines which matters are reserved to the panel and which are assigned to individual members, each of whom, is entitled to give orders to the competent units of the Office. Unlike the federal government, decisions in the state governments do not have to be taken unanimously. The internal affairs of the Office are led by the State Governor (*Landeshauptmann*), who is the head of the State Executive (politically) and the chair of the State Government Office (administratively).

The state government is elected by the state parliament (*Landtag*). There are differences in the formation of state governments. While in some *Länder* the majority principle applies, in others

governments of state unity are formed, representing proportionally all the parties represented in the *Landtag*. Members of the state parliament are elected according to the same principles as members of the National Council.

The district level

Most of the 99 district administrations are also part of the state administration. Beside the fifteen larger cities, which act as administrative districts (cities with their own statutes, *Statutarstädte*), there are 84 district authorities established as administrative districts throughout Austria, and which play a leading role especially in implementing national administration. There are no elected political representatives. District authorities are led by one of the persons nominated as district governor by the state government (*Bezirkshauptmann*).

The municipal level

The municipality *landscape* is characterised by small entities. Only 50 towns have more than 10 000 inhabitants and 85% of all municipalities have less than 3 000 inhabitants.² The legislative power lies with a council which acts as a deliberating body with supreme decision-making power and supervisory functions. Decisions to be made are prepared by committees (e.g. finance, and social and cultural affairs), formed by members of the council. An executive committee (*Gemeindevorstand*) is elected from the local council or, in bigger municipalities, from the *Stadtsenat*.

The elected mayor is the political head of the local authority administration. Each state has different arrangements for electing the mayor, either by the local council or directly by the citizens. The local administration is led by a municipal secretary or city office director (or chief magistrate in the cities with their own statute). The number of members depends on the number of inhabitants.

Responsibilities and powers of local governments

The *Land* level

Even though the Federal Constitution contains a general clause in favour of the *Länder*, the areas of exclusive legislative competences for the *Länder* are rather minor.³ Within the fields for which they are responsible, they have the power to adopt – under specific conditions – the necessary provisions also in the field of criminal and civil law. The *Länder* have the right to challenge a federal law in the Constitutional Court, if they believe that it infringes their competence and is in breach of the constitution.

The *Land* government exercises executive power in fields of specific *Land* responsibilities, and on behalf of the Federation when no relevant federal authorities exist at the *Land* level. Some special provisions in the Federal Constitution considerably weaken the organisational authority of the *Länder*. Under the system of “indirect federal administration”, mandatory instructions (*Erlässe*) can be issued by the federal minister in charge. These directives have to be followed and significantly affect the opportunities of the lower-level authority to act independently. The Governor (*Landeshauptmann*) is the sole recipient of directives from the federal government or from individual federal ministries concerning matters of indirect federal administration.

The existence of an indirect federal administration in the *Länder* contributes to the considerable influence of the federal government on their administrative organisation. Restrictions such as these are unusual in federal systems. They are mainly due to Austria’s transition from a decentralised unitary State (the Austro-Hungarian monarchy) to a federal State. Indirect federal administration nevertheless enables the *Länder* to exert administrative influence in some areas of federal administration and thus to increase their political weight, since as a rule the Governor and the *Land* authorities are subordinate to him/her – *i.e.*

especially the district authorities (*Bezirkshauptmannschaften*) and the offices of the State Government – execute power for the Federation.⁴

Some two-thirds of all civil servants are employed by the federal states and municipalities, and one third by the Federation.⁵

The local level

The districts are administrative units for the enforcement of federal or provincial duties (e.g. trade law, passports, highway code, fines, social matters, veterinary matters).

Self-determination of the local administration is one of the key principles enshrined in the Austrian Constitution. In general, *i.e.* as long as not explicitly delegated to the Federation, the *Länder* are responsible for legislation on municipalities.⁶ Both levels of government though exercise the right of supervision over the municipalities in the area of the municipalities' own sphere of competence.⁷ The *Länder* are responsible for controlling the financial management of the municipal level.

In 1962, an amendment to the Municipal Act (*Gemeindeverfassungsvolle 1962*) was passed by the National Council which constitutionally laid down municipal self-administration. Municipalities have no power to pass legislation. They nonetheless can regulate “local affairs” within the legal framework established by the higher levels of government and the Federal Constitution. Local authorities perform traditional public tasks such as health inspection, local planning, policing and various infrastructure provision functions such as water, sewerage, waste disposal, electric power generation, and roads. In addition, most local authorities run various social and health care services, primary education, culture and leisure activities.

The Federal Constitution grants local authorities the right to undertake commercial activities – *i.e.* they may own assets of any kind, operate enterprises or participate in them – but this is disputed. Some *Länder* restrict such activities to areas which cannot be operated equally well by private business enterprises, but the constitutionality of such limitations is disputed.

The amendment to the Municipal Act also implied an increased scope of tasks. Municipalities were *inter alia* made responsible for local spatial planning (housing), environmental protection and the townscape. Many municipal responsibilities fall under the provision of subsistence⁸ and concern the creation of educational, social, environmental and cultural infrastructure. In some matters, municipalities are responsible for delegated spheres of operation:

- enforcement of federal and *Land* law (bounded by orders);
- realisation of federal and provincial elections;
- registering and marital status (federal law); and
- welfare for young people as far as it is not according to the respective provincial law competence of the district administration.

The wider range of competences resulting from the amended Municipal Act constituted a difficulty for small municipalities so that in the 1960s nearly half were merged into bigger administrative units. Many of the smaller local authorities co-operate for the provision of basic infrastructure services such as sewerage and water purification plants, and to do so they form joint authorities. This form of inter-municipal co-operation is generally subsidised by federal and *Länder* governments.

The Austrian Association of Municipalities and the Association of Towns have been particularly instrumental in the organisation of the local interests (see Box 8.2 below).

In 1992, municipalities were constitutionally granted the right to be informed on matters of European integration and to give their opinion. In 1996, a liaison office in Brussels was established. In the same year, an agreement on a consultation mechanism was reached. According to Article 23d the Federal government not only has to inform the *Länder* on EU matters but as well the municipalities as soon as their area of responsibility or other significant interests are touched.

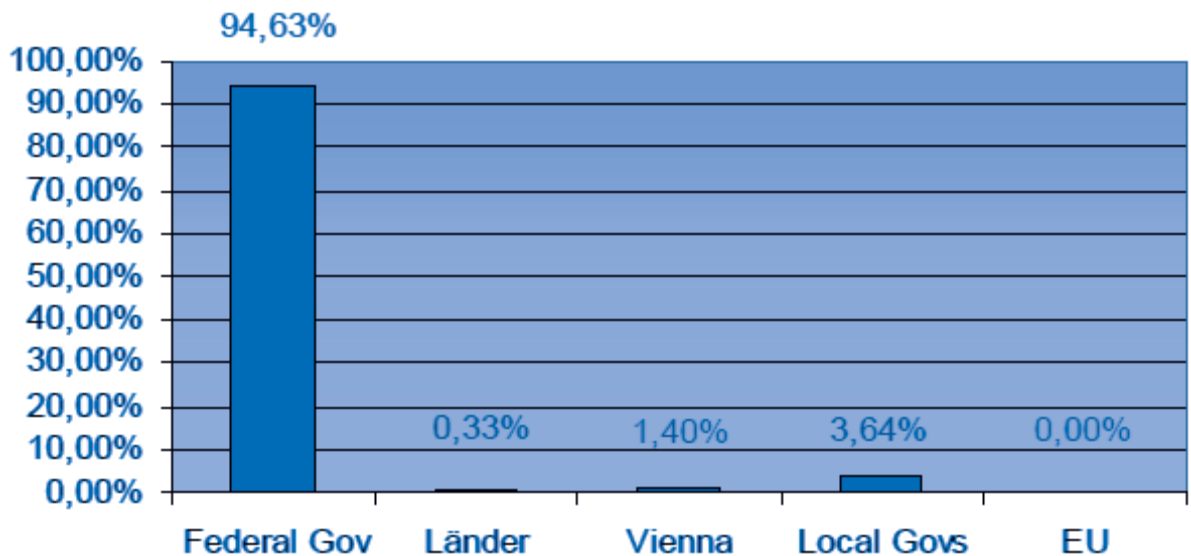
A distinct structure of co-operation has developed amongst Austria's municipalities. As such, many municipal associations have emerged in relation to promoting high investment and employment opportunities, with the aim of making management more efficient.

Funding of local governments

Austria federalist structure relies on the principle of budgetary autonomy of all governments, and budget co-ordination is governed by an internal stability pact, whose main goal is fiscal equity.

The collection of taxes is almost entirely a federal competence. The *Länder* do not have their own tax raising powers. In 2007, the Federation accounted for more than 94% of the tax collection (see Figure 8.1).

Figure 8.1. Collection of taxes in Austria (%)



Source: Federal Ministry of Finance, October 2009.

In 2008, a reform of the Federal Inter-governmental Fiscal Relations Act (*Finanzausgleichsgesetz*, FAG) revised the structure of the tax raising powers. The reform converted federal grants to the lower level into tax shares, which are not earmarked. The *Länder* can spend these tax shares autonomously, on condition that the capacity of the territorial authorities is ensured. The rationale behind the reform was to bring about more accountability of the local level and to share risks.⁹

To finance those tasks assigned to them and the local authorities, a mechanism for financial equalisation (*Finanzausgleich*) is provided by the Fiscal Constitutional Law (*Finanz-Verfassungsgesetz*) of

1948. This settlement is negotiated every four years between the federation, the federal states and local authorities and regards the distribution of federal revenue. The Federal Budget Law (*Bundeshaushaltsgesetz*, BHG) is the legal basis of the budget and lays down the basic principles. As such, it is the binding source of budgetary conduct. The BHG regulates who covers different costs, who has the right to levy taxes and how much money the territorial authorities get from the whole country. The overall coverage (*Gesamtbedeckung*) principle applies, according to which any revenues are being used to cover any expenditures of the federal state. Exceptions are earmarked areas, and reserves.

The *Bundesfinanzrahmengesetz* (BFRG) regulates the procedure and annual budget finance laws which have to be in line with the aforementioned law. The BFRG focuses on expenditure exclusively, setting expenditure ceilings. It therefore also might have an impact on legislative forward planning. Before the decision of the parliament there are negotiations of the representatives of the three territorial authorities which end with a “pact”. The so-called *Finanzausgleich* between the three territorial authorities is considered a “gentlemen’s agreement”. It is binding for the federal level, leading to a special federal law at the end, the so called “*Finanzausgleichsgesetz*”. Accordingly, the final decision lies with the Federation.

The Federal Finance Act (*Bundesfinanzgesetz*, BFG) annually plans revenues and entitles to expenditures in a specific year within the scope of the Medium Term Expenditure Framework (MTEF). The Federal Ministry of Finance can allow certain excess expenditures.

The municipalities have various sources of revenue including payroll (*Kommunalsteuer*), commercial, real estate, beverage and entertainment taxes. Other sources are dog licenses; fees and charges for local infrastructure and other services; and the participation in “fiscal liaison”. Through the latter, local authorities receive a share of the most important federal taxes.¹⁰

To date, the system of revenue distribution to the municipalities relies on a “scaled population multiplier” (*abgestufter Bevölkerungsschlüssel*). Most of the smaller municipalities have nonetheless challenged the current system, favouring instead an output-based approach (*aufgabenorientierter Finanzausgleich*), managing to enforce some amendments of the population indicator. In general, each *Land* government supervises the budgetary regimes of the municipalities.

Some policy fields are excluded from the strict regime of top-down budgeting, for instance social security, EU funding and transfers to the municipalities. A reform of the fiscal relations system is under way. A first part of the budget reform was implemented in 2009, and the second phase will be concluded in 2013. Eventually, the reform will introduce a system of performance management by objectives, with a direct involvement of the Court of Audit. The reform is based on an “impact-oriented” approach (*Wirkungsorientierung*).

Approximately 28% of all public financial resources flow to *Länder* and municipalities. The consultation mechanism embodied in the Constitution is an important element that protects the municipalities from financial overcharge. A consultation mechanism agreement was signed in 1999¹¹ in order to improve the co-ordination between the partners participating in the financial equalisation system. The agreement refers to the preparation of both legislation and secondary regulations. It contains a variety of provisions, including on the mutual obligation to exchange information, with the possibility to take position on all legal measures; the right to call for negotiations in the consultation forum (*Konsultationsgremium*); and the submission to the legislature of the joint recommendations by the consultation forum on the allocation of the costs (*Kostentragung*); and how to settle the allocation of costs if this is not according to what recommended by the forum.¹²

Better Regulation policies deployed at local level

Institutional framework

The function and role of the constitutional services (*Verfassungsdienste*) in the government of the *Länder* is particularly prominent. They range from verifying standards of legal quality and constitutionality checks to proper drafting tasks. The *Verfassungsdienste* may be an independent body within the government's organisation (as is the case in Salzburg).

In Upper Austria, Styria and Carinthia the role of the Constitutional Service encompasses the direct drafting of primary law. This is done on the basis of the regulatory guidelines, and by consulting the specialised departments within the government. By contrast, in the case of the Carinthian government secondary law is drafted by the competent department and then sent to the Constitutional Service to scrutinise the draft.

Also in Salzburg, regulations are drafted generally by the Constitutional Service, but also by competent departments of the regional ministry. The Constitutional Service takes the central function in securing regulatory quality.

Resources and training

Anecdotal evidence from the federal states suggests that the number of staff directly or indirectly involved in Better Regulation co-ordination and management is relatively limited. Generally, there is no one working exclusively on Better Regulation policies.

With regard to training, practices vary from one state to the other. In some cases, courses on preparing regulatory drafts are open to the members of the Constitutional Service. They are organised by the *Verwaltungsakademie* and/or the state government annually. An example is the so-called *Legistikgespräche – Klagenfurt Legistik* talks, with the publication of the related *Bildungsprotokolle* about this workshop. In some other states, it is considered that officials in the Constitutional Service provide fundamental theoretical and practical training. Additional annual regulatory training is therefore not foreseen. The participation in special courses or seminars depends on special topics.

There is no evidence that officials other than legal experts receive further training on Better Regulation at the state level.

Public consultation

Legal provisions and practices for public consultation at the state level broadly reflect what is described for the federal government in Chapter 3. *Land* draft regulations are usually circulated among relevant official and private stakeholders. States often complement this channel through a second, wider “citizens’ consultation”, if the proposed legislation bears elements of general interest. Box 8.1 provides indications on some consultation practices in selected federal states. Its purpose is to illustrate various experiences and it is not exhaustive.

Box 8.1. Public consultation practices in some federal states

The State of Upper Austria distinguishes between the so-called “examination procedure” (*Begutachtungsverfahren*), and a “citizen’s consultation” (*Bürgerbegutachtungsverfahren*). The first is mandatory on all draft bills but those initiated by parliament, and addresses chambers of commerce and trade unions as well as the bodies responsible for competition, trade and consumer policy. The latter by

contrast may be launched if a primary law is of general importance. In this case, every citizen is explicitly invited to comment the draft regulation as published on the Internet. However all draft regulations can be found in the Internet and be commented by the public, even if the citizens are not officially invited to do so.

In the State of Salzburg public consultation follows the same two-fold approach. Generally all laws and decrees are submitted to the “examination procedure”, but the regional parliament can decide, on the basis of the “Citizen's Consultation Act” (*Salzburger Volksabstimmungs- und Volksbegehrensgesetz*) that a citizen's consultation has to be carried out, or to decree a law after the result of a referendum.

In Carinthia proposals for primary and secondary law are sent to official and private bodies who are concerned by this regulation for the examination procedure. Some institutions are contacted obligatorily because of specific law. These draft regulation is also published in the internet and every citizen has the possibility to comment on the draft. The Constitutional Service analyses all statements done in the examination procedure and revises the regulatory proposal.

In Styria, there are two forms of public consultation: the standard consultation usually performed as laid down in Chapter A of the Regulatory Manual. Draft regulations with additional explanations are sent out to all bodies and organisations that may be concerned. The time to reply depends on the size and complexity of the draft; it is at least four weeks. Moreover all draft bills can be found on the website of the Styrian Diet, all draft ordinances on the website of the Styrian government, both with additional explanations and with the possibility for everybody to comment on them. The second kind of consultation is the “General consultation procedure” (*allgemeines Begutachtungsverfahren*) for draft regulations of significant importance. In this case, citizens and institutions have the right to give a written comment within a term of six weeks.

The use of public consultation is regulated also in Lower Austria.

Source: Responses of the Austrian Government to the OECD questionnaire.

The review team understood that government feedback practices at the *Länder* level are relatively advanced. The Carinthian government for instance reports the results of consultation to the state parliament before these votes on a draft regulation. Although the participation of stakeholders after a consultation is not mandatory and varies, in some cases working groups are set up after consultation to find compromises with the stakeholders. All regulatory drafts are completed with explanations before sending out for examination procedure. The results of public consultations are reported in the explanations also in Salzburg, where explanations are considered as an essential part of legal drafts and the basis for decision – finding of responsible bodies. In Styria, the results of consultation on draft bills are free accessible on the website of the Diet, and sometimes the following legislative proposal submitted by the government to the Diet contains a report on the results of the consultation. According to the “General consultation procedure”, the government is legally obligated to give a report to the Diet, and to make the results of the consultation accessible.

Communication of regulation

Various aspects of e-Government are also quite developed at the subnational level, notably in support of enhanced transparency and accessibility of regulation. The majority of the *Länder* have wide communication policies in place with regards to existing regulations, and the state official gazette is posted on line. Access to draft regulations is also possible on line, sometimes on the website of the Diet and the government, or on the Constitutional Service website.¹³ There is also the possibility to subscribe to *Landesrechts-newsletters* to be informed about examination procedures.

Also with regard the communication of new regulations, the *Länder* are relatively advanced. Since 2004, the Styrian *Land* government for instance publishes all draft *Land* bills and draft *Land* ordinances on

the Internet in order to improve the transparency in the rule-making process. Those drafts can be accessed freely and are open to public comments. Since 2008, all comments given in the consultation procedure and concerning bill drafts are published on the Internet. More generally, the Styrian Law Information System (RIS) guarantees free access to the Styrian legislation, including consolidated texts. This is an obligation imposed by *Land* law. The project “paperless diet” made the Styrian *Landtag* the first Diet in Europe to organise its processes completely electronically since October 2005. Also the legislative process unfolds on an electronic interface.¹⁴

Another example is the Viennese legal information system (*Wiener Rechtsinformationssystem*, WRI). This electronic database containing all Viennese legislation, the regulations of the City of Vienna as well as the regulations of the Mayor. The latest draft law and links to background materials can also be accessed. The database includes also decisions of the tax commission and the appeal of the Senate, among others. Since March 2009, a multi-criteria search engine is available for the WRI.

Forward planning

All state governments issue a general programme outlining the areas of action in the oncoming legislature. The programmes are usually published on the website of each state government. In certain cases, more precise internal programmes of the intended legislative activity are developed.

Administrative procedures

Sectoral or tailored internal guidelines for administrative procedures exist at the subnational level, not always with a binding status. Examples include instruments for regulatory quality improvement (Upper Austria) and regulatory guidelines (Lower Austria). The regulatory manual (*Legistisches Handbuch*) of the Styrian government was issued in 2005 and updated every year since. It is publicly available,¹⁵ covers the drafting of all *Land* regulations (draft bills and draft ordinances), and is binding for all government officials.

Legal quality

Like at the federal level, the Constitutional Services of some *Länder* take over the scrutiny of legal quality as well as the constitutionality and consistency of regional draft law.

Ex ante assessment of regulation

The state governments are formally required to perform an assessment of the regulatory impacts on the basis of an “agreement about a consultation-mechanism between the federal and regional governments” (*Konsultationsmechanismus*).¹⁶ The agreement does not require a comprehensive RIA, but only with regard to potential additional expenditure of the respective federal or regional community concerned. Assessments are not required in the case of parliamentary initiative bills (*Initiativanträge*). The consultation-mechanism also includes a threshold test, determining when the procedure has to be initiated.

Most of the impact assessment carried out at the *Länder* level refer to financial aspects. The impact assessment regarding the financial effects of a proposal is usually done by a specialised department and sent to the respective department for financial affairs and the Constitutional Service to scrutinise. In Styria, the responsibility for the financial RIA is allocated in the department of the government’s office concerned with the preparation of the respective regulatory proposal. In Carinthia, guidelines exist on how to perform impact assessments on the basis of the agreement about a consultation-mechanism. The guidelines regulate the collaboration between the competent departments, the department of finance, and the Constitutional Service. They also indicate the procedure for the calculation of the costs. In Salzburg, the benefits and costs of regulatory drafts (both laws and decrees) should be assessed and the results presented in the

accompanying explanations, in accordance with that state's Budgetary Law. The state's Constitutional Service is the responsible unit for execution.

The communication policy of the *Länder* is similar to what happens at the federal level. The results of impact assessments are normally enclosed with the explanations accompanying every draft bill. As such, they are subject to public consultation and published on the Internet.

Alternatives to regulations

Consideration of alternatives to regulation varies across the *Länder*. It may be a formal requirement to be systematically reported in the *Vorblatt*, or occur only for the most important legislative proposals. There is usually a note explaining the necessity for the option chosen in the explanations accompanying the proposal.

Simplification of regulations

The main responsibility for legislative simplification in the *Länder* lays usually with the Constitutional Services of each regional government. "Deregulation acts" (*Rechtsbereinigungsgesetze*) and "re-notification acts" (*Wiederverlautbarungen*) are common instruments across the *Länder* to simplify the legislative stock. Their use since the mid-1990s has been irregular but not infrequent. There usually is no limitation of the scope of legislative simplification within targeted policies. The approach is holistic. In some cases, *ad hoc* deregulation groups were established to overview existing laws and regulations and report on the room for improvement to the government.

Practice with review and sunset clauses varies from one *Land* to the other, and are normally not systematic but have been applied on an *ad hoc* basis.

Administrative burden reduction programmes and administrative simplification

Pilot projects on measuring and reducing administrative burdens have been launched at the *Länder* level. Separate reduction targets have been established, and there is no aggregate target for all the *Länder* (see also Chapter 5). The pilot measurements of state legislation in three *Länder* (Upper Austria, Tyrol and Styria) did not include a baseline measurement similar to the one undertaken at the national level. Rather, so-called "quick scans" were used.

According to the federal government, initial evidence suggests that only few burdens arise from *Länder* regulations, and where relevant they tend to originate from the environment, subsidies and construction sectors. A higher amount of burden would be caused by joint *Länder*-federal level legislation, and by the implementation of federal laws.

Some states are also active in administrative simplification inside government. In Upper Austria, for instance, the programme "efficient administration" (*wirkungsorientierte Verwaltung*) has been in place since 1997. Vienna established the electronic file processing system ELAK (*elektronischer Akt*) at the end of the 1990s, which is now used by all municipal departments. In Carinthia, groups of experts work on a simplification of administrative burdens inside government, while the Salzburg government decided to install the electronic act-programme for managing internal administrative business.

Co-ordination mechanisms

In 1974, a provision¹⁷ was introduced to the Federal Constitution concerning agreements between the Federation and the *Länder* or among the *Länder*.

Vertical co-ordination

There is mutual influence between the federal and the *Länder* levels in their respective decision-making processes. The states participate in the Federation's legislative process through the Federal Council, while the Federation has access to the state law-making via the federal government. All state parliament enactments shall be notified to the Federal Chancellery before publication. Within a period of eight weeks, the federal government has the right to submit a justified objection to a state parliament enactment, if it deems that it would threaten federal interests. Any such objection only represents a suspensive veto. The state parliament may repeat its vote in the presence of at least half its members. If the bill passes again, it becomes law and the federal government may only challenge it in the Constitutional Court if it feels that it is unconstitutional. Only if the execution of the law depends on co-operation with federal authorities, is the approval of the federal government required.

There is a binding agreement about a consultation mechanism between the federal and regional government. The Federal Chancellery and the respective federal ministry are timely notified and consulted. Consultation between the subnational and the federal levels is relatively intense, although not necessarily formalised. This "vertical" consultation usually lasts a few weeks. The consultation on financial impacts lasts 4 weeks, and runs normally in parallel to the usual consultation.

The Federation and the *Länder* may conclude agreements among themselves about matters within their respective sphere of competence. The conclusion of such agreements in the name of the Federation is, depending on the subject, incumbent on the federal government or a federal minister. Agreements which are to be binding also on the authorities of the federal legislature can be concluded by the federal government only with the approval of the National Council.¹⁸

The institutional setting for vertical co-ordination is relatively complex in Austria. Some 40 conferences regularly convene between the federal and the *Länder* level. These conferences are an opportunity for the *Länder* to state their problems with the implementation of federal laws. They may also give impetus to legislative initiatives at the federal level. Some believe that the conferences may have more of an impact than the Federal Council. The chair is always held by a representative of a state, and it is rotating.

The so called "consultation-mechanism" is an agreement between different territorial entities, namely the federal level (*Bund*), the states (*Länder*) and the two major associations of municipalities (*Gemeinden*). The mechanism is based on Art. 15a B-VG and, when it involves the municipality level, a special constitutional law. The agreement stipulates mutual information obligations on new draft regulations, the establishment of a consultation committee and the cover of costs when a piece of legislation burdens the other territorial entities with costs without having offered the possibility to comment on the new regulation. It therefore allows the Federation, the *Länder* and municipalities to raise concern about drafts of state or federal laws and decrees on the ground of financial burdens. If one of the members of this mechanism (federal authority, regions and union of local government units) makes recourse to this mechanism, negotiations will be obligatory.

The Liaison Office of the *Länder* (*Verbindungsstelle der BundesLänder*) in Vienna is a shared institution of the nine federal states. Set up on the initiative of the state governments in 1951,¹⁹ it was officially recognised by the federal government fifteen years later and some federal laws mention it explicitly. The Liaison Office does not have a legal personality, though. The main responsibility of the Office is to create a permanent link among the *Länder*, and between these and the federal government, in order to co-ordinate the *Länder* positions. The Office serves *inter alia* also as the secretariat for all the *Länder* conferences such as the *Landeshauptleutekonferenz* and the conferences of the heads of the *Länder*

government offices (*Landesamtsdirektoren*). Staff members come from the different *Länder*, and the costs are shared between the *Länder*.

The local level is also represented actively at the federal level, notably through two voluntary associations (see Box 8.2).

Box 8.2. Co-ordination and advocacy of local-level interests in Austria

Austrian Association of Municipalities

The origins of the Austrian Association of Municipalities (*Österreichischer Gemeindebund*) date back to 1947-48. The Association, which consists of *Länder* sub-associations, represents the interests of small communes at federal level. About 99% of Austrian local governments are organised with the association by voluntary membership. One main goal of the association as stated in a 1957 declaration was a constitutional guarantee for municipal self-government.

Austrian Association of Towns

The Austrian Association of Towns (*Österreichischer Städtebund*) was founded in 1915. Membership is voluntary, is targeted to larger municipalities, and covers more than half of Austria's population. The Association provides legal advice, facilitates exchange of information and best practices (via 36 working groups), promotes public relation activities, and maintains international contacts. One of the main areas of activity is representing the interests of the towns and municipalities as part of the negotiations on the federal budget and the corresponding financial equalisation. The Association is also incorporated in the legislative process; it gives about 100 opinions per year on federal laws. The Association has got one liaison office in Brussels.

In 1988, a constitutional amendment was passed which fixed the status of the Austrian Association of Municipalities and the Austrian Association of Towns as representatives of municipal interests at the federal level but also internationally.

Source: Responses of the Austrian Government to the OECD questionnaire; and mentioned websites.

Horizontal co-ordination

As a rule, the Constitution does not empower subnational authorities to sign agreements at the local level. Horizontal agreements among the *Länder* and among the municipalities (so-called inter-communal co-operation, through *Gemeindeverband*) can only be made on matters pertaining to their respective autonomous sphere of competence and the federal government must be informed without delay.²⁰

The main co-ordination mechanism between the *Länder* consists in the *Land* Governors' Conference (*Landeshauptleutekonferenz*). This political forum aims at harmonising the interests of the *Länder vis-à-vis* the Federation. The co-ordination is reflected in unanimity required to adopt decisions. Through the Conference the individual *Land* governments organise and voice their demands. The meetings of the Conference are prepared by its administrative counterpart, the Directors-General of the *Land* Governments (*Landesamtsdirektorenkonferenz*). Items for the agenda are suggested by individual participants. The conference makes recommendations for the decisions of the *Land* Governors' Conference. The Federation is usually represented in both conferences. There are also various "Conferences of Experts" at both the political and administrative level.

In addition to these instruments there is the Austrian Conference of Regional Planning (ÖROK), which helps co-ordinate regionally-relevant planning projects and policies among the corporate territorial authorities. More generally, *Länder* Conferences are primarily "informal", political bodies; their most

prominent role is to prepare and to adopt joint positions of the *Länder* and to horizontally co-ordinate certain issues. Legal mandates are rare. Conferences do primarily have a horizontal character, but very often representatives of the Federal government participate.²¹

Notes

1. The federal states are Burgenland, Carinthia, Lower Austria, Upper Austria, Salzburg, Styria, Tyrol, Vorarlberg and Vienna.
2. Cfr. Federal Chancellery, *Administration in Brief. Services and Data*, May 2006, p.7.
3. See: Art. 15 of the Constitution. A great number of the important powers are listed in Art.10, which refers to the competences of the Federation.
4. See: Art. 102 Para. 1 Federal Constitutional Law. The “political weight” mentioned refers to the authority of the Governor, who is *primus inter pares* within the *Land* Government (and is therefore primarily responsible for the executive power in each *Land*), represents the *Land* and carries additional powers in the areas of indirect federal administration.
5. Cfr. Federal Chancellery, *Administration in Brief. Services and Data*, May 2006, p.10.
6. See: Art. 115 (2) B-VG.
7. See: Art. 119a of the Constitution.
8. This refers to the provisions of Services of General Interests, *i.e.* services considered to be in the general public interest and accordingly subjected to specific public-service obligations. They include non-market services (*e.g.* compulsory education, social protection), federal services (*e.g.* security and justice) and services of general economic interest (*e.g.* energy and communications). In Austria, such provision is the responsibility of the communities, according to the subsidiarity principle.
9. Further administrative reforms concern the abolishment of a public administration tax privilege concerning family assistance payments; and the introduction of a Standardised Fiscal Code.
10. For instance, wage and income tax: tax on investment income turnover (VAT), beer, wine, real property acquisition and mineral oil; and levies on gambling establishments.
11. See: *Vereinbarung zwischen dem Bund, den Ländern und den Gemeinden über einen Konsultationsmechanismus und einen künftigen Stabilitätspakt der Gebietskörperschaften*, in BGB of 14 January 1999, Nr.35.
12. See: www.bmf.gv.at/Budget/Finanzbeziehungenzu_658/Konsultationsmechanismus/_start.htm (last accessed on 8 February 2010).

13. See the cases of Styria: (www.landtag.steiermark.at/cms/ziel/30636372/DE/, www.verwaltung.steiermark.at/cms/ziel/30638189/DE/, and www.verwaltung.steiermark.at/cms/ziel/2890458/DE/), and of Carinthia (www.landesrecht.ktn.gv.at), respectively (last accessed 18 November 2009).
14. See: www.landtag.steiermark.at/cms/beitrag/10256628/9151669 (last accessed 8 December 2009).
15. See: www.verwaltung.steiermark.at/cms/dokumente/10165551_4530957/a1e85c09/A_Verfahren.pdf (last accessed 19 November 2009). The manual replaced the Styrian regulatory guidelines of 1990, offering not only new and more contents but also new instruments as *e.g.* process modelling.
16. See: XX Legislative Period, RV 1210 AB 1254 S.130; BR: AB 5692 S.642 – StF: Federal Gazette 1 Nr.35/1999.
17. Art. 15a of the Federal Constitutional Law.
18. See: Art. 15a Para. 1 Federal Constitutional Law.
19. In accordance with Article 107 B-VG.
20. See: Art. 15a Para. 2 Federal Constitutional Law.
21. On the conference system in Austria, see A. Rosner/R. Gmeier (2019), “Die Länderkonferenzen als Instrumente der Selbstkoordination der Länder und des kooperativen Bundes”, in P. Bussjäger (Ed.), *Kooperativer Föderalismus in Österreich. Beiträge zur Verpflechtung von Bund und Ländern*, Schriftenreihe des Instituts für Föderalismus, Band 111, Wien, p.49-63.

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