Better Regulation in Europe

ITALY

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Better Regulation in Europe: Italy 2012

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Foreword

The OECD Review of Better Regulation in Italy 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.

Italy is part of the third group of countries to be reviewed – the other four are Austria, Greece, Ireland, and Luxembourg. The first group of Denmark, the Netherlands, Portugal and the United Kingdom were released in 2009, the second group of Belgium, Finland, France, Germany, Spain and Sweden in 2010.

The project is also an opportunity to discuss the follow-up to past OECD reviews on regulatory policy and to find out what has happened in respect of the recommendations made at the time. A number of OECD Reviews of Regulatory Reform of Italy were published in 2001, 2007 and 2009 [OECD (2001), *OECD Reviews of Regulatory Reform: Regulatory Reform in Italy 2001*, OECD, Paris; OECD (2007), *OECD Reviews of Regulatory Reform: Ensuring Regulatory Quality across Levels of Government*; and OECD (2009), *OECD Reviews of Regulatory Reform: Better Regulation to Strengthen Market Dynamics*].

To maintain consistency with the other reports in the series, this revised edition of the report on Better Regulation in Italy includes the addition of a new Chapter 6 on Compliance, enforcement and appeals.

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Abbreviations and acronyms

AEEG	Regulatory Authority for Electricity and Gas
AGCOM	Communications Regulatory Authority
ANCI	Association of Italian Municipalities
ASL	*Aziende Sanitarie Locali* (local health agencies)
ATN	*Analisi Tecnco-Normativa* (preliminary legal analyses)
AVCP	Authority for the supervision of public contracts for works, services and supplies
CAF	Common Assessment Framework
CAWI	Computer Assisted Web Interviewing
CCDs	Common commencement dates
CIACE	*Comitato Interministeriale per gli Affari Comunitari Europei* (Inter-ministerial Committee for European Community Affairs)
CIVIT	*Commissione Indipendente per la Valutazione, la Transparenza e l'Integrità della pubblica amministrazione* (National Commission for Evaluation, Transparency and Integrity)
CNEL	National Council of the Economy and Labour
CNIPA	*Centro Nazionale per l'Informazione nella Pubblica Amministrazione*
CNSA	National Committee for Food Safety
DAGL	Department of Legislative Affairs
DIA	*Dichiarazione di Inizio Impresa*
EFSA	European Food Safety Authority
MOA	*Misurazione degli Oneri Amministrativi*
OLI	*Osservatorio Legislativo Interregionale* (Inter-regional Legislative Observatory)
POAT	Project for Operational Assistance to the regions
PICO	Integrated Programme for Growth and Employment
SCIA	*Segnalazione Certificata di Inizo Attività*
SCM	Standard cost model
SMEs	Small and medium-sized enterprises
SSPAL	*Scuola Superiore della Pubblica Amministrazione Locale* (Local Advanced School of Public Administration)
PA	Public Administration
RIA	Regulatory Impact Analysis
TAR	*Tribunali Amministrativi regionali* (regional Administrative Tribunals)
UFFPA	Office for Training of Public Administration Staff

UNCEM	Association of Italian Mountain Communities
UPI	Association of the Italian provinces
USA	Office for Administrative Simplification
USQR	Unità per la semplificazione e la qualità della regolazione
VIR	*Verifica dell'Impatto della Regolamentazione* (*ex post* analysis)

Country profile: Italy

Source: OECD (2007).

The land		
Total Area (1 000 km^2):	301	
Agricultural (1 000 km^2, 1995):	165.2	
Major regions/cities (thousand inhabitants, 2001):	Rome	2 547
	Milan	1 256
	Naples	1 005
	Turin	856
The people		
Population (thousands, 2007):	59 336	
Number of inhabitants per km^2:	197	
Net increase (2006/07):	0.8	
Total labour force (thousands):	24 854	
Unemployment rate (% of civilian labour force, 2009):	7.8	
The economy		
Gross domestic product in USD billion:	1 815.6	
Per capita (PPP in USD):	30 300	
Exports of goods and services (% of GNI):	27.9	
Imports of goods and services (% of GNI):	28.7	
Monetary unit:	Euro	
The government (2008)[1]		
System of executive power:	Parliamentary	
Type of legislature:	Bicameral	
Date of last general election:	April 2008	
Date of next general election:	2013	
State structure:	Unitary	
Date of entry into the EU:	1951	
Composition of the main chamber (number of seats):	**S. Berlusconi Coalition** (The People of Freedom, Lega Nord, Movement for Autonomy)	344
	W. Veltroni Coalition (Democratic Party, Italy of Values)	246
	Union of the Centre	36
	South Tyrolean People's Party	2
	Autonomy Liberty Democracy	1
	Movimento Associativo Italiani all'Estero	1
	Total	**630**

Note: 2008 unless otherwise stated.

Source: OECD (2009b); OECD in Figures 2009; OECD (2009c); and OECD (2009d).

1. A new Government led by Mr. Mario Monti was sworn in on 16 November 2011 and received the confidence vote by the Chamber of Deputies on 17 November 2011. See *www.camera.it/46*.

Reducing administrative burdens to boost business activity

In the course of the finalisation of this review, the country undertook a major political transition, with likely major influences on the better regulation agenda for the country. In the last two months of 2011 and the first months of 2012, the new government led by Mario Monti embarked on wide ranging and in-depth structural reforms aimed to address the economic situation faced by the country. Better and more efficient public administration features high on the reform agenda of the new government. Several legislations with a focus on regulatory reform, or important components thereof, were proposed:

- The "Salva Italia" Decree-law of December 2011 extends liberalisation measures to the sale of pharmaceutical products, to commercial distribution (including the abolishment of opening hours restrictions), and to the organisation and operation of professions (including free choice of fees).
- The "Cresci-Italia" Decree-law of January 2012 introduces measures aimed at overcoming two major obstacles to Italian economic growth: the insufficient market competition and the inadequacy of the infrastructure.
- The "Semplifica Italia" Decree-law of January 2012, if endorsed by parliament, provides detailed and practical simplification measures with immediate effects, with a view to reducing administrative burdens on businesses and citizens (see Box 0.1).

In addition, taking into account one of the OECD recommendations, the previous fragmentation of competences for regulatory simplification were consolidated under the leadership of a broadened Ministry for Public Administration and Simplification.

While the new regulatory reforms, in particular the practical simplification initiatives of the "Semplifica Italia" Decree, are likely to have an immediate impact, the OECD recommendations emphasising the need to combine the production of rules with mechanisms that ensure effective implementation should remain important considerations for the government:

- Monitoring and evaluation capacities to check progress and results of burden reduction initiatives need to be strengthened.
- Results and impacts need to be widely communicated.
- Specific attention should be given to the implementation of the programme on measuring and reducing burdens at regional and local levels and to the strengthening of capacity for regulatory policy in sub-national administrations.

In that respect, the plans of the Minister for Public Administration and Simplification to establish an evaluation system based on performance indicators; to launch communication campaigns to engage citizens and businesses; and to strengthen the co-operation with regions and local authorities through roundtables and benchmarking of best practices are crucial accompanying undertakings.

Box 0.1. The "Semplifica Italia" Decree-Law of 27 January 2012

The Decree is in the broad framework of the administrative burden reduction programme carried out by Italy in recent years. The Decree draws from the inputs gathered through public consultation to complement the existing simplification apparatus by providing for concrete, practical and with immediate effects measures, differentiating them between general measures, measures for citizens and measures for businesses. At the time of completion of this report, savings for SMEs from the measures were estimated at some EUR 500 million per year.

The Decree addresses lengthy administrative procedures by introducing the possibility of substitutive powers at the request of private individuals to expedite administrative processes when delays are not respected. The respect of administrative deadlines becomes the direct responsibility of individual civil servants, who may be subject to sanctions. The Decree also introduces the use of regulatory budgets for each public administration to avoid that the development of new regulation tampers with the simplification efforts.

The measures for citizens aim to reduce red tape for people with disabilities, to computerise civil acts by making public administrations directly communicate electronically. Further savings should result from the shortened processing and delivery periods. Several administrative procedures are simplified, among which the issuance and renewal of driving licences and technical compliance of cars.

The measures for business involve, notably, simplification of procedures to participate in tenders through better use of electronic information in e-procurement (estimated savings for SMEs of about EUR 140 million per year), elimination of the security policy document in the privacy area (estimated savings for SMEs of around EUR 313 million a year), unique environmental permit for SMEs, elimination of obsolete regulations, co-ordination and streamlining of inspections, as well as sector specific measures (agriculture, fishing, heating installations).

Source: *www.governo.it/GovernoInforma/Dossier/index.asp*.

Executive summary

Economic context and drivers of Better Regulation

The economic challenges faced by Italy are significant and have become even more important in the recent context of political turmoil and economic recession. Over the past decade, Italy's economic growth rate has remained below the European average. Labour productivity is falling relative to other large European economies. Export performance has been mixed. FDI has remained lower than in other countries of similar size. Italy also has a high proportion of employment in small firms, often family firms, which represent about 4.5 million firms, and raise specific challenges.

Regulatory reform has a crucial role to play to improve the competitiveness of the national economy. In particular, regulatory simplification, cost-cutting, and improvements in regulatory quality have concrete and direct effects across the whole of the economy. Aware of the challenges, Italy has made important efforts to give its regulatory policies a new impetus. In particular, in recent years, Italy has accelerated the measurement and reduction of burdens (procedures, certificates, information obligations) harming competitiveness.

However, the new momentum for regulatory policy reform needs to stand the test of time. It follows a range of initiatives pursued by successive Italian governments to address the post-war legacy of state intervention and heavy regulation with limited results. A number of challenges remain, in particular:

- Complex devolution has brought forward the need to pay greater attention to the implications of multi-level regulatory management. While the effects of decentralisation have clearly complicated the task of regulatory management and oversight, this needs to be more clearly signposted in the current and future reforms.
- Growing awareness of the need for effective regulatory reform may not be matched by similar awareness or capacity to act in the complex network of public administrations at national and sub-national level that need to be mobilised.
- The mechanisms that could support incremental improvements in regulatory reforms and incentivise administrations to deliver better regulatory management remain poorly developed. In particular, open, public consultation and communication mechanisms on regulatory activity are weak and non-systematic, giving discretionary powers to the administration to use them. Effective provisions to monitor and evaluate the programmes are lacking – with the notable exception of the administrative burden reduction strategy –, preventing constructive feedback on their effectiveness.

Table 0.1. The public governance framework for Better Regulation

Relevant authority		Structures	Functions
President of the Council of Ministers		Department for Legal and Legislative Affairs (DAGL)	Co-ordination and quality of regulatory activity. RIA, *ex post* evaluation
	Minister for Public Administration and Simplification	Office for Administrative Simplification (USA)	Administrative simplification and burden reduction
		Unit for the simplification and the quality of regulation	Normative simplification

Source: Italian authorities, as of December 2011.

Developments in Better Regulation and main findings of this review

Strategy and policies for Better Regulation

Over 15 years, successive Italian governments have pursued a range of regulatory policy reforms in line with the efforts in neighbouring European countries. Regulatory reform plays an important role in the various packages that have been announced to recover from slow economic growth. The Strategic National Framework aims to provide a strategy to improve the multi-level framework for regulatory reform and to speed up the reform processes. The Minister for Public Administration has initiated a great push to modernise public administration. A Minister for Normative Simplification was put in place in 2008. The Government, which took its functions in November 2011, gave further impetus to regulatory reform, by unifying responsibilities for simplification under the leadership of the Minister for Public Administration and Simplification. The renewed drive for regulatory reform that occurred in Italy towards the end of the 2000s was also in the mainstream of European good practices and was responsive to the mid-term review of the EU Lisbon Strategy.

Italy's strategy for regulatory reform focuses on "cutting-laws", "cutting-burden" and "cutting bodies", demonstrating the political importance of regulatory reform and simplification. Italy has accelerated the simplification of administrative procedures and reduction of burdens. The "guillotine clause", introduced by the 2005 Simplification Act, repealed more than 200 000 laws. Targets for reducing administrative costs, initially set at 25% by 2012, have been brought to 32%. The principle of a proportionate approach to administrative burdens on SMEs has also been introduced in 2010, which, together with the simplification measures adopted for SMEs, has led to estimated saving of EUR 1.5 billion per year. Digitalisation is clearly an important driver of the efforts to get to grips with administrative simplification. With the adoption of the 2008 regulation on RIA, and the approval of *ex post* evaluation (VIR) in 2009, efforts have also been made to systematise and rationalise impact assessments of new government regulations.

However, the challenges that emerged with the 2001 constitutional reform to decentralise the state persist. Decentralisation has provided more scope for experimentation and innovation, but also resulted in an increasingly complex layering of regional and state competences, where co-ordination is of critical importance to counter the risk of fragmentation of responsibilities and preserve policy coherence. The Italian apparatus for co-ordination is well developed compared with many other countries. However, the magnitude of the challenges will require strengthening co-ordination mechanisms, oversight capacities, financial incentives, technical capacities and human capital, and co-operative principles and frameworks to embed "better regulation" principles in the development of the multi-level regulatory system. With a view to address these

needs, Decree-law 70/2011 formally extends the measuring and the reduction of administrative burdens to Regions and Local Authorities, to Independent Authorities and introduces the measurements of burdens falling onto citizens. In 2011, a Joint Committee was also established among State, Regions and Local Autonomies at the Unified Conference in order to co-ordinate the methodologies for measuring and reducing burdens in matters of concurrent competences between the State and the Regions, starting with the construction sector.

A further critical point and a challenge for the new administration is the linkage of the reform agenda with wider key policies to boost competitiveness and ensure sustainable development. The most recent measures taken by the Government of November 2011 are to be welcomed in this respect. Following OECD recommendations, steps have been taken to promote administrative burden reduction and economic liberalisation through the so-called "Salva Italia" Decree-law of December 2011. Cutting administrative burdens is also promoted in the Document of Economy and Finance 2011 in the framework of the National Programme of Reform (PNR) 2011, as well as in recent commitments taken by Italy with the Presidents of European Commission and Council. Law 180/2011 of November 2011 foresees, as a part of regular RIAs, the mandatory *ex ante* measurement of administrative burdens introduced or eliminated by the legislative proposal – and not just their description.

The success of regulatory policy reforms will crucially hinge on the development of quality control mechanisms and incentives for compliance. The development of central quality control bodies for regulation is a good start. The guidelines for the implementation of plans for burden reduction, have formulated actions for the monitoring and evaluation of the burden measurement and reduction activities. Several independent administrative authorities have also gained important experience and display a tradition of disclosing regulatory procedures to stakeholders from which lessons can be learnt. At the occasion of the approval of the new Statutes, various regions (including Lombardy, Abruzzo, Emilia Romagna, Tuscany and Umbria) have started introducing specific provisions aimed at the evaluation of effectiveness of public policies in meeting the planned objectives. However, staffing and expertise in the units responsible for quality control need to be consolidated and increased. In line with this, transparency and consultation mechanisms, as well as benchmarking processes should be strengthened. With respect to regulatory decisions, quality standards for regulatory impact assessments need to be set. More generally, external, impartial and regular evaluation, based on a clear set of performance indicators, would help obtain feedback on the effectiveness of the Better Regulation programme.

Recommendations – Strategy and policies for Better Regulation	
1	Staffing and expertise in central quality control bodies for regulation need to be consolidated and increased.
2	Transparency and consultation mechanisms, as well as benchmarking processes need to be strengthened.
3	External and regular evaluation, based on a clear set of performance indicators, would help obtain feedback on the effectiveness of the Better Regulation programme.

Institutional capacities for Better Regulation

Success on the regulatory reform agenda requires broad consensus over years and across levels of government to ensure that political commitments are translated into concrete changes throughout the public administration. Stable, expert-driven, and well-resourced institutions at the centre of government must be supported by political leadership in order to promote, oversee, and enforce the regulatory reform commitments of the government. Italy's Better Regulation bodies are a step forward in this direction – in particular, the Department of Legislative Affairs (DAGL) with its regulatory impact analysis team, as well as the Unit for the simplification and the quality of regulation and the Office for administrative simplification, both supporting the Minister for Public Administration and Simplification.

Another significant step is the reform effort underway in the public administration. One major dimension of the so-called "Brunetta reform" (2010) is the nurturing of public servants' behaviour as a means of unblocking change. The reform aims to achieve measurement of real performance both of services and of individuals, relying in part on feedback from the public. Steps have already been taken in that direction. Implementation may however be problematic if the reform faces resistance. Public sector managers, in particular, will be a key determinant of the degree of application of new performance evaluation techniques. At his parliamentary hearing in 2011, the Minister of Public Administration and Simplification reiterated the importance of transparency and accountability, and the critical idea that the citizens should know not only what public administrations do, but also "how they do it".

Co-ordination between the different bodies involved will determine the success of these efforts. In Italy, the President of the Council of Ministers is formally responsible for regulatory policy. Until the new government of November 2011, direct competences for the Better Regulation reform agenda in the Presidency of the Council of Ministers were split between the Department of Legislative Affairs (DAGL), the Department of Public Administration and the Department for Normative Simplification. Split responsibilities and the lack of formal co-ordination may have explained the limited results of the overall government regulatory policy so far. Under the Government appointed in November 2011, the structures devoted to simplification (Office for administrative simplification and Unit for the simplification and quality of regulation) are regrouped under the responsibility of the Ministry for Public Administration and Simplification, leading de facto to a consolidation of the institutional framework. The Department of Legislative Affairs (DAGL) continues supporting directly the President of the Council in co-ordinating the regulatory activity of the government and in ensuring the quality of regulatory production.

Some issues still do not receive sufficient attention. This is particularly the case of public consultation for which the Italian record is patchy, especially in relation to exploiting the potential of ICT. On other issues such as enhancing RIA, diffusing *ex post* evaluation and systematising communication, the authorities expect the new regulation on RIA under development by the DAGL to address previous lack of attention in this respect. In addition, while resources – including training opportunities – for the Better Regulation agenda seem quite reasonable in the Presidency units, it is not clear whether they are adequate in the ministries or the wider public sector.

	Recommendation – Institutional capacities for better regulation
1	The latest government reshuffling of November 2011 better meets international standards of consolidation of institutional framework for regulatory policy. Such setting should be progressively strengthened and confirmed in the long run to avoid continuous re-organisations at the centre of government, which are likely to hamper a consistent and strategic implementation of the reform agenda. The synergies and co-operative mechanisms put in place in support of the administrative burden reduction programme could be taken as a possible example and extended to organise the governance of other regulatory tools.

Transparency through consultation and communication

Italy is ripe for a more pro active relationship with the wider public in the development of new laws and policies and could learn from other countries in this regard. As of today, there is little structure or formality to consultation and communication activities. Ministries carry out consultations informally in their own way when they launch a draft law. However, endorsement of a draft law by the Council of Ministers does require the opinion of certain advisory bodies (the State-regions conference; independent authorities; parliamentary commissions; and the Council of State). Parliament carries out hearings but only selectively. Greater awareness of the necessity to enhance consultation practices as an "integral part" of decision-making is emerging. A new regulation is under development by the DAGL to address these shortcomings and promote wider consultation in the framework of both *ex ante* and *ex post* analysis of regulation.

	Recommendations – Transparency through consultation and communication
1	Ensure speedy development and proper implementation of all the instruments aimed at promoting systematic, timely and transparent public consultation practices, including the forthcoming DAGL regulation on consultation and related detailed guidelines for administrations. The new consultation policy should be properly communicated to stakeholders.
2	Greater analysis, advocacy and communication on the expected gains from regulatory policy would help the country strengthen the coalition of reformers. In the long run, consider how to strengthen the functions of producing such information.

The development of new regulations

Not unlike other EU countries, the Italian legal system is very complex, drawing from a rather legalistic decision-making tradition. The pathway for drafting regulation is more immediately evident to civil servants than options for developing alternative instruments. In recent years, there has also been a tendency to advance the government's programmes by issuing legislative decrees and decree-laws. As a result, Italy's legal system is an example of continuous accumulation of regulatory stock which needs regular cleaning out.

Efforts have been made to systematise and rationalise* ex ante *impact assessments of new regulations. The adoption of the 2008 regulation on RIA constitutes a concrete initiative to mainstream the tool and facilitate its use. It also signals a renewed commitment on the part of Italy to regulatory reform. This was reinforced by the 2009 Directive on normative procedures, which paid close attention to the importance of bridging normative planning and the RIA process, as well as by the explicit links made in legal acts between RIA and *ex post* evaluation, potentially creating structural and procedural integrated mechanisms. Steps to rejuvenate RIA also include consolidating the procedure in a single document and process and integrating impact assessments for issues which overlap between ministries in a single collective assessment. Efforts are also being made to evaluate impacts on citizens, enterprises and the administration.

Ownership of the RIA process seems to be building in Italy. A number of ministries appear to be switching on to the process seriously and are re-organising their structures and procedures to better meet the requirements, even though communication on organisational upgrading remains incomplete. Broader awareness of the RIA process is also developing with the development of interfaces that facilitate debates with academics and stakeholders (including the business community). An example is the Osservatorio AIR (created in 2009), which serves as a laboratory for carrying out RIA and consultation, and focuses on independent agencies, for which it systematically reviews progress, and proposes improvements.

However, the experience of Italy with RIA still leaves much scope for improvement. Structural gaps in the design of the instrument persist and make improving the current system a difficult task. A new regulation under development at the time of completion of this report is expected to address some of the shortcomings identified by DAGL in the design and the implementation of RIA, VIR and related public consultation. Meanwhile, this report aims to support the reform efforts of the new government by highlighting a number of critical areas for improvement.

Fewer and more targeted and robust RIA would lead to better results, both in terms of achieving policy objectives and of imposing RIA in the daily practice of policy-making. The model provided for by the 2008 RIA regulation institutes a very broad scope for RIA, which has translated in the undertaking of some 150 RIAs per year. While this has meant that the Government has actively worked towards mainstreaming RIAs in the regular activities of administrations and in the routine production of regulations, the high number of RIAs raises important issues. In particular, quantity may come at the expense of quality – both with respect to producing good quality analyses and to ensuring high performance quality check. Fundamentally, capacity of policy makers to take RIA into account in their decision-making may not yet be in line with such level of RIA production. A problem of scope is also recognised by Italy, as the 2008 RIA regulation allows for exempting administration from doing RIAs on urgent and complex proposals – typically the areas where such a tool would bring value. In this respect, DAGL is considering revisiting the criteria for exemption in order to better target when RIAs are carried out by limiting the number of assessment while including the most complex proposals.

The technical capacities for carrying impact assessment – including early consideration of alternatives to regulations and quantitative assessment – need strengthening. Three years after entering into force, the RIA regulation of 2008 has still not been followed by the necessary complementary guidelines. Assessments of costs and benefits still display a number of shortcomings. The 2008 RIA regulation prescribes that the analysis of costs and benefits be carried out only on the "zero-option" and the preferred option, with other options receiving less thorough attention. While this approach is intended to simplify the drafting and make the tool more attractive and more widely used, it weakens one of the fundamental elements of RIA (the structured comparison of options) and may generate assessments that are mere justifications of decisions already taken. DAGL also notes that assessments remain mainly qualitative (estimates of costs and benefits are rare) despite its attempts to diffuse basic knowledge and skills around RIA through more regular and comprehensive training rounds in the Presidency of the Council and across line ministries.

The mechanisms for quality control need to be consolidated. The RIA regulation strikes a good balance between the centre (control and co-ordination) and the periphery (responsibility for producing RIAs). Institutionally DAGL is responsible both for carrying out a procedural and technical analysis of RIAs, typically controlling that the assessments are in line with minimum requirements on the basis of an internal checklist; and for ensuring the co-ordination among administrations so that RIAs are delivered on time to the pre-council meetings. However, there are no explicit deadlines either on launching and implementing or on complying with the changes requested by DAGL. A more general issue of regulatory culture exists: while there are signs that individuals with diversified profiles are being hired or trained in some parts of the central administration, RIA seems to remain trapped in rather legalistic, procedural logics.

Rigorous consultation during preparation of RIA reports and clear and accessible communication of results need to be ensured. Publicity and communication of progress remain largely neglected. DAGL has issued a second report on RIA activity and performance in September 2010, covering the years 2007-2008. However, while final RIA reports are de facto public on the Parliamentary website, their accessibility needs to be improved. The 2008 RIA regulation sets consultation in the framework of RIA only on a facultative basis. Consequently, Ministries carry out consultations in their own way, with little structure and formality. The new regulation under development by the DAGL is expected to address these shortcomings.

Italy is making efforts to embed* ex post *evaluation of laws. The policy also provides for *ex post* evaluation on all normative acts for which an impact assessment has been performed, two years on. To be effective, though, the initial impact assessment needs to be of sufficient quality and incorporate indicators of success against which the monitoring can be carried out. The process may produce a long stream of amendments. As in some other countries, it is likely to be sensitive for the ministry/politician concerned.

	Recommendations – The development of new regulations
1	Consider the possibility of introducing a prioritisation mechanism to screen among regulations which ones would require full or more in-depth RIAs (Canada's "triage" mechanism provides an example).
2	Start the RIA process at the earliest stage possible, since good quality RIAs conducted early and allowing the identification of non-regulatory alternatives will help limit the flow of new regulations.
3	Issue binding and precise procedural and methodological guidelines to assist with the preparation of RIAs.
4	Consider further investment in staffing and RIA training to enable ministries to conduct the required technical analysis. Take this opportunity to ensure multi-disciplinary backgrounds and skills and initiate a culture of evidence-based approach to decision making within DAGL and the line ministries.
5	Publish relevant criteria and modus operandi for DAGL in its function of RIA oversight body.
6	Introduce incentive and sanction mechanisms for administrations to comply with requested changes in impact assessments, for instance by publicly reporting each year information on the relative number of proposals returned to the administration by DAGL on the ground of sub-optimal RIA quality, according to the type of proposal and administration and on the type of problems encountered. A library of examples of good assessments by administrations would help illustrate what is expected from RIA drafters.
7	Enhance early inter-ministerial co-ordination and information sharing as fundamental elements informing the ex ante assessments.
8	Reinforce the requirement to consider alternative forms to regulatory interventions at an early stage of the impact assessment process.
9	Make RIAs systematically available to the public on one single point of access.
10	Seek more systematic dialogue with stakeholders and academia. Consider the Osservatorio AIR as a possible model.
11	Consider inserting sunset clauses to avoid instability of the regulatory framework if *ex post* assessments lead systematically to amendments.
12	Consider the bundling of laws for *ex post* evaluation in order to reduce political sensitivities and inconsistencies and better align post-analysis with delivery of results for society, economy and environment.

The management and rationalisation of existing regulations

Legislative simplification has long been a cornerstone of Italian regulatory policy, as a response to the continued production of new laws. A major step taken by the authorities involved law cutting, with a special emphasis on SMEs, providing for the removal of redundant and obsolete laws, and those showing "no signs of life". The next step is codification, which looks into the opportunity to introduce changes in the content via expert commissions set up in ministries, with the aim to align laws to the needs of modern society. Apart from the guillotine mechanism, emphasis has shifted in recent years to administrative burden reduction to assess the opportunity for simplification.

The commitment to administrative burden reduction in recent years is well-timed in the context of the current need to speed up economic recovery. Because of the high proportion of micro enterprises in the composition of Italian industry, red tape has a strong impact on competitiveness. Procedures, which are the same for all or sometimes actually designed for larger companies, weigh most heavily on small firms. Second, there is an entrenched use of un-rationalised administrative procedures and certificates. Third, there are complications caused by decentralisation and regions as well as municipalities going their own way, and overlap of competences. Great complexity and fragmentation were uncovered in the process of measuring burdens. Lastly, the culture of the public administration needs to change as it currently prioritises very detailed legal provisions over actual results.

Administrative simplification initiatives have included:

- Conference of Services, i.e. the simplification of the delivery of complex authorisations. A lead agency convenes all the others, and the Conference is the final authority for delivering an authorisation. Successful implementation is still to be confirmed across multiple agencies and levels of government.
- SCIA initiative, aimed at firms who need a set of permits to start an activity. Started in July 2010, it promotes self certification, via notification by the company that it fulfils all the requirements to start an activity.
- One-stop shops, supported by the implementation of the EU Services Directive. They are run by municipalities or Chambers of Commerce when the latter do not have the capacity yet. As in most other EU countries these are increasingly digitalised services.
- Italy also has a more classic administrative burden reduction programme. On the basis of simplification policies already adopted, it is estimated that the reduction target of 32% by end 2012 would reduce burdens by more than EUR 7.6 billion.

The burden reduction programme of Italy displays strong positive aspects. For one, the programme benefits from strong political commitment, illustrated by the fact that the overall reduction target was raised to 32% by 2012, that the scope of the programme was extended to cover regulations by independent national agencies, burden on citizens; and to include the regional level. The programme is also deemed well targeted – with a specific approach for compliance requirement on SMEs – and relatively efficient. Administrations benefit from the programme through spill-over effects and synergies with other reform actions, notably legislative simplification and e-Government.

More generally, administrative burden reduction is seen as setting good standards for regulatory reforms at the central level. Administrative burden reduction programmes have helped diffuse a more result-driven culture throughout the administrations. Important efforts are made to include a range of competences, ages and background in the teams (economic as well as legal) and to involve stakeholders in the process and its monitoring. The programmes have also triggered practices of e-consultation. Efforts to communicate current initiatives and results from the Administrative Burden Programme are greater than in other fronts of the Italian regulatory reform agenda.

While these reforms to reduce administrative burden represent positive significant steps, they should be broadened, sharpened, and sustained over time. One particular challenge has been the slow pace with which, initially, measurements were launched and concluded and, especially, simplification measures were proposed and adopted. However, according to the Italian authorities, these initial concerns have been overcome, as illustrated by the fact that until now 81 high-impact procedures have been measured through 14 surveys in 10 regulatory areas. Simplification measures have been applied to 8 regulatory areas. Similarly, it is expected that concerns at the split of political responsibility and accountability between the two ministers in charge of administrative and legislative simplification be overcome by their regrouping under a single Minister for Public Administration and Simplification with the new Government of November 2011.

	Recommendations – The management and rationalisation of existing regulations
1	Consider integrating on a systematic basis simplification processes with forms of cost-benefit analysis.
2	Agree on speedier procedure with Parliament for the adoption of simplification proposals.
3	Strengthen the resources allocated to the "MOA Task Force" to speed up the administrative burden measurement process.
4	Strengthen the monitoring and evaluation capacities to check progress and results of burden reduction initiatives and ensure wide communication of results.

Compliance, enforcement and appeals

Progress by the Italian Government on the reform of inspections has potential to yield considerable benefits for businesses, and also for the public in terms of greater transparency, improved compliance, and subsequently better outcomes (safety, health, environment, etc.). However, the reform will need to be continued, including implementation at the regional and local levels, and also deepened (e.g. through use of IT) and eventually broadened in scope (to include inspections that have so far not been covered, e.g. tax, labour legislation). The initial impulse for reform was indicated in the decree-law 70/2011 (13 May 2011 – Urgent Economic Measures), which in particular foresaw coordination of tax and revenue inspections (of which there are currently many different kinds, conducted by several agencies). On 9 February 2012 the decree-law 5/2012 (Urgent

Dispositions in Simplification and Development Matters), was adopted which provided a real framework for reform of inspections in Italy. There have been significant steps undertaken under the Government's leadership, with strong involvement from several key regions – these steps have included a burden measurement exercise, the development of Guidelines for Inspections (to be adopted early 2013), and initiatives to improve coordination at the regional level. At the same time, strong resistance by some institutions has led to their exclusion from the reform process (tax administration, labour inspection).

The issue of administrative appeals to regulatory decisions has received increased interest in Italy in the wake of the saturation of the civil law system. A number of fast track procedures have been established for administrative appeals and the option of suspending appeals has also helped streamline processes. Delays in civil justice seem to have been much higher than the international average. Procedures are usually more complex in Italy and take more time. An underlying problem appears to be the excessive "demand" for the Italian court system. Economic disputes are generally of notably low monetary value and proceedings appear to be drawn out over a long period of time.

A number of decentralised alternative dispute mechanisms now exist in Italy. In March 2010, mediators were introduced for civil and commercial matters. The Justice of the Peace is the court for less significant civil matters. This court presides over lawsuits in which claims do not exceed EUR 5 000 in value or EUR 15 000 in certain circumstances. While Italy has not established an Ombudsman at the national level, a number of regions introduced the office of the Regional Ombudsman as an alternative mechanism to judicial appeal. At the regional level, other forms of alternative dispute settlement mechanisms have also been pioneered, with satisfactory results.

	Recommendations – Compliance, enforcement and appeals
1	Continue implementation of inspections reform already initiated, in particular through generalisation of risk-based targeting, increased efforts to inform businesses and promote compliance, and us of IT for co-ordination. Consider reduction of overlaps and duplication through institutional reform. Include tax and labour inspections in the reform.
2	While the diagnostic is clear, possible appropriate solutions that meet with consensus remains open. The Online Civil Trail Initiative may help towards speeding up proceeding and facilitating access to documentations through ITC. The Initiative has been launched as a pilot in a number of courts. Further steps should be taken to enhance its implementation and diffusion across Italy. In addition, consideration should be given to establishing a national Ombudsman as an alternative dispute mechanism.

The interface between member states and the European Union

Italy has made great progress in improving the timeliness of transposition of EU laws related to internal market. A number of initiatives and co-ordination arrangements have helped improve Italy's record of transposition deficit and infringement procedures. To address the issue of concurrent competences, a standard framework and guidelines have been established by the central government to identify the steps needed to comply with directives and involve stakeholders. A dedicated unit within the Department for European

Policies (*Struttura di missione per le procedure di infrazione*) was created in July 2006 to prevent infringements. Deadline of the legislative delegation has been aligned to that of the transposition and continuous monitoring of the approval process of implementation measures carried out.

The country still faces structural challenges to improve the way sub-national authorities participate in policy formulation at the European level, and how they collaborate to avoid delayed, partial and incorrect transposition and implementation of EU law. The revision of the current system, to date in discussion within Parliament, constitutes a timely and precious opportunity to streamline the decision-making process for EU-related acts, and institutionalise good practices. In particular, the revision is an opportunity to address the need for closer co-ordination and joint participation of the regions, as appropriate and where foreseen by the constitutional allocation of competences.

Recommendation – The interface between member states and the EU	
1	Contribute to strengthen the responsibility and capacity of the regions to timely and fully transpose and implement EU law through their closer involvement in the ascending phase of EU decision making; through closer collaboration with the State in the appraisal of infringement procedures; and through burden sharing (or full liability by the regions) in case of ascertained infringement in areas of exclusive regional competences.

The interface between sub-national and national levels of government

Italy has experienced devolution of legislative and regulatory powers to the regions. While Italy celebrates the 150th anniversary of its unification, economic and social heterogeneity is largely a historical legacy. SMEs are often rooted in their territories of origin and may not desire a national market to bring unwelcome competition. There are also big income differences between north and south. In this context, the 2001 constitutional reform has constituted a major milestone by opening the way to a structured but to date still un-finished decentralisation.

This raises a number of difficulties for better regulation, which the central government has yet to address fully. In particular, the reforms have resulted in significant competence overlap (concurrent competences) between the regions and the centre. In addition, the tendency of regions to equate autonomy with regulatory production and differentiation constitutes a major strain on efforts to streamline administrative procedures. The leadership of more mature and successful federal states could be helpful in identifying practical ways forward. Improving fiscal federalism could also be an important lever.

Addressing the complexities of decentralisation, especially concurrent competences, will require a more effective use of co-ordination mechanisms. A structure is in place around three levels of "conferences" or "tables". The effectiveness of the conference of the regions, a centrepiece of the system, may need to be strengthened. More generally, the system does not seem to sufficiently and systematically integrate multi-level dynamics. The general Agreement of 2007 on regulatory quality and simplification was never given full implementation. The so-called "Development" Decree 70/2011 is an attempt to remedy the situation by instituting a Joint Committee among State, Regions and local authorities for the co-ordination of methods to measure and reduce burdens. The committee aims to act as a platform for peer learning on best practices of administrative simplification and promote shared methodologies of burden measurement and reduction among regions.

Greater awareness and capacity building on the Better Regulation agenda are needed at sub-national level. While some regions are advancing on individual reform fronts – for instance by experimenting with RIA and addressing administrative burden reduction programmes –, sub-national authorities in general and municipalities in particular need to be involved systematically and comprehensively, and take pro-active, responsible action. In this respect, the "Development" Decree 70/2011 generalises the measurement of administrative burdens to the sub-national level. Capacity to do so and heterogeneity of situations nonetheless appear to be a major issue which needs to be tackled.

	Recommendations – The interface between sub-national and national levels of government
1	Pursue a longer-term strategy towards closer co-ordination in regulatory policy matters across different levels of government.
2	Support the implementation of the program for measuring and reducing burdens at regional and local level, including through a strengthening of capacity for regulatory policy in sub-national administrations. The project for operational assistance to the regions (POAT), run by DAGL with some Regions on RIA and *ex post* evaluation, could serve as a basis.
3	Enhance co-ordination and information sharing as fundamental elements informing the *ex ante* assessments. Systems like the *e-urop@* database could be piloted in that respect.

Introduction: Conduct of the review

Review and country contributions

The current review of Italy reflects contributions from the Italian government and discussions at meetings held by the OECD team with Italian officials and external stakeholders. In the course of the development of this review, the country undertook a major political transition, which is likely to strengthen the impetus for the better regulation agenda. Major initiatives and developments since this transition are referenced in the report, but have not been evaluated.

The OECD team consisted of:

- Nick Malyshev, Head of the Regulatory Policy Division of the Public Governance Directorate, OECD.
- Caroline Varley, Project Leader for the EU 15 reviews, Regulatory Policy Division of the Public Governance Directorate, OECD.
- Lorenzo Allio, Independent Policy Analyst and Consultant on Public Governance and Regulatory Reform (not present on mission).
- Céline Kauffmann, Senior Economist in the Regulatory Policy Division of the Public Governance Directorate, OECD (not present on mission).

The team held discussions in Rome on 9-10 December 2010 with representatives of the following organisations:

- Cittadinanzattiva
- Confartigianato
- Confcommercio
- Confederazione Nazionale dell'Artigianato e della Piccola e Media Impresa (CNA)
- Confindustria
- Department of Economic Development
- Department of European Affairs
- Department of Legislative Affairs
- Department of Normative Simplification
- Department of Public Administration
- Legislative Office of the Ministry for Agricultural, Food and Forestry Policies
- Legislative Office of the Ministry for Cultural Assets and Activities

- Ministry of Interior
- Ministry of Labour and Welfare
- Office for Administrative Simplification
- Parliamentary Analysis Supporting Unit
- Presidency of the Council of Ministers

Subsequent inputs and comments received on the review were co-ordinated by USA (the Office for Administrative Simplification), USQR (*Unità per la semplificazione e la qualità della regolazione*) and DAGL (the Department of Legislative 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 and 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 and appeals.** This chapter considers the processes for ensuring compliance and enforcement of regulations, as well as administrative and judicial review procedures available to citizens and businesses for raising issues related to the rules that bind them.

- **The interface between Member States and the European Union.** 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 sub-national 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 and the proposed draft 2012 Council Recommendation on Regulatory Policy and Governance 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 two previous OECD Reviews of Regulatory Reform of Italy were of particular relevance for this work: the 2007 Regulatory Reform Review on *Ensuring Regulatory Quality across Levels of Government* and the 2010 Regulatory Reform Review on *Better Regulation to Strengthen Market Dynamics*.
- 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 from colleagues within the OECD Secretariat. The report is also based on material provided by Italy as well as on recent reports and reviews carried out by the OECD and other international organisations on related issues such as e-Government and public governance.

Within the OECD Secretariat, Jennifer Stein provided communications support 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

Italy has made real efforts to give its regulatory policies a new impetus since the 2008 OECD review, at least as regards legislative and administrative simplification, the functioning of public administration, and aspects of impact assessment. There is wide awareness that previous efforts have not fully delivered, while expectations on the potential implications of good quality regulation and accountable, evidence-based and impact-oriented decision-making are raising. The country deserves considerable credit for pursuing this agenda, especially at times of political turmoil and economic recession.

The EU influence in steering the Better Regulation agenda is less evident than in some other EU countries – beside the general impact that the transposition of the EU Services directive has on administrative re-engineering and concern at transposition delays and infringements. In two instances only such influence is obvious: the administrative burden reduction agenda is closely related to similar developments in other EU Member States and at the EU level; and the recent Law 180/2011 (so-called *Statuto delle imprese*) is clearly parented with the EU Small Business Act. For the rest, advances with the regulatory reforms are mainly the result of domestic dynamics and of a bipartisan consensus that seems now to be consolidated. Italy hopes that it has achieved a higher gear and greater speed in the reform agenda. However, this new momentum, also confirmed by the new government of November 2011, needs to stand the test of time. Only the next few years will determine whether a point of no return has effectively been passed or if a new backlash in political commitment and leadership may risk hampering consistent and strategic implementation of the reform agenda.

Although the effects of decentralisation have clearly been significant and have complicated the task of regulatory management, this is not (yet) a clearly signposted issue in the reform agenda. The multilevel dimension remains one of the most important and pressing issues against the background of a complex decentralisation process. Not enough attention is being paid to the implications for regulatory management and the economic effects of a fragmented internal market.

The Government of November 2011 is taking steps to better link the regulatory reform agenda with the wider policy objectives of curbing sovereign debt crisis and boosting economic growth. Administrative burden reduction and economic liberalisation are promoted through the so-called "Salva Italia" Decree-law of December 2011. This Decree extends the liberalisation (launched in 2006) to a number of areas, including to the sales of pharmaceutical products, to commercial distribution and to the organisation of liberal professions, and rationalises regulation supporting the liberalisation of the sea, air and railways transport sectors. Among other measures introduced is also the strengthened power of the Antitrust Authority. As such, it complements the "Development Decree" of August 2011 (as regards the reform of liberal professions) and the "Stability Law" of November 2011 (which deals with liberalisation of road transports). Cutting administrative burdens is also promoted in the Document of Economy and Finance 2011 in the framework of the National Programme of Reform (PNR) 2011, as well as in recent commitments taken by Italy with the Presidents of the European Commission and of the Council of Europe.

By unifying responsibilities for simplification under the leadership of the Minister for Public Administration and Simplification, the new Government is also assuaging the concern that a complex and fragmented institutional framework may hamper the effectiveness of regulatory policy.

Communication on Better Regulation strategy and policies

With the notable and welcome exception of the MOA programme, regulatory policy in general and individual initiatives has remained poorly communicated.

Ex post *evaluation of Better Regulation strategy and policies*

While a review of the experience so far with the One-Stop Shop initiative (*sportello unico per le attività produttive*) and of the administrative burden reduction programme is scheduled, there is no clear commitment to evaluating progress across the different initiatives. A rather ad hoc and unsystematic approach is followed. Strategic changes (including institutional re-organisation) over the past years have not necessarily followed logics of performance and achievements of results.

E-government in support of Better Regulation

Digitalisation, re-engineering and enhanced efficiency through ICT are clearly an important driver of the efforts to get to grips with administrative simplification. Italy has launched several initiatives both at the central and the sub-national level, including the creation of a series of one-stop-shops through the synchronisation of public administration and private networks; streamlining the front office of public service delivery; and improving access to information. Nevertheless, like many other EU countries, Italy faces the challenges of an important geographical and social digital divide that can hinder the full exploitation of the e-government potential.

Recommendations. The success of regulatory policy reforms crucially hinge on the development of quality control mechanisms and incentives for compliance:

1. Staffing and expertise in central quality control bodies for regulation need to be consolidated and increased.

2. Transparency and consultation mechanisms, as well as benchmarking processes need to be strengthened.

3. External and regular evaluation, based on a clear set of performance indicators, would help obtain feedback on the effectiveness of the Better Regulation programme.

Background

Economic context and drivers of Better Regulation

Both domestic as well as external pressures have supported the Italian national strategy for better regulation. Domestically, regulatory policy has its origins in a longstanding drive to simplify the regulatory environment, in both legislative and administrative terms. Since the 2001 constitutional reform extended and formalised the decentralisation process in the country, governments have committed to carry forward federalism and simplification simultaneously, with the aim of exploiting synergies from these two processes leading to better provision of public services to citizens and enterprises.

Another domestic driver is the improvement of the regulatory function by establishing a highly performing, transparent and accountable public administration. For a number of years, the Italian executive has recognised that there are serious shortcomings in the management of administration. In 2008, the Ministry of Public Administration launched wide-ranging reforms and an "industrial plan" for re-organising the public administration and enhancing its efficiency, with a view to introduce performance incentives among employees, and more transparency and merit-based decisions on recruitment and promotion.[1]

Regulatory reform has also been encouraged by external pressures. Reports by international organisations, including the OECD, have highlighted the importance of the regulatory framework for economic competitiveness and growth. Italy's economic growth has been below the euro-area average, with low total factor productivity growth. Structural reforms and liberalisation policies remain a necessity.

As it is the case for most EU countries, the EU's comprehensive "Action Plan for Better Law-making"[2] launched by the European Commission in 2002, and the related Inter-institutional Agreement signed by the European Commission, the European Council of Ministers and the European Parliament in 2003 have also exerted a significant influence. The Lisbon Strategy in 2005 called upon each member state to implement national plans for competitiveness and growth. The plans were designed to encourage progress on reforms, including those related to competitiveness, administrative simplification, and public spending.[3] Principles and tools in support of policies to achieve "growth and jobs" are now complemented by a more comprehensive strategy for "Smart Regulation" (European Commission, 2005).

Main developments in the Italian Better Regulation agenda

Developments in the past years have built on earlier attempts to shift away from annual "simplification laws" and pivot action around more encompassing initiatives – such as the cutting law mechanism and the measurement of administrative burdens.

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

2011	The Enterprise Law 180 (*Statuto delle imprese*) – reduction and transparency of administrative obligations for citizens and firms
2010	Introduction of the proportionality criterion in burden simplification and reduction measures for firms
2009	Regulation of VIR (*Verifica dell' Impatto della Regolamentazione*) Directive on the preliminary examination of regulatory proceedings of the Government
2008	Adoption of the Administrative costs reduction rule Rule of the President of the Council regarding the timeline and ways of implementing the technical regulatory analysis Regulation on RIA
2005	Fourth law of simplification (No. 246) on reorganisation, regulatory quality and regulation A new legislative tool for reducing regulatory stock is introduced (the so-called Decree Taglia Leggi)

2003	Third law of simplification (No. 229) on reorganisation, regulatory quality and regulation. Introduction of RIA for Independent Authorities
2001	Law 3 of the constitutional reform modifies the distribution of competencies for regulation among State, regions and local authorities Handbook for drafting laws of the Presidency of the Council Rules for the legislation and the application of drafting guidelines and institution of the Committee for legislation of the Chamber of deputies
2000	Consolidating act for administrative documentation Second law on simplification (No. 340)
1999	First law on simplification (No. 50) for deregulation and consolidating acts and introduction of RIA
1998	Simplification rules (one-stop shop)
1997	Law 59 for the regulation of simplification rules which provides for the adoption of laws of simplification on a periodic basis
1994	Launch of deregulation with the first simplification rules
1990	Law on the administrative procedures (No. 241) with the first institutions of proceedings simplification (Conference of services, New business launching statement)

Guiding principles for the Better Regulation policy agenda at the national level

In recent years, broad support for reforms has enabled the government to move up a gear, intensify its efforts and develop a more consistent approach on two intertwined fronts:

- In terms of political commitment and leadership, the agenda has been propelled forward by the appointment of the Minister for Normative Simplification in 2008, and by the actions of the Minister for Public Administration (see Chapter 2).
- In terms of strategy, the aim has been to advance the normative and administrative simplification agendas, and enhance evidence-based decision-making (notably through measuring and reducing administrative burden), linked to policies aimed at improving performance in the public administration.

The emphasis on regulatory reform is embodied in Decree-law 112/08 adopted in June 2008, and converted into law in August of that year (Law 133/08) (see Box 1.1). As an indication of the political importance granted to regulatory reform and to simplification in particular, the title of the law explicitly mentions these policy areas. A specific chapter in the Law is also devoted to them – a novelty for a budgetary law (*legge finanziaria*). This was a strong signal of the importance that the government attaches to simplification in support of clarity and transparency, as well as to its contribution to competitiveness. Better regulation is therefore now considered in Italy as a fully-fledged policy that goes beyond sectoral needs and agendas. Relative continuity in the policies of simplification through the various legislatures without which the Decree could not have been designed and adopted so quickly.

Main Better Regulation policies at the national level

Decree-law 112/08 made three key areas of intervention operational: the "cutting-laws"; the "cutting-burden"; and the "cutting-bodies" initiatives. The Government's strategy aims at improving the quality of regulation while enhancing the outputs of the public service. As an illustration, there is now a closer connection between the personal evaluation of top managers and achievement of the objectives set for their services in terms of regulatory reform.

Box 1.1. Moving up a gear in Italy's simplification agenda: Legislative Decree 112/08

The Legislative Decree 112/08 reinforced and made operational three key areas of intervention:

- **The "cutting-laws" mechanism** (*taglia-leggi*) – Art. 24 concludes the first phase of the guillotine mechanism (i.e. the inventory) by repealing more than 200 000 laws. As such, by itself it has reduced the Italian legislative stock by one third, bringing the number of State legislation in force down to 14 600.
- **The "cutting-burdens" mechanism** (*taglia-oneri amministrativi*) – Art. 25 foresees completing the measurement and reduction of administrative burdens (MOA) by 2012; designing programmes to achieve the target of -25%; involving each ministry as well as the individual top managers responsible for that policy; and introducing fast-track procedures. The target has been raised to -32%.
- **The "cutting-bodies" mechanism** (*taglia-enti*) – Art. 26 abolishes all those public administration bodies that do not provide economic services and that are staffed by less than 50 employees. All other bodies that are not explicitly declared or justified will also be closed (exceptions are listed by the law).

In October 2010, the Public Administration Department issued the Plan for Administrative Simplification 2010-12, further to consultation with stakeholders (see Chapter 5). The Plan is aimed at:

- Achieving a 25% (now 32%) reduction in administrative burdens on businesses by 2012, which is now expected to lead to more than EUR 22 billion savings if applied to both national and regional legislation. The Italian approach explicitly seeks to tackle the most burdensome and obsolete measures.
- Introducing simplification measures specifically targeted for SMEs and the principle of proportionality in administrative requirements, building on the European Commission's Small Business Act.[4]

Late 2011, major developments have occurred that changed the institutional environment for the Better Regulation agenda of Italy, but whose full implementation and impact cannot be evaluated yet. They include:

Decree-law 70/2011 (the so-called "Development Decree") of August 2011 extends the measurement of administrative burdens to Regions, Local Authorities, Independent Authorities and citizens. A Joint Committee has been established at the Unified Conference for the co-ordination of the methods of burden measurement and reduction. Joint measurement activities have started in co-operation with the State, Regions and Local Autonomies in fields of concurrent competencies in key sectors such as construction.

The "Stability Law" of November 2011 introduces measures for the reduction of administrative burdens for citizens and firms. It also provides for forbidding the introduction of additional administrative obligations when transposing and implementing European directives.

The Decree-law "Salva Italia" of December 2011 introduces a number of liberalisation measures and complements the "Development Decree" and the "Stability Law". It extends the liberalisation (launched in 2006) of sales of pharmaceutical products (by reducing impediments to the sale of pharmaceutical products outside the chemist's shops), the liberalisation of commercial distribution (by eliminating obligations and exceptions to the free choice of opening hours, of territorial boundaries different from the boundaries defined in the urban development plan, by maintaining business authorisations for medium and large wholesalers only in the case of general interests related to health protection, workers, environment, and cultural heritage), the liberalisation of working activities and the organisation of liberal professions (free choice of fees, expansion of companies owned by practitioners and information disclosure).

Ex post *evaluation of Better Regulation strategy and policies*

As in most other EU countries, *ex post* evaluations have not been undertaken systematically. However, a number of instruments exist which, in principle, allow for an appraisal of the Better Regulation strategy. They mainly include:

- the annual report sent by the DAGL to the Parliament on the progress of RIA and VIR implementation;
- the annual reports of the Independent Administrative Authorities sent to the President of the Council or to the Parliament, which include a description of better regulation initiatives.

E-Government in support of Better Regulation

"Innovation and digitalisation within the public administration and the country" is the second pillar of public administration reform. The Italian policy on digitalisation encompasses three interrelated aspects: *i)* ICT adoption inside each public entity, *ii)* interoperability within the public sector, and *iii)* enhanced online public services and administrative burden reduction for firms and citizens. The general objective is to create an easier, faster and cheaper way to access public services, and to enhance the interaction between the provider (public administration) and the consumers (citizens and firms). Digitalisation is expected to increase effectiveness and efficiency of public service delivery, and enhance transparency and accountability.

Legal provisions for e-Government

Parliament has traditionally supported the development of e-Government practices and the application of ICT in support of the regulatory reform agenda. The relevant legal provisions in this area were codified in the Digital Administration Code (*Codice dell'amministrazione digitale*) of 2005 (Legislative Decree 82/2005). In December 2010, the new version of the Code was approved through Decree 235/2010 which entered into force on 25 January 2011 (Box 1.2).

Box 1.2. A new code for e-Government in Italy

The new e-Government Code is the second pillar supporting the modernisation and digitisation of the Public Administration (PA) project besides the so-called "Brunetta" reform. The revision of the 2005 Code became necessary due to the fast evolution of IT. It responds to the need for tools enabling increased efficiency and effectiveness in the entire public system. The pursued aim is to stop obsolete structures and endless procedures from being a burden for the national budget and from discouraging foreign investment. The Code is applied at both the central and local level.

The main novelties of the code regard:

- **The re-organisation of the public administration** through the establishment of a unique office responsible for ICT activities, the streamlining of procedures at organisational and IT levels as well as the introduction of the IT protocol and the electronic file (*fascicolo elettronico*).
- **The streamlining of procedures at organisational and IT levels.** It is expected that the public administrations' original documents will be drafted by using information technologies and that the rules governing the copying of administrative and electronic documents will consequently be revised;
- **The right to interact with the public administration through digital means**. All public administrations must have a fully legal valid, secure, certified digital channel (in most cases consisting of certified electronic mail, that will substitute return-receipt, registered mail) that will allow citizens and businesses to use their computers to communicate with public offices. Other provisions regard the introduction of e-payment means (via debit card, credit card, or prepaid card, and any other electronic payment instrument available), the exchange of data between companies and the administration, the access to networked services, the use of electronic signature, the dematerialisation of documents and the provision of more transparent content on institutional websites. Transparency and accessibility of administrative information and requirements are also enhanced.
- **Security of data exchange** through the adoption of emergency and recovery plans to face possible disasters, so as to ensure the continuity of public service delivery and of Government-to-citizen information exchange. The public administrations are also called upon to sign agreements on co-ordination, compatibility and mutual access to databases and systems. The administrations will need to make their public data available in open formats that can be reprocessed by third parties; the exchange of data between businesses and administrations is also planned. The administrations holding databanks will be required to enter into publicly disclosed agreements for ensuring the accessibility of their information to the other administrations. The agreements will govern the limits and the conditions of access to the databanks, including for ensuring the confidentiality of personal data.
- The new code is expected to enable considerable **productivity recovery**, that is:
  - Decrease in the time spent on administrative tasks (up to 80%).
  - Reduced judicial costs: within the six-months testing of electronic notifications in the framework of civil trials before the Milanese Courts, 100 000 such modifications were made, representing approx. EUR 1 million savings.
  - Approx. one million paper pages saved in one year as a result of dematerialisation. The target is to take this number to 3 million in 2012.
  - A 90% saving in the paper-related costs, including those pertaining to ecological impact for about EUR 6 million.
  - Wide-spread use of certified electronic mail (PEC)[1] which is expected to generate a EUR 200 million saving due to the reduction of letters with acknowledgement of receipt sent by the PA to the citizens, as well as less time and space dedicated to archiving the documents.

1. *www.postacertificata.gov.it.* The PEC is an e-mail address that ensures the sender of the actual delivery of the message to the designated address and provides the same legal value as a letter sent by registered mail.

Source: www.innovazionepa.gov.it, and *www.governo.it/GovernoInforma/Dossier/codice_amministrazione_digitale,* translated by ePractice (*www.epractice.eu/en/news/308646).*

The new Code is a step towards achieving digital and simplified administration within three years, in compliance with the e-Gov Plan 2012 adopted in January 2009.[5] The Plan promotes government innovation, spreads online services and reinforces the accessibility and transparency of the public administration, so as to bring it closer to the needs of citizens and businesses. The Plan consists of 80 digital innovation projects, structured around four intervention areas and 27 government objectives. A crucial instrument to mobilise the necessary organisational and financial resources is ensured by over 143 "institutional co-operation memorandums" with central administrations, regions, local authorities and private subjects and associations. Citizens can monitor online the progress status of each planned project.[6]

One-stop shops and other levels of government

The diffusion of ICT within the public administration in Italy has acquired a strategic relevance with the constitutional reform of 2001 (see Chapter 2). While the reform reduced the scope for the State to promote administrative simplification at different levels of government through direct legal interventions, e-government allowed the promotion of simplification from central to regional and local administrations in a different way. The consolidation of one-stop shops (*sportelli unici*), linked to the implementation of the so-called EU "Services Directive" illustrates the efforts of the government in this respect (Box 1.3.).

Box 1.3. Diffusing one-stop shops and making them operational

Although local authorities had been invited to establish one-stop shops on a voluntary basis since 1998, ten years later, according to a FORMEZ survey, one-stop-shops were operational only in 40.6% of the municipalities, covering 60% of the population. Additional measures were introduced since 2007 aimed at consolidating one-stop-shops as the single electronic access point across the national territory for information to businesses and the issuing of all authorisations required to locate, create or modify a production and commercial facility.[1] From November 2011, the website *www.impresainungiorno.gov.it* centralises access to online information and services for Italian companies for 83% of municipalities (8 092 in total).

The reform has introduced a single notification procedure for the registration of business start-ups (*ComUnica*) replacing all of the former requirements for starting a business in the fields of social security, public assistance and taxation (tax code and VAT number). A Bank of Italy report of 2008 has measured the savings of *ComUnica* by comparing it with the traditional procedures, quantifying a benefit of 35% in time saved for firms.

The reform also involved the transposition of Directive 2006/123/EC (the "Services Directive"). Contact points have been established in the form of governmental internet gateway facilitating the communication between enterprises and local administrations (*www.impresainungiorno.gov.it*). The system relies on the ICT system of (local) Chamber of commerce, which allows for better links to the territory and for efficient allocation of resources. A number of private bodies (*agenzie per le imprese*, *www.agenziaperleimprese.it*) assist SMEs in gathering and processing information and identifying the correct documents and forms. They are also entitled to act as intermediaries on behalf of (presumably) small entrepreneurs.

The new one-stop shops, so called "SUAP" (*Sportelli Unici per le Attività Produttive*), moreover, intend to reduce the length of the procedures even further, as the requests to start all the activities concerning the location, the realisation, the transformation, the restructuring, the reconversion, the increment or the transfer, the cessation and the re-establishment of the economic installations are sent exclusively electronically. The local SUAP aim at ensuring a unique and timely answer to the applicant in place of all the public administrations involved in the procedure, including those responsible for the environmental and landscape-territorial matters, the historical-artistic patrimony, health and public safety.

Box 1.3. Diffusing one-stop shops and making them operational (*cont.*)

The municipalities can now choose to create and manage a SUAP in an independent way, in collaboration with other neighbouring municipalities or with the competent Chamber of Commerce in their territory. The website *www.impresainungiorno.gov.it* ensures that all necessary administrative forms are standardised and available. Moreover, the website provides a benchmark by delivering applications and statistical information for all SUAPs managed in collaboration with the Chamber of Commerce.

The first results of the reform of the SUAP are encouraging. About 15 000 instances have been sent from April to November 2011 by municipal SUAPs through the channel of "*ComUnica*" and around 3 000 instances have been sent through telematics by SUAPs managed in collaboration with the Chambers of Commerce (all the data above-mentioned are provided by the website impresinungiorno.gov.it). In addition, these initiatives do not generate additional costs, as they merely re-organise the existing ICT and electronic interface and make it more user-friendly and efficient.

1. See Decree Law 7/2007, Decree Law 112/2008, Legislative Decree 59/2010 and Decrees of the President of the Republic 159/2010 and 160/2010.

Other e-Government initiatives

The Government has consolidated its approach to design electronic interfaces with the public, notably by issuing guidelines for public administration websites.[7] The guidelines set standards for framing and managing these websites, suggesting criteria and tools to streamline online content while reducing the number of obsolete public websites.

Three complementary initiatives of the Ministry for Public Administration and Innovation are aimed at multiplying the interface between public administrations, citizens and firms:

- **Friendly Networks** (*reti amiche*).[8] This is a system for the delivery of public services ranging from general information to issues related to passports, and residence and citizenship certificates, payments, through various agreed contact points at post offices, tobacconists, banks in agreement with the Italian Banking Association, pharmacies, large retailers. The initiative is expected to simplify service access, diminish service delivery time, and ensure user friendly services. The front offices provided by private networks also help individuals with poor ICT skills. The most innovative characteristic of Friendly Networks is the inter-operability between public administration web services and private networks.
- **EasyLife** (*vivi facile*).[9] This project launched in spring 2010 provides an advanced communication channel with the public administration through a single integrated communications system point of access to several digital services via mobile phones or the web. EasilyLife brings together various communication channels (web, e-mail and certified mail) and unifies the identification and registration processes of all services readily available to the public. While the services currently provided relate to the Vehicle Licensing Office (the Italian Automobile Association, ACI) and the school system, EasyLife will gradually be extended to other areas such as the public healthcare, welfare, labour mobility, justice and the taxation system.
- **Frienldy Line** (*linea amica*).[10] This call centre (which is at the core of a network of more than 1 000 contact centres of public administrations) offers three services to citizens: access to all the information regarding public administration; guidance and a call-back service if a specific problem cannot be solved immediately; and collection of complaints about poor service provision. Furthermore, it enables users

to evaluate the service received on line, by phone and by e-mail. Calls are forwarded to the toll-free number of the appropriate administration, or users can be guided through the portal. The Friendly Line call centre has been particularly used further to the earthquake in Abruzzo in 2009. The second phase of Friendly Line should integrate further the back-offices of the contact centers, allowing communications via VoiP, the sharing of FAQ and the transfer of queries from citizens.

Other e-Government initiatives have received increasing attention. Examples include:

Since November 2008, it has been compulsory for all new businesses to create a certified e-mail account, while existing companies have until November 2011 to do so. Since November 2009, all professionals have to activate a certified e-mail account and public agencies must publish their certified e-mail addresses on their websites. Bonuses to managers are frozen in case of non-compliance. So far, approximately 1 120 000 requests to open a PEC (certified email) account have been registered.[11]

In order to reduce paper consumption and simplify the access to information for citizens and businesses, Law 69/2009 Art. 32 has made mandatory since 1 January 2011 for all the Public Administrations to publish documents, bills and administrative acts on-line (Albo pretorio on-line). Only for tenders a 'double track' (paper & on-line) is still allowed until 2013. As of July 2011, 97.5% of the municipalities were complying with the "Albo pretorio on-line".

A system for electronic transmission of sick leave certificates to the National Social Security Service (INPS) by the doctor or public health service has been online since April 2010. By December 2010 electronic certificates outnumbered the paper ones. By March 2011 electronic certificates were more than 90% and by November 2011 less than 2% of paper certificates remained. Since the beginning of the new procedure more than 19 million electronic certificates have been transmitted. More than 340 000 certificates (on average) are sent per week. The compliance is homogeneous along the whole country.[12] The enforcement of this new transmission mechanism is ensured by sanctions for doctors failing to comply with these new legal requirements. Estimated savings are around 590 million euros (including savings for the workers who do not use mail to send the certificate to the employer). Other important impacts are expected from the availability of new knowledge bases regarding morbidity, behaviours etc. that will support future planning. In addition, this is an important step in further developments in the digitalisation of the prescription cycle (for medicines, visits etc.) and a building block for eHealth.

By August 2011, more than 40% of schools had joined the initiative "My SchoolPortal" (*Portale ScuolaMia*), providing various online services to the families (including online grade reports) since February 2010.[13] Moreover, electronic communications (certified e-mail or SMS) are now used to convene temporary teachers in schools.

Another priority domain of the eGov Plan is Justice for which a "Special Plan for digitalisation" was launched in March 2011. By September 2011, 95% of Courts had subscribed to the Plan which foresees by October 2012 the adoption of experimented IT solutions in the whole country to support the digitalisation of acts and procedures, and of notifications and electronic payments. By September 2011, nearly 84% of the Courts subscribing to the Plan had been endowed with IT kits. Progress has also been made on the Electronic Civil Proceeding side: online notifications have more than doubled between 2010 and September 2011 (from less than 400 000 to almost 900 000) and some Courts are using electronic payments of rights and taxes. Benefits are already materialising. Examples include the Court of Milan, which has achieved reduction in times for order of payments

from an average of 45 days (with peaks of 150) to 19 days; and the Prosecutor Office of Bolzano who has registered an increase in productivity of 50% and a decrease of its expenses by near 70%.

Notes

1. To encourage transparency, the Ministry of Public Administration announced that ministries should publish the salaries of senior officials on their websites, and does so itself for its officials, consultants and experts. Few other ministries have followed suit.
2. *http://ec.europa.eu/governance/better_regulation/index_en.htm.*
3. For Italy, see the various *Piani per l'innovazione, per la crescita e l'occupazione* (PICO), *www.politichecomunitarie.it/attivita/48/programma-nazionale-di-riforma*.
4. *http://ec.europa.eu/enterprise/policies/sme/small-business-act.*
5. *www.governo.it/GovernoInforma/Dossier/piano_e_gov_2012.*
6. *www.e2012.gov.it/egov2012.*
7. *www.innovazionepa.gov.it/comunicazione/notizie/2011/agosto/01082011---online-le-linee-guida-per-i-siti-web-delle-pa-anno-2011.aspx.*
8. *www.innovazionepa.gov.it/lazione-del-ministro/servizi-per-il-cittadino/reti-amiche/presentazione.aspx.*
9. *www.vivifacile.it*.
10. *www.lineaamica.it*.
11. *www.postacertificata.gov.it/home/index.dot*, as on 26 October 2011.
12. Figures provided by the Department of Public Administration and Simplification (status: December 2010). See *www.innovazionepa.gov.it/lazione-del-ministro/certificati-di-malattia-online/cosa-prevedono-le-norme--.aspx*.
13. *www.scuolamia.pubblica.istruzione.it*, as of September 2010.

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 sub-national 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 sub-national 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

In the context of better regulation, change to the public administration is key. Top managers play an important role in fully embracing and thereby facilitating and stimulating the implementation of regulatory tools, but they can exert equal pressure to slow down or postpone reforms. For example they can be rigid about the application of administrative or decisional procedures. Simplification is a long and complex process, and new and streamlined procedures might be perceived negatively as they clash against the predominant culture.

A significant reform effort of the central public administration is underway with the so-called "Brunetta reform". The reform is geared towards shifting to a result-oriented and performance driven culture, so as to release the full potential of public service delivery, relying on public servants as a means of unblocking change. Real performance is being measured more systematically and consistently, both at the level of the services and of individuals, using also feedback from the public in the former case. Some steps have already been taken, as illustrated by the service satisfaction surveys.

With specific regard to the institutional setting governing and framing regulatory reform at the central level, the President of the Council of Ministers is formally responsible for regulatory policy. Until the new government of November 2011, direct competences for the Better Regulation reform agenda in the Presidency of the Council of Ministers were split between: *i)* The Department of Legal Affairs (DAGL), responsible for the co-ordination of the regulatory activity of the government and for ensuring the quality of regulatory production; *ii)* the Department of Public Administration, responsible for the administrative burden reduction programme and public administration simplification and reform; and *iii)* the Department for Normative Simplification, in charge of the portfolio for legislative codification and for implementing the cutting-laws mechanism.

From November 2011, the structures devoted to simplification (Office for administrative simplification and Unit for the simplification and the quality of regulation) have been regrouped under the responsibility of the Ministry for Public Administration and Simplification, leading de facto to a consolidation of the institutional framework. This decision is to be welcomed. The Department of European Affairs (responsible for the transposition and co-ordination of EU-related legal acts) and the Departments for Regional Affairs (which oversees the co-ordination with the regions and controls the implications of the regulatory cascade across levels of government) contribute to the agenda each within their specific remit.

Recommendation:

The latest government reshuffling of November 2011 better meets international standards of consolidation of institutional framework for regulatory policy. Such setting should be progressively strengthened and confirmed in the long run to avoid continuous re-organisations at the centre of government, which are likely to hamper a consistent and strategic implementation of the reform agenda. The synergies and co-operative mechanisms put in place in support of the administrative burden reduction programme could be taken as a possible example and extended to organise the governance of other regulatory tools.

Background

Public governance context

Decentralisation

The interface between the central and sub-national governments has been significantly reformed over the past sixty years. The most important reform was adopted in 2001, with an amendment of Title V of the Constitution, revised Articles 114-133.[1] The reform provided a framework for new institutional structures, the division of legislative and administrative powers, the financial scheme and financial relations between diverse entities, the possibility of differentiated autonomy for regions with an ordinary statute, and the abrogation of budgetary controls of regional actions.

The 2001 Constitutional reform re-allocated legislative competences. Before 2001, the regions had responsibilities only on the matters expressly assigned to them by the Constitution. With the reform, the regions acquire exclusive legislative power with respect to any matter not expressly reserved to State law. The regions have legislative competence and regulatory implementation power also in matters of concurrent legislation, except for fundamental principles that are reserved to State law (see Annex A for details). Municipalities and provinces have regulatory power with respect to the organisation and fulfillment of the functions assigned to them.

The 2001 reform also re-designed the allocation of administrative functions. Legislative and administrative competences have been de-coupled. Municipalities are entrusted with generalised enhanced administrative tasks, with the exception of those cases where uniformity and coherence require the conferral of the administrative competence to a superior level of government (Art. 118).

Further to the reform and because of the need for institutional adjustments,[2] the Italian Constitutional Court was called upon to rule on an increasing number of disputes.[3] Among other issues, Case law produced by the Constitutional Court since 2002 has clarified the interpretation of the competence allocation. The Court has also addressed its own role in arbitrating conflicts arising between the State and the regions; the need to institutionalise mediation mechanisms to prevent such conflicts; the function of the Parliament; and the budgetary autonomy of the regions.[4] The Court also ruled on possible alternatives, further to the suppression of the notion of "principle of national interest" by Constitutional Law 3/2001.

Reform of the public service

The Minister for Public Administration and Innovation launched in 2008 a process of renewal and modernisation involving civil service and administrative organisation as a whole. The reform addresses four core dimensions: meritocracy, efficiency, transparency and innovation. Its main objectives are in line with the Lisbon Strategy – productivity growth, reduction of administrative burden, enhancement of public services – in an attempt to contribute to the overall re-launch and growth of the economy (Box 2.1).

Box 2.1. Making public administration perform better: The "Brunetta" reform

The reform strategy developed by the Minister for Public Administration and Innovation covers the period 2010-13. It rests upon three pillars:

- **Modernising the public administration**. Entered into force through Legislative Decree 150/2009 in November 2009, the reform encompasses a revision of all aspects related to the civil service, with a view to improving labour productivity as well as administrative efficiency and transparency. The areas of the reform include "merit" (a reinforced selection mechanisms for economic and career incentives); "assessment" ("customer satisfaction", transparency and merit-rewarding will be the cornerstone of the new performance assessment system – not least through the initiative "Show your face"); "collective bargaining" (in line with private sector approaches, supplementary bargaining and, as a consequence, additional remuneration, will be conditional on the real attainment of planned results and management savings); "management" (managers are entrusted with concrete tools and are subject to, inter alia, economic sanctions in case of failure to comply with their obligations); and "discipline" (disciplinary proceedings have been simplified and a catalogue of particularly severe infractions leading to dismissal has been put in place).
- **Diffusing innovation and digitalisation**. The Government has introduced a Multiannual Plan ("i2012 – Innovation Strategies") resting on Public Administration (e-Government) on the one hand, and economic and social sector (i-Economy/i-Society), on the other hand. The main achievement in this respect has been the adoption of the new e-Government Code (*Codice dell'Amministrazione Digitale*) in February 2010 (see Chapter 1).
- **Enhancing the relationship between public administration, citizens and businesses**. The main legislative initiative regards the introduction of the Charter of duties of public administration (*Carta dei doveri della pubblica amministrazione*). The Charter will help to enforce citizen's rights and duties of public administrations *vis-à-vis* citizens and business. The pillar relies, among others, on a number of initiatives that multiply the interactions with the administrations, including the "Friendly Networks" project (*reti amiche*) and the call centre "Friendly Line" (*linea amica*) (see Chapter 1).

Source: *www.innovazionepa.gov.it/lazione-del-ministro/documents-in-english/documents-in-english.aspx*; *www.riformabrunetta.it.*

Institutional context for policy and law making

Italy is a parliamentary republic established by the constitution of 1948 further to a referendum that abolished the monarchy after the end of World War II.

The institutional setting for Better Regulation within the Italian executive has been characterised by both elements of continuity over the past decade and significant changes. The first are notably embodied by the Department for Legal Affairs (DAGL) and the Ministry for Public Administration and Innovation. The recent changes of November and December 2011 (most notably the unification of administrative and regulatory simplification under the leadership of a single Minister) are the latest of a series and reflect political developments as well as the fruit of experience in better regulation over the past decade. Developments have also been influenced by the 2001 constitutional reform, which re-allocated legislative competences across levels of government, and implied a fundamental re-thinking of the State's regulatory policies and its organisation.

Box 2.2. Institutional framework for the Italian policy, law making and law execution process (central level)

The executive

The Council of Ministers consists of the Prime Minister (referred to as the President of the Council of Ministers) and the ministers personally proposed by the premier. The number of ministries is fixed to 13. The number of ministers (including ministers without portfolio, vice-ministers and undersecretaries) cannot exceed 65.

The Prime Minister conducts and is responsible for the general policy of the Government. He/She ensures the unity of the government's political and administrative policies, and promotes and co-ordinates the activities of the ministers (Art.95 of the Italian Constitution). The Prime Minister is appointed by the President of the Republic. The government answers to the parliament and must enjoy the confidence of both chambers.

The Premier's supervisory power is limited by the fact that, at least formally, he/she does not have the authority to fire ministers. In practice, nonetheless, reshuffling (*rimpasto*) and, more rarely, individual votes of no confidence by Parliament allow for changes within the same mandate.

The Presidency of the Council of Ministers is the institutional structure supporting the activity of the Premier. It consists of a Secretary General, whose office is the pivotal centre for the co-ordination of the government's action, and of a number of offices and departments. The latter are either directly subordinated to the Presidency, or they are delegated to Under-Secretary of State and Ministers without portfolio, respectively.[5]

The government has legislative power under two conditions specifically indicated by the Constitution – namely in the case of delegated laws (the power is then explicitly and directly conferred on the executive by parliament) and in the case of legislative decrees (in case of emergency). The government exercises administrative power by regulating the functioning of the State public administrations.

The legislature at the central level

Legislative power is held by a bicameral parliament consisting of the Chamber of Deputies and the Senate. The members of the two Chambers are elected for a period of five years. Italy is based on a fully balanced bicameralism, according to which both chambers are on equal footing and play the same role in the legislative process. Parliament co-legislate, grants and revokes the confidence to the Government and fulfils functions of political control over the executive through the adoption of guidance documents such as motions and resolutions as well as questions and petitions. In addition, Parliament may conduct inquiries on matters of public interest, appointing Committees of Inquiry.

The first chamber is the Chamber of Deputies. Its 630 elected members (of which 12 are elected in the overseas constituency) consider and approve the laws. During the legislative process, every text is considered by one of the 14 standing committees or a special commission before being discussed by the plenary.

The second chamber is the Senate. Only citizens above the age of forty can be elected in the Senate, which consists of 315 members (six of whom in the overseas constituency). In addition to elected members, the Senate also includes up to five life senators – who are appointed by the President of the Republic "for outstanding merits in the social, scientific, artistic or literary field" – and the former Presidents of the Republic, who are *ex officio* life senators.

Parliament sits in joint session (chaired by the President *of* the Chamber *of* Deputies) among other things to elect the President of the Republic and to appoint one third of the members of the Higher Council of the Judiciary *(Consiglio Superiore della Magistratura)* and of the Constitutional Court (Corte Costituzionale).

Box 2.2. Institutional framework for the Italian policy, law making and law execution process (central level) (*cont.*)

The President of the Republic

The President of the Republic is the Head of State and represents the unity of Italy. He / She is elected by the parliament (in joint session) and by three delegates coming from each of the twenty regions,[6] for a seven-year term. The President promulgates legislative acts and can refuse to sign them (by returning the bill to the Houses with a motivated letter), thereby preventing them from becoming legally binding. In addition, the President is the guarantor of the Constitution and of the prerogatives of the various institutions. The President calls the constitutional referenda; appoints the President of the Council and each individual minister; and can dissolve Parliament and call for elections. The President heads the Superior Council of Judges and appoints one third of the members of the Constitutional Court. He / She is also the commander in chief of the armed forces.

The judiciary

The Italian legal system draws from the European codified civil law tradition. The Constitution guarantees the independence of the ordinary judiciary from interference by any other State power in its activity of interpreting the law and assessing facts.

The Constitutional Court has the power to review laws and decree-laws. If they do not comply with the Constitution, the Court declares their unconstitutionality and, consequently, these acts are no longer valid in the constitutional order from the day after the decision's publication. The Constitutional Court is the only body entitled to exercise this power. Judges nevertheless play an important role in checking whether laws are in accordance with the Constitution and raising constitutionality issues before the Constitutional Court. The Court is composed of 15 judges: one-third appointed by the President of the Republic, one-third elected by parliament, and one-third elected by the ordinary and administrative supreme courts.

The Supreme Court of Cassation (*Corte Suprema di Cassazione*) is the highest appeal court. Appeals to the Court generally come from the lower appeals court, but litigants may also appeal directly. Generally, cassation is based not on outright violations of law, but on diverging interpretations of law between the courts. The Court therefore cannot rule on the evidence of the facts or overrule the trial court's interpretation of the evidence; rather, it rules on the lower court's interpretation or application of the law. Decisions of the supreme court are binding only in the case submitted. The Court's seat is in Rome and has jurisdiction over the entire territory of the Republic.

Besides *ordinary courts* (civil and penal), the Constitution provides for only clearly defined *specific courts*, among which are the *administrative courts*. The latter monitor the legitimacy of administrative acts and may lead to their annulment.

Judges are independent public officials. Once appointed, they serve for life and cannot be removed without specific disciplinary proceedings conducted by the Superior Council of Judges (*Consiglio Superiore della Magistratura*). Civil and criminal judges form a single structure, that of the ordinary judges, which also includes prosecutors (*pubblici ministeri*). Administrative judges are distinguished from ordinary judges and have an independent governing body. The Ministry of Justice handles the administration of courts and judiciary including paying salaries or constructing new courthouses.

As the judiciary's self-governing organ, the Superior Council of Judges safeguards the independence of the order; regulates the most important activities necessary for the exercise of its competence; and applies disciplinary sanctions. It is made up of the President of the Republic, who presides over it (and who generally has the assistance of a Vice president, elected from the members), the first President of the *Corte di Cassazione*, the *Cassazione*'s Prosecutor General, as well as 24 other members.

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

2006	Creation of the "MOA Task force" co-ordinated by the Office for simplification of the Department of the Public Administration
2006	Creation of the Unit for the simplification and the quality of regulation at the Presidency of the Council
2002	Creation of an office on RIA and VIR at the Department for legal and legislative affairs. Another office for simplification is instituted at the Department for Public Administration
1999	A structure for simplification and codification is instituted at the Presidency of the Council of Ministers: the so-called *Nucleo* for the simplification of rules and procedures
1988	Creation of the Central Office for the co-ordination of the legislative initiative and regulatory work – DAGL (*Dipartimento per gli Affair Giuridici e Legislativi*) – at the Presidency of the Council of Ministers,

Key institutional players for Better Regulation policy at the central level

The executive centre of government

Between 2008 and 2011, a Minister for Normative Simplification was responsible for co-ordinating legislative (such as the *taglia-leggi* process) and administrative simplification initiatives. From November 2011, the structures devoted to simplification (Office for administrative simplification and Unit for the simplification and the quality of regulation) have been regrouped under the responsibility of the Ministry for Public Administration and Simplification, leading de facto to a consolidation of the institutional framework.

The Ministry for Public Administration and Simplification is supported by:

- The Unit for Simplification and Regulatory Quality (Unità per la *Semplificazione e la Qualità della Regolazione*, USQR) consists of high-level experts and functions as an advisory board and a transmission belt between the political arena and the technical dimension of the reform agenda. It follows on earlier attempts to establish a Nucleo and an Observatory for simplification, as part of the first wave of regulatory reforms which took place in the 1990s.
- The Office for Administrative Simplification (USA) co-ordinates the administrative simplification activities and the implementation of the measurement and reduction of administrative burden. USA is supported by a "task force MOA" and the Statistical Office (ISTAT).
- The Minister for Public Administration and Simplification collaborates with the Department for Digitalization of Public Administration and Technology Innovation (the former Department for Innovation and Technologies) for the definition and implementation of measures related to technological innovation in public administration.

The Department for Legal Affairs (*Dipartimento per gli affari giuridici e legislativi, DAGL*),[7] established in 1988 as part of the Presidency of the Council of Ministers, is primarily responsible for the planning and preparation (*istruttoria*) of the legislative proposals. It provides legal advice to the legislative offices of each ministry on the appropriateness of legislative drafts. DAGL oversees the quality of the juridical technical language and the legal quality – considering the incidence of the new norm on the juridical system – as well as the proper evaluation of the financial effects. The government's Directive of 2009 entrusted DAGL with enhanced responsibilities: checking whether the criteria justifying fast-track and urgent procedures are met; co-ordinating normative matters with other parts of the Presidency of the Council, the ministries, the independent authorities, relevant parliamentary bodies, the Constitutional Court and the State Council, as well as across levels of government; and carrying out analytical work on normative matters.

DAGL also includes the Regulatory Impact Analysis Unit.[8] Its mandate is to check the appropriateness and the completeness of the activities performed during the preparation of the RIA. The Unit gives its final opinion on the RIA document before this is formally included in the agenda of the Council of Ministers. To this end, the Unit has developed evaluation criteria and monitoring indicators. This task was further consolidated by the regulation on RIA of 2008. DAGL is also responsible for issuing the government-wide guidelines on RIA, legal scrutiny (ATN) and *ex post* evaluation (VIR). Once a government bill is sent to parliament, DAGL is responsible for monitoring the parliamentary debates. It assesses proposed amendments in co-operation with the Department for the relation with Parliament.[9]

Among other issues, the Regional Affairs Department (*Dipartimento per gli Affari Regionali*) co-ordinates co-operation between the State and regional and local authorities. It manages relations between the levels of government and ensures the consistent and co-ordinated exercise of the powers and remedies provided in the event of inaction and infringements. The department provides for the legal and administrative compliance with, and for the examination of regional laws and acts to ensure compatibility with the Constitution. It supervises the implementation of the statutes of the regions and provinces with special autonomy.

Within the Presidency of the Council of Ministers, the Department for European Affairs (*Dipartimento Politiche Comunitarie*) co-ordinates the government's European policy both in the negotiation phase and in the implementation of EU law, overseeing the CIACE (*Comitato interministeriale per gli affari comunitari europei*). The Department is responsible for co-ordinating the Italian programme in the framework of the Europe 2020 agenda; it addresses and anticipates infringements with EU law (also through the SOLVIT system), and is in charge of the free circulation of persons, goods and services within the EU. The Department also supports and provides training, and organises a contact point for public information on EU matters.

Institutional support for e-Government strategy

The initiatives launched to foster e-Government in Italy are promoted and co-ordinated by the Department for Digitalization of Public Administration and Technology Innovation. They have relied on the activity of the *Centro Nazionale per l'Informazione nella Pubblica Amministrazione* (CNIPA) until 2009. In December 2009, as a part of the "Brunetta" reform (Decree 177/2009), a new agency for ICT in the Public Administration (*DigitPA*) was established under the direct responsibility of the Minister for Public Administration and Innovation.[10] The mission of the new body is to:

- Provide technical support and consultancy to public administrations and the government.
- Issue technical rules, standards, guidelines and recommendations.
- Monitor and evaluate compliance of public administration ICT activities with the governmental strategies, technical adequacy, economic efficiency, and results obtained by ICT projects.
- Define and manage high innovative ICT projects, such as the Public Connectivity System (SPC).
- Moreover according to the Digital Administration Code, the Department chairs the permanent Commission for co-ordination of e-government among central administrations and the Commission for co-ordination with Regions and local governments.

Co-ordination on Better Regulation across the central government

The situation has not evolved substantially in recent years and inter-ministerial co-ordination relies mainly on informal relationships. The programme for administrative simplification of SME regulation and administrative burden reduction enjoys the institutionalisation of a devoted committee (*Tavolo per la semplificazione per le PMI*) – see below.

Better Regulation and regulatory agencies

Italy has set up a number of independent sectoral regulatory agencies (authorities) over the years. Throughout the 1990s, such authorities were established as a result of EU directives and the move towards privatisation and market-based approaches for core services, but also as a response to policy concerns which were felt to be best handled at arm's length from the political arena. The key authorities include the Competition Authority (created in 1990), the Energy Regulator (AEEG, in 1995), the Communications Regulator (Agcom, in 1997), the Isvap (in 1982), and the Securities market Regulators (CONSOB, established as early as 1974).

These authorities are generally entrusted with significant independence, as well as with regulatory and quasi-judicial powers. They are generally accountable to Parliament, to which they must report annually. They are also subject to audit by the Court of Accounts, and their decisions can be appealed in courts. However, there is no single approach and criteria for appointment, tenure of the executive board, and accountability procedures may differ. Regulatory authorities have been the subject of significant policy debate and modernisation proposals covering these issues, and addressing a vacuum in the postal sector, as well as in the transport and water sectors have been tabled throughout the past decade.[11] However, there is no consensus over when they should be set up and how they should be managed.

With regard to Better Regulation, while agencies are called upon to produce RIA, or to consult the public on their normative acts,[12] they are free to choose the forms of RIA and methodologies that best suit their internal statutes and organisation – and some have developed their own Better Regulation agenda, setting standards and developing good practices sometimes beyond the regime established for central administrations.

Better Regulation and the legislature

The Parliament has been quite active in promoting regulatory reform. A number of parliamentary committees and procedures specifically address regulatory policies:

- The bipartisan Committee on Legislation (*Comitato per la legislazione*), established in 1997, advises the Chamber on the consistency, simplicity and clarity of drafting of proposed legislation and on the effectiveness of simplification measures. The Committee provides an opinion on all Decrees issued by the government and submitted to the Parliament, as well as on all proposals for enabling and deregulation acts to be adopted by the Standing Committees. It publishes every year an annual Report on Legislation at the levels of the central government, the regions and the EU.
- The Office for the Quality of Legislation (*Servizio per la qualità degli atti normativi*) was created in 2000 by the Senate, with units responsible for compliance with the rules of drafting, for the review of RIAs issued by the government, and for review of the effects of laws.[13]
- A Bicameral Commission for Legislative Simplification (*Commissione parlamentare per la semplificazione della legislazione*) was set up in 2006 in relation to the cutting-laws' exercise (taglia-leggi),[14] to give opinions on the various steps of the guillotine exercise. It also has a mandate for administrative simplification,[15] with the right to render opinions on simplifying, amending or abolishing public administration bodies. In particular, the Commission gives opinions to the government on draft legislative decrees aimed at simplifying the system and on proposed codes rationalising entire legislation areas.

Parliament has also traditionally supported the development of e-Government and the application of ICT in support of the regulatory reform agenda. In particular, Parliament has allocated a fund in 2000 for the creation of a public and free law database on the internet, in close co-operation with the Presidency of the Council of Ministers. The database *www.Normattiva.it* was activated in March 2010. New developments include convergence of the "Normattiva" database with regional legislation databases and inclusion of legislative acts from 1861 to 1945.

Other important players

The Council of State serves an advisory function as a consultative body to the government, as well as a judicial function as it ensures the legality of public administration. The Council has jurisdiction on acts of all administrative authorities, except when these authorities lack discretionary power.[16] The Council must be mandatorily consulted on drafts of regulations to be signed by a minister or by the President of the Republic; drafts of legislation or regulations unifying previous texts; general models for certain types of contracts, agreements and conventions established by one or several ministers; specific administrative decisions and extraordinary petitions to the President of the Republic. On other acts, such as EU law and questions concerning the interpretation of statutes or good administration, the opinion of the Council is optional. With regard to its judicial function, the Council of State represents the appeal body of any ruling of an Italian regional administrative tribunal (TAR).

The National Council of the Economy and Labour (CNEL) is an advisory body of the Chambers and the Government. CNEL has legislative power (right of legislative initiative) and contributes to the elaboration of economic and social legislation.

The Court of Audit (*Corte dei Conti*) safeguards public finance and guarantees respect of the judicial system through its audit function and its judicial function. The Court is independent and directly reports to the Chambers of Parliament on its audit findings. In accordance with Art. 3 of Law20/1994, audits may be both *ex ante* (essentially, on general planning acts of the administration, audited "a priori" for the consequences they produce on the following implementation acts) and *ex post* (notably on the management of the budget and the capital assets of State departments and of the EU funds). Jurisdictional Chambers of the Court have been established in each region (further to Law 19/1994). Appeals are allowed against the sentences of these Chambers before the Central Jurisdictional Chambers. Regional Prosecutor General Offices have been set up as a result of the decentralisation of the Jurisdictional Chambers.

Resources and training

Since the 2006 government's Directive "*Per una pubblica amministrazione di qualità*", administrations are called upon to intensify their efforts to provide adequate training for their civil servants in methodologies and techniques for improving performance. Administrations were also solicited to adopt self-evaluation tools such as the Common Assessment Framework (CAF). In relation to the cutting-laws exercise, a help desk for problems of a legal nature was organised. A computer assistance service has also been provided through a permanent technical help desk service run by DigitPA.

As part of the reform on enhancing performance evaluation launched by the Minister for Public Administration, a dedicated National Commission (*Commissione indipendente per la valutazione, la trasparenza e l'integrità della pubblica amministrazione*, CIVIT) was established in 2009.[17] CIVIT is charged with steering, co-ordinating and overseeing evaluation activities within public administrations, including the development of methodologies and the diffusion of evaluation practices.

The Office for Training of Public Administration Staff (UFFPA), located in the Department for Public Administration, is responsible for organising and co-ordinating training on regulatory policies. The Ministry relies also on the National School for Public Administration (SSPA), for training senior civil servants. Further specific training courses have been organised directly by the Presidency of the Council of Ministers, notably on legal technical analysis (ATN), RIA and *ex post* evaluation (VIR). In addition, DAGL launched a Project for Operational Assistance to the regions (POAT) in 2007 in order to enhance administrative capacity at the sub-national level.[18] The Department for European Affairs supports training for civil servants in central, regional and local administrations on EU matters, and promotes EU-related capacity-building activities also abroad.

FORMEZ (*Centro di Formazione Studi*) implements most of the training programmes at regional and local levels, in particular in Southern Italy. Between 2002 and 2008, FORMEZ carried out training, launched trials, and diffused methodologies related to RIA involving 15 regions. Five regions were involved in activities related to the measurement and reduction of administrative burdens.

Notes

1. Constitutional Law 3/2001; see OECD (2007).
2. See, for instance, Osservatorio sulla Legislazione della Camera dei Deputati, Rapporto 2004-05 sullo stato della legislazione, XIV Legislative Session, 11 July 2005, p. 247ff.
3. Over 2004-06, almost 10% (123 out of the some 1 160) of the regional legislative acts examined by the national government have been challenged in court. A quantitative analysis of the judicial dispute is provided by the Servizio Studi del Senato, Il Contenzioso Stato-Regioni: Dati Quantitativi, Dossier No. 17, June 2008.
4. On the latter point, see Osservatorio sulla Legislazione della Camera dei Deputati, Rapporto 2007 sulla Legislazione tra Stato, Regioni e Unione Europea, XV Legislative Session, 29 October 2007, p. 291ff.
5. *www.governo.it/Presidenza/strutture_funzioni.html.*
6. The region Val d'Aosta is represented by one delegate only.
7. *www.governo.it/Presidenza/DAGL/index.html;www.governo.it/presidenza/contenzioso/; www.governo.it/Presidenza/AIR/index.html.*
8. *www.governo.it/Presidenza/AIR/index.html.*
9. *www.governo.it/rapportiparlamento.*
10. *www.digitpa.gov.it.*
11. Law proposal AS 1366/2007 constitutes an example.
12. The Simplification Law 229/2003 formally extended RIA to the independent regulatory authorities, when they adopted regulatory acts (with the exception of the Competition Authority). Other legal basis require sector-specific analysis, comparable to RIA. See for instance Art.13 of Legislative Decree 259/2003 on electronic communications; Art.23 of Law 263/2005 on financial markets; Art. 23 of Law 62/2005 referring to the authority for the supervision of public contracts for works, services and supplies (AVCP).
13. *www.senato.it/leggiedocumenti/152388/152432/152434/genpagspalla.htm.*
14. Law 246/2005.
15. Law 244/2007.
16. In such case, the dispute is considered to be one of civil law.
17. *www.civit.it.*
18. *www.governo.it/Presidenza/AIR/abstract_POAT_DAGL.pdf.*

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.

Assessment and recommendations

Public consultation on regulations

Italy is advancing on the modernisation of its public consultation practices, not least thanks to the thrust for e-consultation fostered by the 2005 Code of Public Administration. The system for the measurement of administrative burden is another point in case. In that remit, Italy has developed a more transparent and systematic consultation of stakeholders at the early stages not only of policy formulation, but also in relation to the design and conduct of the measurement tool. The Guidelines on the measurement and reduction of administrative burden point out, formally, the need to involve stakeholders in every phase of the process. The recent Enterprise Law (Law 180, November 2011) provides for the consultation of the most representative business organisations before the adoption, at any Government level, of measures which have consequences on them. In September 2010, a Negotiating Table for simplification measures for SMEs was established at the Department of Public Administration with the participation of designated representatives from major associations (Confindustria and Rete Imprese Italia, which includes Confartigianato; CNA, Confcommercio, Confesercenti, Casartigiani). The Table is consulted in every phase in the definition and implementation of the simplification Agenda, in the burden measurement and reduction activities and in targeted simplification measures for SMEs. The initiative *Burocrazia: diamoci un taglio!* is a further example of an online consultation designed to involve citizens, businesses and their associations in the administrative simplification process.

Despite a series of legal provisions enshrined in laws and regulatory act, however, systematic and open consultation of the public on regulatory initiatives is not governed by operational principles and quality standards. The existing provisions remain merely descriptive and do not provide further concrete, detailed guidance on how to organise consultation. The 2009 Directive implies that stakeholders' consultation takes place within the process of preparing RIAs, but the 2008 RIA regulation fails to provide the mechanisms, processes and tools to ensure implementation matching international good practices. Consequently, while consultation practices have evolved over the past 15 years and the authorities always consult during RIAs, open public consultations (notably through "notice and comment" procedures) remain seldom used and coexist with traditional forms of closed-door consultation and negotiation. Moreover, there still is significant variance in the scope, intensity and transparency of consultation.

Greater awareness of the necessity to enhance consultation practices as an "integral part"[1] of decision-making is emerging. The new government of November 2011 has announced that it would devote more attention to public consultation in the preparation of normative acts. DAGL is preparing a new regulation which is expected to cover consultation in *ex ante* and *ex post* evaluation.

Recommendation:

1. Ensure speedy development and proper implementation of all the instruments aimed at promoting systematic, timely and transparent public consultation practices, including the forthcoming DAGL regulation on consultation and related detailed guidelines for administrations. The new consultation policy should be properly communicated to stakeholders.

Public communication on regulations

By making the *Normattiva* portal operational and accessible for free, Italy has bridged the gap that separated it from other well performing EU countries in terms of public communication of adopted regulations. Nonetheless, wide margins of improvement remain as far as the communication of planned and forthcoming regulatory initiatives, which are not systematically posted online. The results of burden measurement, reduction and simplification activities are shown in a special report published regularly online. This constitutes a "good practice" upon which future improvement could be based.

Recommendation:

2. Greater analysis, advocacy and communication on the expected gains from regulatory policy would help the country strengthen the coalition of reformers. In the long run, consider how to strengthen the functions of producing such information.

Background

Public consultation on regulations at the central level

Policy on public consultation

Italy is conscious of the need to strengthen consultation. A 1999 reform law called for better consultation and established the Osservatorio sulle semplificazioni for consultation on simplification initiatives. The general requirement for Italian central administrations to systematically consult stakeholders affected by regulations as well as the public is enshrined in the law.[2] But while stakeholders' consultation is systematic and accompanied by publication of the consultation activities in the measurement and reduction of administrative burden, it is somewhat less developed in the development of new regulations.

The law requires that simplification measures for SMEs are prepared after hearing the employers' associations and the results of these consultations are made public and submitted to the parliament. The Enterprise Law approved in November 2011 also formally introduces a systematic consultation of representative organisations prior to the adoption of measures (at any government level) which have effects on firms.

The 2008 RIA regulation insists on the necessity to put adequate emphasis on this important phase of the preparatory process – a principle which is reiterated by the Directive of the Prime Minister of 2009 regulating the procedural stages for the preparation of normative acts.[3] Nonetheless, both the related decree implementing the law and setting general principles and standards for public consultation and the related guidelines are still to be issued. As a result, the approach has been somewhat *ad hoc*. There are no formal legal requirements to publish the results of consultations, reveal the parties consulted, or provide feedback. The procedure and intensity of the interaction between central administrations,

the regions, local authorities, the social partners and other stakeholders vary. Depending on the regulation, the Council of State, the Court of Audit, the Conference State-Regions and the business associations must be consulted, channelled through DAGL.

DAGL is proposing a decree implementing the legal basis on public consultation, with a view to integrate RIA and consultation practices as much as possible, and to standardise current approaches. To date, the proponent administrations are in fact each responsible for organising the form of public consultation, and they have great discretion as to whom and how to consult.

Some central administrations have taken individual steps to enhance consultation practices. Illustrative examples include:

- The Department of the Treasury has a dedicated section of its website where public consultations carried out on its draft legislative proposals and other documents are published.[4]
- The Ministry for Agricultural, Food and Forest policies has created an Observatory (*Osservatorio sulla regolazione*) charged with the co-ordination of all ministry's activities linked to RIA and *ex post* evaluation (VIR). The Observatory manages a register that allows stakeholders to participate in online consultations. Further to these consultation rounds, which usually last 20 days, the Observatory produces the related RIA report. This report is, however, not publicly available.
- The Ministry for cultural heritage and activities organises so-called focus groups in relation to its RIA practice. This form of consultation is reported to have been an effective and efficient allocation of resources. However, in the past two years, the notice-and-comment mechanism was used only once.
- The Ministry of economic development opened an online consultation in April 2010 on the transposition of the EU Directive on the accomplishment of the internal market of Community postal services (Directive 2008/6/EC). A report was published in the summer of 2010.[5]

An emerging use of ICT for consultation

The Code for Digital Administration of 2005 (see Chapter 1) opened the way for a more embracing consultation culture, through the use of ICT, and Internet in particular. It notably contained a provision making explicit reference to online consultation. A number of initiatives have been taken in this direction in relation to proposals for administrative simplification. For the first time, the government organised a government-wide online consultation, on the Action Plan on Simplification for 2007. In 2008, an online consultation was also launched with a view to collect indications on the priority for simplification for the then new Action Plan, generating some 1 200 comments and recommendations from stakeholders within a month.

In March 2009, the Department for Public Administration and Innovation opened a three-week online consultation on the implementation of some delegated competences to the Minister to rationalise the performance of the public administration and enhance its efficiency (Legislative Decree 150/2009). FORMEZ managed the online consultation, and the Department issued a report on the experience in April 2009, analysing both the statistics related to the exercise and the content of the feedback received.[6] The Minister has defined two main instruments to support this effort, namely the Reform Delivery Unit (RDU), a co-ordination unit with representatives of all key players, and a web portal on the reform.[7]

In March 2010, the Department invited citizens, experts and all the stakeholders to give their comments and advice through a two months online consultation on the draft version of the Guidelines for the public administrations websites.[8] A similar consultation was carried out in May 2011 to update the Guidelines. A public online consultation, open to all stakeholders, also took place between May and July 2011 on the preliminary text of the new code of public administration (*www.codicepa.gov.it*).

Box 3.1. Online consultation on administrative simplification: Cutting bureaucracy

In November 2009, the Public Administration and Innovation Department launched *Burocrazia: diamoci un taglio!*, an online consultation designed to involve citizens, businesses and their associations in the administrative simplification process. Unlike the previous trials, this initiative is permanently accessible to all potentially interested parties.

The initiative received 500 comments and inputs within two years, 46% of which submitted by private sector representatives. The Office for Administrative Simplification in the Public Administration Department screens them and considers them as a basis for new simplification measures. Feedback is ensured through the regular publication of reports concerning the main results and case studies, for which citizens can follow the process of resolution.[1]

According to the results of the consultation, poor use of ICTs and limited integration and interoperability among public agencies are the two most critical issues that compound bureaucracy. The Public Administration Department estimates that 17% of Italian population uses e-Gov services; compared to an EU average of 30%, 40% in the major European countries and 60% in Northern European countries.

1. *www.magellanopa.it/semplificare*; the latest report was published in October 2011.

Source: OECD (2010), *Modernising Public Administration: A Study on Italy*, p. 89, *www.epractice.eu/node/284742*.

In July 2008, an Inter-Institutional Agreement was signed between the Minister for Normative Simplification and the President of the National Council for Economy and Labour (CNEL) to enhance consultation with stakeholders on simplification and regulatory reform. As specified in the Agreement, CNEL provides support to the Minister during the examination of the themes connected to regulatory reform and normative simplification in the economic and social fields. It also provides advice and support through the participation of relevant members. This form of consultation aims, among others, to identify the normative simplification proposals that could bring benefits for the country economic growth and development, taking into account the results of the burden measurement programme.

Consultation by regulatory agencies

Public consultation practice by regulatory agencies is quite advanced. All of them apply notice-and-comment and publish the inputs received as well as their (general) feedback on the consultation findings. What differentiates the various practices is the form of publications, some directly posting online links to individual documents, other attaching the consultation documents to the proposals.[9] Banca d'Italia and the Regulatory Authority for Electricity and Gas (AEEG), for instance, have developed specific guidelines, the systematic organisation of hearings with the main stakeholders, and the online publication of consultation documents (coupled with the "notice and comment" procedure).[10] The Authority for the supervision of public contracts for works, services and supplies (AVCP),

which also publishes consultation on its initiatives online, is another example of the recent agencies' dynamism on regulatory public consultation.[11] Systematic involvement of stakeholders in the adoption of general type acts is required of financial authorities (Bank of Italy, Committee on corporations and the stock exchange, ISVAP and COVIP) by law (Law 262/2005). Similarly, the law establishing AGCOM, the Communications Regulatory Authority, requires the involvement of stakeholders in the regulatory process. The AEEG has voluntarily developed a structured consultation system according to international standards.

Public communication on regulations at the central level

Communication on existing regulations

All Italian laws and subordinate regulations as well as the judgements of the Constitutional Court have to be published in the Official Gazette (*Gazzetta Ufficiale*), available online. Information and communication activities of the public administration are regulated by Law 150/2000. The Digital Administration Code of 2005 (Legislative Decree 82/2005) made a sensible contribution towards diffusing the practice of converting, transmitting and publishing legal and administrative acts into electronic format. The Code strengthened the right of individuals and economic operators to access and receive public documents electronically.

Since 2008, the programme Normattiva (*www.normattiva.it*) has served as the database and communication service for accessing legislation in its original formulation as well as it is (has been) in force (i.e. further to amendments) at any given point in time. It is shared by the Presidency of the Council of Ministry, the Senate and House of Representatives, is managed by the Minister for Legislative Simplification and the DAGL.

Communication on proposed regulations

While planned legislative proposals by the government are still not systematically published, some attempts have been made to improve the situation. In 2007, the Government adopted a political and programmatic planning process listing all the actions of commitment, deadlines, the kind of intervention, and the responsibilities envisaged by the Government. To date, the legislative proposals that are likely to bear the most important impacts are normally posted on the websites of the government or the responsible ministries. This is notably the case for the most relevant simplification proposals, which have been until now accompanied also by targeted information campaigns.

Notes

1. As defined by the Minister of Public Administration and Simplification at his parliamentary hearing in 2011: *www.funzionepubblica.it/media/879354/audizione_ministro_20_12_2011.pdf*.
2. Law 229/2003 and Law 246/2005.
3. Direttiva del Presidente del Consiglio dei Ministri, *Istruttoria degli atti normative del governo*, Gazzetta Ufficiale.
4. *www.dt.tesoro.it/it/consultazioni_pubbliche*.
5. *www.comunicazioni.it/ministero/ufficio_stampa/comunicati_stampa/pagina252.html*.
6. Further to Law 15/2009. See *www.innovazionepa.gov.it/comunicazione/notizie/2009/aprile/notizia-del-29042009-4.aspx.*
7. *www.riformabrunetta.it.* The portal give public servants and citizens complete and transparent information on the reform process. It links all activities related to the reform, in particular, initiatives on customer satisfaction, transparency, equal opportunity and front-line support.
8. *http://apps.innovazionepa.it/forum/forum_topics.asp?FID=9,* and *www.innovazionepa.gov.it/media/367125/linee_guida_siti_web_pa.pdf.*
9. *www.osservatorioair.it/wp-content/uploads/2010/04/OsservatorioAIR_Panel_Consultazioni.pdf.*
10. On the AEEG consultations, see *www.autorita.energia.it/it/docs/dc/consultazioni_aperte.jsp*, *www.autorita.energia.it/it/docs/dc/dc-11.htm*, *www.osservatorioair.it/wp-content/uploads/2009/08/deli-46_09-aeeg.pdf*; on the AGCOM consultations, see *www.agcom.it/SearchTematica.aspx?idM=5*.
11. *www.avcp.it/portal/public/classic/Comunicazione/ConsultazioniOnLine*.

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

Italy is a strong example of a system with deep Napoleonic roots. As a consequence, there is a sort of regulatory presumption in State intervention and the regulatory stock piles up and becomes ever more complex. The decentralisation process and the allocation of competences across levels of government accentuated the problem of regulatory inflation, making the need for regular screening of the necessity, proportionality and consistency of new legislative and regulatory proposals even more pressing.

Ex ante *impact assessment of new regulations*

Italy has intervened on RIA practices of central administrations by introducing a new system in 2008. This signals renewed commitment to mainstream the tool and make it work, compared to the previous years. The system seeks to rationalise, simplify and make more flexible previous approaches. Also thanks to the provision in the 2009 Directive on normative procedures, closer attention is paid to the importance of bridging normative planning and the RIA process. More regular and comprehensive training rounds are organised, helping diffusing basic knowledge and skills both in the Presidency of the Council and across the line ministries. A number of ministries seem to pick up the challenge and are re-organising their structures and procedures to better meet the requirements. An explicit link in the legal acts is made between RIA and *ex post* evaluation, potentially creating structural and procedural integrated mechanisms to carry them out.

The DAGL RIA Unit stands out in its efforts to change the underlying culture within both DAGL itself and the administrations. While the general approach prevailing to date seems to perpetuate a mere formalistic compliance with the obligation of producing a RIA, the critical and constructive evaluation produced by DAGL signals the commitment to progress further.

At the same time, some independent agencies serve as laboratories for carrying out RIA and consultation, and some of the solutions implemented reflect international good practices. Similar considerations can be made on the basis of the experience developed in a few regions and municipalities. Hence, the RIA picture in Italy overall is rather dynamic. The Osservatorio AIR (created in 2009) is one important new actor, for it systematically reviews progress, and critically and constructively proposes improvements. Although focusing on RIA in the independent agencies only, the Osservatorio helps create a debate on RIA in Italy across the PA-stakeholder-academia interface that is very much needed.

Nonetheless, the potential of RIA is still largely unexplored, and many of the recommendations included in the previous OECD assessments have not been implemented. DAGL, as the central co-ordination and oversight body, has correctly identified the most pressing areas for improvement and is currently working on a new regulation governing RIA, VIR and public consultation to address some of these issues. In the context of this forthcoming regulation – whose draft has not been consulted and evaluated as part of this review, this report highlights a number of elements identified by the OECD as critical areas for improvement.

Scope of application: one of the major issues addressed in the first years of the RIA application was the lack of incentives and sanctions for administrations that did not perform impact assessments. The 2008 regulation has made RIA a necessary step to inscribe new draft legislation in the Council of Ministers agenda. This, along with support and training activities carried out by the DAGL, has led to a sharp increase of the production of RIAs. However, more than 150 RIAs per year is an excessive amount, considering the novelty of the tool. This jeopardises the efforts of administrations to produce good quality analyses as well as the task of DAGL to ensure high performance quality check. Italy is still on a learning curve for producing RIAs of good quality that influence decision-making. Experience suggests that to advance on that curve is "to start small but well" – i.e. with fewer but better RIAs.

In light of these challenges, the 2008 RIA regulation does not appear to meet the gaps. It explicitly allows for exempting administration from doing RIAs on urgent / complex proposals – exactly when *ex ante* assessments are most opportune – at a time when central normative action in Italy was mainly promoted through decree-laws, whose rationale is exactly to respond to urgency and emergency situations. While the exemption from RIA for urgent interventions (typically passed through decree-law) may be difficult to avoid because time is of essence to address sudden and unpredictable emergencies, the new RIA regulation envisaged by the DAGL is expected to modify the exemption assumptions to reduce the number of RIA and to cancel the exemption "for more complex issues".

Recommendation:

1. Consider the possibility of introducing a prioritisation mechanism to screen among regulations which ones would require full RIAs (Canada's "triage" mechanism provides an example).

Timing: RIAs tend to be produced very late and to comply with procedural requirements. They are therefore not widely used within the proponent administration, and their impact on policy formulation and decision-making remains modest. RIAs are often used to justify (procedurally) the decisions taken.

Recommendation:

2. Start the RIA process at the earliest stage possible, since good quality RIAs conducted early and allowing the identification of non-regulatory alternatives will help limit the flow of new regulations.

Implementation and capacity building: Besides structural problems related to how the system is conceived, there have been also implementation failures. After two years from the entering into force of the RIA regulation, comprehensive guidelines are still not issued (the current RIA regulation and annex cannot be a proxy for such supporting documentation). In addition, the overall institutional framework to support the production of quality impact assessments has not been significantly upgraded. There are signs that diversified profiles are being hired or trained in some parts of the central administration to better steer the shift towards a more evidence-based approach to decision-making, but RIA seems to remain trapped in rather legalistic, procedural logics.

Recommendations:

3. Issue binding and precise procedural and methodological guidelines to assist with the preparation of RIAs.

4. Consider further investment in staffing and RIA training to enable ministries to conduct the required technical analysis. Take this opportunity to ensure multi-disciplinary backgrounds and skills and initiate a culture of evidence-based approach to decision making within DAGL and the line ministries.

Oversight: RIAs are screened by the DAGL RIA Unit before the proposal is discussed in the (pre-) Council meeting. DAGL requests every administration to apply the necessary modifications in order to make the RIA report consistent with the minimal contents requested by the regulation. In addition, DAGL oversees the final RIA evaluation transmitted to the pre-Council. In August 2011 a new decree was issued reorganising the DAGL. It establishes a Team (*Nucleo*) supporting the activities related to RIA and *ex post* evaluation, which complements the DAGL staff working on RIA.

Recommendations:

5. Publish relevant criteria and modus operandi for DAGL in its function of RIA oversight body.

6. Introduce incentive and sanction mechanisms for administrations to comply with requested changes in impact assessments, for instance by publicly reporting each year information on the relative number of proposals returned to the administration by DAGL on the ground of sub-optimal RIA quality, according to the type of proposal and administration and on the type of problems encountered. A library of examples of good assessments by administrations would help illustrate what is expected from RIA drafters.

Integrated and multi-level analysis: RIA is being increasingly connected to other regulatory tools. For instance, the *Statuto delle imprese* of November 2011 has amended the 2008 RIA Regulation to make the assessment of burdens abolished or introduced by any proposal mandatory. Another example of growing interaction between regulatory tools is the requirement for RIA drafters to include a section on the foreseen *ex post* evaluation aspects. By contrast, more efforts could be made to improve cross-sectoral RIAs produced by teams from more than one department (e.g. on climate change). While not explicitly foreseen or promoted in the 2008 RIA Regulation, the principle is stated in the law.[1] However, RIAs are often carried out by individual ministries and seeking cross-departmental inputs at an early stage is not systematic. Co-ordination is usually organised by DAGL, when the draft bill is already produced. A further area for improvement regards greater and more systematic integration of multi-level dynamics.

Recommendation:

7. Enhance early inter-ministerial co-ordination and information sharing as fundamental elements informing the ex ante assessments.

Comparison of options: The 2008 RIA regulation prescribes that the analysis of costs and benefits be carried out only on the "zero-option" and the preferred option, while the other options can receives less thorough attention. While this "simplified" approach is intended to make the task of RIA drafters easier (and therefore – arguably – to make the tool more attractive and more widely used), it weakens one of the fundamental elements of RIA (the structured comparison of options) and the analysis runs the risk of not going beyond justifications of decisions already taken.

Recommendation

8. Reinforce the requirement to consider alternative forms to regulatory interventions at an early stage in the impact assessment process.

External accountability: Until now, administrations have been able relatively easily to derogate from their legal requirement to carry out consultation during the preparation of the RIA report. They are not subject to authorisation or specific criteria. Their only obligation is to indicate why they chose to do so. There is wide discretion for RIA drafters as to the form and scope of their consultations, which does not provide incentives to strive for comprehensive, transparent and participatory RIAs. Similarly, although publicity and communication of progress are key, they have so far been largely neglected. Final RIA reports are *de facto* public on the Parliament website, because they are attached to the acts transmitted to Parliament by the government. However, their accessibility needs to be improved. Because they are of little relevance to decision-making, RIAs tend to be neglected during the parliamentary phase. Similarly, since they are not easily accessible, it is difficult for the public to evaluate the actual quality of the RIAs. Organisational changes (even if they have not been generalised across central departments) have not been communicated.

Recommendations:

9. Make RIAs systematically available to the public on one single point of access.

10. Seek more systematic dialogue with stakeholders and academia. Consider the Osservatorio AIR as a possible model.

Only time will tell if the current system is structurally better than the previous ones and can deliver lasting changes. Overall, so far the system has not succeeded in creating a community of "RIA stakeholders" (understood here in the broadest sense as desk-officers; top managers; decision-makers; business and other external stakeholders) that have the incentive to and interest in upgrading the system and use RIA as a support of their role in decision-making. As a result, pressure on the central administration to deliver better RIAs has remained limited.

Ex post *evaluation of regulations*

Italy is making efforts to embed *ex post* evaluation of laws. The policy provides for *ex post* evaluation on all normative acts for which an impact assessment has been performed, two years on. To be effective, though, the initial impact assessment needs to be of sufficient quality and to incorporate indicators of success against which the monitoring can be carried out. Efforts to ensure greater interaction between RIAs and *ex post* evaluation are under way. For instance, every RIA has to specify the following information: *i)* the responsible subject of *ex post* evaluation; *ii)* the description of the activities which will be performed to assure proper advertising and information on the new normative intervention; *iii)* the tools which the administration will employ to perform the monitoring and the evaluation, notably the specific aspects concerning VIR. DAGL does not accept the RIAs unless they contain this information and supports through a specific training the ministries in the formulation of appropriate indicators for VIR. The *ex post* evaluation process may produce a long stream of amendments. As in some other countries, it is likely to be sensitive for the ministry/politician concerned.

Recommendations:

11. Consider inserting sunset clauses to avoid instability of the regulatory framework if *ex post* assessments lead systematically to amendments.

12. Consider the bundling of laws for *ex post* evaluation in order to reduce political sensitivities and inconsistencies and better align post-analysis with delivery of results for society, economy and environment.

Background

General context

The structure of regulations

The main written sources of domestic law are: *i)* the Constitution; *ii)* the primary sources of law; and *iii)* regulations. The provisions of the Constitution prevail over all other provisions. These are followed by the primary and secondary sources, as well as custom, in line with the hierarchy set out in Box 4.1. Chapter 8 sets out the situation as regards regulatory powers of the regions and municipalities.

Box 4.1. The structure of regulations in Italy

The *Constitution* is at the apex of Italian law, and it can be amended or added to solely by means of a special procedure, which is highly complex and is laid down in the Constitution itself (Article 138). Some articles of the Constitution may not be changed under any circumstance; this is the case for Italy's status as a republic, which may not be constitutionally revised; in general all points that are essential elements of the constitutional system are also considered to be unchangeable (e.g. the principles of freedom and equality, the parliamentary system, the principle of a fixed Constitution, and constitutional justice).

Generally recognised principles of international law have constitutional status. The *rules of international law, including EU law*, occupy the space between the Constitution and the laws (Art. 117 Constitution). EU law takes precedence over Italian law (as in other EU member states) where the EU has exclusive competence (Costa v Enel, 1964).

The regional statutes are autonomously issued by each region, with the exception of those of the five regions with special status, which are adopted through a constitutional law. The regional statutes determine the form of the regional government, the fundamental principles of its organisation and functioning, the exercise of rights of legislative initiative and referenda, and the procedures for adoption and publication of regional acts.

Constitutional laws modify or complement the Constitution. They are adopted by absolute majority of each of the two chambers, at respective sessions taking place at least three months one after the other. The constitutional law can be put on referendum within three months before its entering into force. The referendum will not take place if the law has been approved by a second vote by each Chamber with a two third majority of its members.

Ordinary laws (*leggi*) are pre-eminent acts, which may be adopted by the State or the regions, according to the Constitution (Art.117). A provision established by a law can be repealed or amended solely by a new law, while an ordinary law may amend or repeal any provision within the legal system, excluding provisions with constitutional status, which may only be repealed or amended by constitutional laws. A conflict between laws passed at different times is resolved using the principle that the subsequent law supersedes that previously in force (*lex posterior derogat prior*).

Box 4.1. The structure of regulations in Italy (*cont.*)

Legislative decrees (decreti legislativi) are issued by the government following prior delegation by parliament through a delegation law (*legge di delega*). Legislative decrees are limited by the guiding principles and criteria set in the delegation law, only for a defined period and for subjects that have been laid down in the delegating law. If legislative decrees exceed the limits of the delegated powers, the issue of unconstitutionality may be raised.

Decree-laws (*decreti legge*) are government acts issued in special cases ((typically as a matter of necessity and urgency). They must be presented on the same day to parliament for conversion into laws; if they are not converted within sixty days of their publication they lose validity retroactively. Parliament may regulate by means of laws any relations that have arisen by virtue of unconverted decrees.

The main secondary regulatory, non-legislative acts are:

- *Government regulations (regolamenti del governo)* are issued through a Decree of the President of the Republic and must be screened by the Council of State and the Court of Audit. Art.17 of Law 400/1988 states several types of regulations: executive, applicative and integrative; independent (concerning subjects where the discipline is not informed by laws according the Constitution to the law itself); organisational and functional types concerning public administrations and law suppressing ones (in the subjects not informed by the Constitution to the law). The law suppressing regulations aim at simplifying the normative system. They undergo the preliminary opinion of the parliamentary committees.
- *Ministeria decrees and Decrees of the President of the Council* are issued by ministers (on matters within their portfolio) or by the Prime Minister in accordance with a law. Ministerial decrees must be communicated to the President of the Council of Ministers before their adoption. The Council of State expresses its own opinion on both types of decrees.

Case law

Case law does not mean the same in Italy's civil law context as it does in a common law context. Case law does not create legal rules because it acts within the framework set by the legislator. If a norm is declared as non-conforming to the Constitution, the norm is repealed with *erga omnes* effects.

"Soft law"

Besides legal acts, the Italian regulatory system (as in most other countries) includes forms of so-called "soft law". Circulars (*circolari*) are not sources of legal norms, but consist of instructions given by a higher administrative authority to a lower administrative authority and therefore presuppose a hierarchical link between the two authorities.

Source: http://ec.europa.eu/civiljustice/legal_order/legal_order_ita_en.htm and Government of Italy (2011).

Trends in the production of new regulations

As reflected in Table 4.1, the production of new ordinary state laws has decreased in absolute terms over the past 10 years. Over the same period, legislative activity of the regions has remained largely stable overall, even though the production of regional laws has reached a low in 2011. Except in 2008 and especially in 2009, production of legislative decrees has also remained relatively stable, at around 70 new decrees per year.

Table 4.1. Production of laws

Year	Ordinary State laws	Legislative decrees	Regional laws
2011	65	63	540
2010	72	82	595
2009	87	24	664
2008	44	41	608
2007	60	74	618
2006	23	73	588
2005	127	77	632
2004	119	62	594
2003	171	79	586
2002	130	37	705

Source: Government of Italy (2011).

Procedures for making new regulations at the central level

The law making process and the role of the central executive

Box 4.2. Drafting a Bill in the Italian government

While not having the monopoly of legislative initiative, in practice the government has the main responsibility for initiating the legislative and regulatory process, which is broadly outlined in a Decree of the Prime Minister of 1993 and, more recently in a Directive of 2009.[1] In order to enter the agenda of the Council of Ministers, a draft bill is subject to a number of tests. Officials put particular attention on:

- The descriptive report *(relazione illustrativa)*, which is obligatory for any regulatory initiative, is arguably the piece of analysis which attracts most attention. It indicates the principle triggering the proposed intervention, describes the problem to be addressed, and outlines how the intervention fits in the overall legal, administrative and policy context. In the case of decree-laws, the illustrative report must highlight the condition of emergency or urgency justifying them. In the case of delegated laws, the delegation and its conditions must be accurately reported;
- The three technical documents are also object of some attention, but arguably more because they are required as mandatory attachments in order for the bill to be considered by the Council of Ministers, than for their actual content. The three documents are a legal analysis (*Analisi Tecnico-Normative*, ATN); Regulatory Impact Assessments (see below), and the Technical-Financial Report, issued in collaboration with the State General Accounting Department (*Ragioneria Generale dello Stato*);[2]
- Whether as a part of the ATN, or of the descriptive report, particular attention is put on outlining the normative competences of various levels of government (EU, State, and regional), especially further to the reform of Title V of the Constitution (de-centralisation process);
- With regard to administrative burdens, the RIA Regulation (Decree 170/2008)[3] requires that the proponent administrations indicate the information obligations introduced (or removed) by the proposal. It did not require that administrative burden calculations be carried out *ex ante*. However, the new Law on the Statute of enterprises approved in November 2011 formally introduces *ex ante* measurement of administrative burdens within RIA.

Upon the submission of the draft bill to DAGL by the proponent ministry, DAGL seeks the inputs of the other administrations involved in the dossier and institutions (*acquisizione dei pareri*). In general, administrations have the discretion as to whom and how to consult, but the DAGL may in some cases play a role in channelling the practice. For some normative acts, specific bodies must be mandatorily consulted (for instance the Council of State, or the Court of Audit).

Box 4.2. Drafting a Bill in the Italian government (*cont.*)

Once the preparatory stages are completed, DAGL screens the draft bill accompanied by related supporting documentation and circulates them electronically to the Cabinets and the legislative offices in the ministries. The 2009 Directive specifies that DAGL can refuse or postpone the inclusion of a draft bill on the agenda of the preparatory meeting of the Council of Ministries (the so-called "pre-council") if one of the previous stages is not completed satisfactorily. In particular, no regulatory proposal can be added to the pre-council agenda, if it is not accompanied by the three reports (ATN, RIA, and financial-technical report).

The draft normative acts are examined at the preparatory meetings of the Council of Ministries. These meetings are chaired by DAGL. All ministries (at the level of the Heads of the Legislative Office or of the Minister's Cabinet) are invited to consider the proposals to be included in the agenda of the Council of Ministers. The appraisal is collegial and it is both procedural and substantial. The draft bills implying financial impacts must first be verified by the Ministry of Economy and Finance (*Ragioneria Generale della Stato*). The preparatory meetings are a critical stage in the process, since here interests are negotiated and potential conflicts settled. The meetings are normally weekly, and they must take place at least two days before the meeting of the Council of Ministries in which the act is discussed.

The Council of Ministers considers the agenda prepared at the pre-council meeting. It proceeds to a first preliminary check, further to which DAGL requests the acquisition of additional evidence from consultation practices and acquisition of compulsory opinions envisaged by the law. Once these are completed, the draft proposals and the revisited supporting documentation is tabled again at a pre-council meeting and eventually submitted to the Council of Minister for the final check. The adopted bill is then either sent to parliament for the legislative adoption or published in the Official Gazette.

1. Direttiva del Presidente del Consiglio dei Ministri, Istruttoria degli atti normative del governo, Gazzetta Ufficiale No. 82, 8 April 2009.
2. *www.rgs.mef.gov.it.*
3. Decreto del Presidente del Consiglio dei Ministri, Regolamento recante disciplina attuativa dell'analisi dell'impatto della regolamentazione (AIR), ai sensi dell'articolo 14, comma 5, della legge 28 novembre 2005, No. 246, 11 September 2008, No. 170, *www.governo.it/Presidenza/AIR/normativa/decreto_11settembre2008.pdf.*

The law-making process and the parliament

Box 4.3. Stages in the law-making process

The Italian Constitution provides that the legislative function is exercised collectively by both Houses (Art. 70). This means that in order to become law, a bill must be approved by the Chamber of Deputies and the Senate in identical terms. Each of them, separately and successively, considers and approves the bills. The process of formation of the law (the so-called *iter*) consists of the following stages:

Presentation of the draft bill (legislative initiative)

The legislative *iter* can be initiated by the government, through parliamentary initiatives (by individual senators and representatives, in the House to which they belong) and popular initiatives (signed by at least 50 000 voters), as well as by the National Council of Economy and Labour or the Regional Councils. The texts presented by the government are called bills (*disegni di legge*), while all others are called legislative proposals (*proposte di legge*).

Consideration

The bill is first discussed and approved by the chamber to which it was originally presented. The bill is assigned to the parliamentary committee (*commissione*) responsible by subject-matter (there are 14 standing committees in each chamber). The committee sits in this case in its reporting capacity (*commissione in sede referente*). It carries out an examination (*istruttoria*) and prepares a text and an accompanying report to be submitted to the plenary. The committee may decide to consider two or more bills jointly but submit a single report and a single text.

Box 4.3. Stages in the law-making process (*cont.*)

During the examination, the committee takes account of the views of other committees, which meet in an advisory capacity to comment and make suggestions on that part of their responsibility. The committee acquires opinions and information as needed and appropriate, including through hearings. The government participates in the preliminary stages and processing of the text.

The Committee drafts bill sections, decides on amendments, which can be proposed by all members of the chamber, by the rapporteur and by the Government, and finally appoints the *rapporteur (relatore)* in charge to prepare the report for the plenary. Minority reports can also be presented. In view to the plenary debate (in the Chamber of deputies only) a small committee of nine MPs (*Comitato dei nove*) is set up, including the *rapporteur* and representatives of the groups which carried out the examination in the parliamentary committee.

In the plenary, the government representative intervenes after the *rapporteur*. The groups then express their opinions. The *Rapporteur* and also the so-called Committee of Nine provide guidance during the debate and express their advice on each amendment together with the competent representative of government. Each individual article of the draft – as well as its amendments – has to be separately discussed and voted. A final vote on the entire bill closes the session.

Transmission of the text to the other House

The text of the bill adopted in the first reading is then sent to the other chamber either in the same wording or with modifications. The discussion and adoption of the bill follows the same procedure as for the first reading. If amendments are adopted in the second reading, the bill moves from one chamber to the other, until it is approved by both in the identical formulation (this is the so-called "shuttle").

Fast-track procedures (*procedimenti abbreviati*)

In addition to the ordinary procedure (which must be followed for some types of legislation indicated by the Constitution and the Rules of Procedures of both Houses), two abbreviated methods can be used:

- *the review and approval of the bill in committee*. Committees have direct legislative competences (*commissione in sede legilsativa*), unless the government or one tenth of the deputies / senators and one-fifth of the committee object. In that case, the draft is put back to the plenary; and
- *examination by the Commission in drafting capacity* (*in sede redigente*). In this case, the committee is specifically empowered by the chamber to prepare a text of the bill and to submit it to the plenary. The latter votes the individual articles and the entire bill, but cannot amend the text adopted by the committee.

Enactment

The adopted bill is promulgated by the President of the Republic within a month of adoption. The President of the Republic may, by sending a reasoned memorandum to parliament, request a new debate, but if the law is once again adopted by the Chambers, it must be promulgated. Once promulgated, the law is published in the Official Gazette before entering into force fifteen days after publication (unless the law itself prescribes a longer or shorter term).

Popular referenda

Concerning national laws, there are two kinds of referendum:

- "abrogative" referenda: these can be called in order to totally or partially repeal a law, but only at the request of 500 000 electors or five regional councils. Financial laws, laws relating to pardons or laws ratifying international treaties may not be put to a referendum; if the majority of the electorate votes, the result of the referendum is considered valid; and

Box 4.3. Stages in the law-making process (*cont.*)

- "constitutional" referenda: these can be called in order to approve constitutional amendments or other constitutional laws, but only at the request of 500 000 electors, five regional councils or a fifth of the members of one of the two Houses of Parliament. The law submitted to a referendum shall not be promulgated unless approved by a majority of valid votes. Referendums shall not be held if the law has been approved in the second voting by each of the houses by a majority of two thirds.

Regional referenda may be envisaged by the regional statutes (and have a binding or non-binding character) and be optional, notably to approve the regional statute itself. At municipal level, binding and non-binding referenda can be held on issues related to local policies.

Source: www.camera.it/716 and G.M. Salerno (2005), "I referendum in Italia: fortune e debolezze di uno strumento multifunzionale", in *Diritto Pubblico Comparato Europeo*, Fascicolo 3.

Forward planning

Individual ministries and departments have large discretion in setting their legislative and regulatory agendas. Nonetheless, the government has launched a series of initiatives to make legislative and regulatory planning more rationale and systematic. Based on the government rules of procedures of 1993,[2] the 2009 Directive of the Prime Minister regulating the preparatory stages of rule-making[3] requires administrations to communicate the initiatives that they intend to present to the Council of Ministers in the following trimester to DAGL. The administrations formally notify DAGL also about the start-up of RIAs. Within the programming framework, DAGL informs the administrations about the outcome of its monitoring on the "delegated laws" and about the acts to be submitted to the final approval of the Council of Ministers. On that basis, DAGL defines the agenda of the Council of Ministers (*agenda dei provvedimenti normativi*).

The government adopted a political and programmatic document listing all the commitments – the "Programme Tree" (*Albero del programma*) – managed by the specifically created Department for the implementation of the programme.[4] The government now proceeds to a systematic monitoring of the programme implementation throughout the legislature, registering and summarising both the proposals that are still to be adopted by the Council of Ministers and the ones that have gone through the parliamentary debates. Such registration and examination concern also the government's legislative decrees (such as those implementing delegated laws, or transposing EU directives).

Administrative procedures

Law 241/1990 has served as a sort of "Administrative Procedure Act", providing for timing of procedures, accountability, motivation of the acts, participation, transparency and right of access. The Prime Minister Directive of February 2009 updates and summarises the procedure to be followed by administrations in the preparation and adoption of normative acts by the government.[5] The Directive indicates the sequence and the timing with which administration must submit the draft bill and the accompanying documentation to DAGL (see Box 4.2). It seeks to rationalise and standardise the normative activity of the government. In this respect, the Directive calls upon administrations to ensure their adequate organisation, notably by setting up and equipping units for the preparation of RIAs and *ex post* evaluations. The Directive also foresees the consultation phase (without, however, providing detailed standards, since the practice will be disciplined by a separate directive on public consultation to be issued.

Because of their independent and neutral status, regulatory authorities are not subject to the provisions of Law 241/1990.[6]

Legal quality

The responsibility for drafting quality lies with DAGL. Since 2000, Italy has acquired experience in performing Legal Technical Analysis (*Analisi tecnico-legislativa*, ATN) to evaluate the quality of legal texts. The timing and methodology to carry out ATNs were revised in September 2008 by a Directive of the Presidency of the Council.[7] This includes assessing the implications for the legal order, in the light of the jurisprudence, and presenting this jointly with the technical-financial analysis and the RIA. Emphasis is put on the analysis of the national and international legal context (conformity check); on the quality of drafting; on the legal consistency of the legislative proposal; and on the compliance with pre-existent de-regulation measures. The directive also fosters collaboration between the legal offices of the administrations.

Over the years, both the government and the legislature have issued circulars and guidelines on legal drafting. In 2001, the Presidents of the Chamber, the Senate, and the Council of Ministers jointly adopted new circulars on technical drafting of legal acts. In 2002, the Ministry for Public Administration issued a circular letter on simplifying the language of administrative acts. More recently, the USQR and the DAGL have worked towards establishing a national "Chart for Regulatory Quality". An internal software introduced in 2005 allowing standardised and consistent legal drafting is available to the DAGL and the ministries. The software ensures compatibility with the drafting processes at the regional level.

Ex ante *impact assessment of new regulations at the central level*

Policy on Impact Assessment

Early approaches

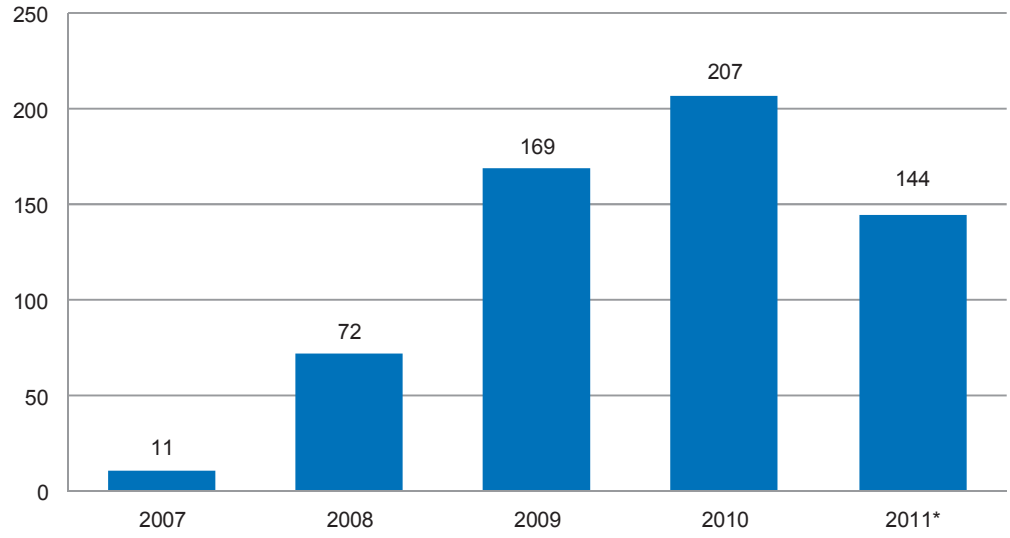
RIA was formally introduced in 1999-2000, as a pilot project, by a directive of the Prime minister and fairly detailed guidelines. As originally designed, RIA consisted of a two-tiered process. A standardised "preliminary assessment" first identified the problem to be addressed, the objectives of the intervention, and the stakeholders. They were also to analyse likely budgetary, economic and social constraints, including impacts, provide a general assessment of alternatives, including the "no action-option", and, finally describe the appropriate level of the regulation proposed. At a second stage, a more comprehensive RIA was to accompany the final draft proposal. The final RIA was to be supported by a consultation phase. This first experimental phase produced five full RIAs.

Renewed political impetus was given to RIA with Law 246/2005, further to which the scope of application of RIA was extended to cover both primary and secondary regulations, including on acts transposing EU directives. Responsibilities for carrying out RIAs were decentralised, and the methodology "simplified" in order to ensure the widest recourse possible to RIA by administrations.

Recent developments

In 2008, a RIA regulation (DPCM 170/2008) was adopted. The principal goal of the revised approach was to diffuse and embed the instrument into the working methods of each central administration. At the same time, the regulation sought to extend the application of the tool.[8] Under the current system, RIA is one of the three mandatory reports that must accompany any proposal for normative acts submitted to the Council of Ministers. Exceptions still exist, and are listed in the 2005 Law (see below). In addition, the Council of Ministers may always decide and motivate exemptions. In any case, the regulatory memorandum accompanying the act (*relazione illustrativa*) has to report on the motivations for eventual exemptions. Central administrations have carried out more than 670 RIAs since 2007, with an increasing trend in annual production (with the exception of 2008, in which anticipated parliamentary elections took place) (see Figure 4.1.).

Figure 4.1. RIAs carried out by central administrations



*. 1 January – 6 December 2011.

Source: DAGL, 2011.

Institutional framework

As in most OECD countries, operational responsibility to carry out RIAs lies with the ministries. Their legal offices provide a first screening of the quality of the analysis, before RIAs are submitted to DAGL. Administrations are upgrading their legislative offices with a view to better co-ordinate and assist with the production of RIAs – for instance by setting up a RIA unit within its legislative office, or by establishing a network of internal and external experts.

According to the 2008 RIA Regulation, central administrations are expected to inform DAGL when they start the RIA process. The Regulation however does not specify when such communication shall take place. This gap is compensated by the requirement in the 2009 Directive on the organisation of the rule-making process, which calls upon the administration to indicate their planning to DAGL quarterly. In practice, communication of the planning is still unsystematic or partial. Since in principle every government act must be accompanied by a RIA, DAGL is nonetheless informed on the flow of new RIAs beyond the cases of exclusions and of requested exemptions.

Unless the proposal falls under the responsibility of two or more administrations, these are not required to systematically circulate draft RIAs across the government.[9] While they are urged to gather information both from other administrations and from external sources during the preparation of the draft bill, the proponent ministries and departments can choose who and how to proceed. An inter-departmental discussion takes place once the draft bill is submitted to DAGL, and it is organised by the latter in view to setting the agenda of the (pre-)Council meetings.[10]

DAGL serves as the only reference point for both *ex ante* and *ex post* analyses. Its RIA Unit[11] is charged with managing the process and with the control of compliance. The Unit checks the appropriateness and the completeness of the analysis and verifies the exclusions and exemptions from RIA:

- RIA is not requested for constitutional bills; regulations dealing with national security; and transposition of international agreements (17 exclusions in 2010; 28 for the period 1st January – 6th December 2011).
- Upon motivated request by the concerned administration, DAGL may exempt it from carrying out a RIA in cases of necessity and urgency, or in the light of the "specific complexity and size of the normative intervention and its likely impacts" (5 exemptions in 2010; 9 for the period 1st January – 6th December 2011).

DAGL may ask the relevant administrations to complement and clarify the RIA report and gives its final opinion on the document before it goes on the agenda of the Council of Ministers. In 2010, DAGL asked for 152 integrations of RIAs (73% of the whole). For the period 1st January – 6th December 2011, DAGL asked for 111 integrations (71% of the whole). [12]

DAGL provides, when necessary, support to the administrations in elaborating the RIA and the other mandatory reports. Its RIA Unit is charged with managing guidelines and with the control of compliance. While not formally foreseen, training is also acknowledged to be a critical element in the strategy to introduce and diffuse the tool. Between 2009 and 2010, two different trainings were organised. In 2009, a course of 6 days overall on RIA, ATN and VIR was provided to 18 officials at the Presidency of the Council of Ministers, covering theoretical aspects and the analysis of case studies. A seminar on RIA and VIR managed by the RIA Unit of the DAGL in collaboration with the *Scuola Superiore della Pubblica Amministrazione* took place twice in 2010. Structured in 15 sessions of 4 hours each, the training was attended by 43 among high officials and civil servants in the central administration. In 2011, DAGL organised a new RIA and VIR training for the staff of the Presidency of the Council, which was attended by 48 administrators.

Since 2010, the Unit has also organised regular meetings with the administrations to provide aggregated feedback, address the main problem they face, and identify priority areas for further action. The aim is to establish a non-formal dialogue between the centre and the periphery, with a view to facilitate the diffusion of the tool through the RIA network.

Methodology and process

The "simplified" approach introduced in 2008 seeks to streamline the procedural steps of the original blueprint (Article 5 of Law 50/1999). The RIA regulation consolidates the previous two circulars of the President of the Council into a single act; and converts the two-tiered approach into a single RIA document. The model relies on seven core sections to be filled as part of the structure of the RIA:

- the issue underpinning the proposed regulation: this includes a description of the "context" of reference; the coherence of the initiative in relation to the government's programmatic objectives; and the information used in the analysis;
- the objectives to be reached;
- the consultation process and its results: where consultation is absent, administrations shall justify why they did not comply with this step;
- the assessment of the "zero" option (no intervention);
- the assessment of alternative options;
- the justification of the chosen regulatory option, with the methods and comparisons (with particular emphasis on the assessment of the likely administrative burdens implied by the chosen option); and
- the modalities for implementing the regulatory intervention.

With regard to the methodologies, administrations have to cover:

- the assumptions underlying each alternative;
- the main advantages and disadvantages of the alternatives considered with a special emphasis on the preferred option (the cost-benefit analysis is indicated as one of the possible techniques available);
- the information obligations (and related administrative costs) introduced on businesses and citizens;
- the impact on well functioning markets and on the competitiveness of the country; and
- the impact on liberalisation processes.

Law 180/2011 on the Statute of enterprises approved in November 2011 includes significant specifications on enhanced attention to be put on the regulatory impacts – including administrative burdens – on SMEs. Consultations aspects are also strengthened (see Chapter 3).[13] This reflects and integrates the thrust to foster SMEs environment in Europe, as outlines in the European Commission's Small Business Act.[14] The DAGL is currently upgrading the regulation on RIA, VIR and public consultation, which will be complemented by to a guidance material also with a view to integrate such elements.

The 2008 RIA Regulation expressly mentions competition effects as one of the impacts that administration should analyse and consider when elaborating the preferred option. A (rather superficial) note is published also on the DAGL website.[15] As a result, RIA reports usually include a (mostly qualitative) brief assessment. Between 2006 and 2008, Italy promoted, together with the UK, a twining project with the Government of Romania on enhancing pro-competition policies and reforms, also through the means of RIA.[16] Because not a regulatory agency, the national Antitrust Authority (*Autorità Garante della Concorrenza e del Mercato*, AGCM) is not subject to the legal requirements of Law 246/2005 and it has not developed a system for systematic RIA.[17] Nonetheless, the AGCM has carried out *ad hoc* advisory analyses for regions (e.g. Tuscany) and to publish studies on the anti-competitive behaviour of firms.[18]

Besides the RIA report, administrations must produce a Technical-Financial Report, which lists the quantification of financial requirements and the related sources of coverage. The annual provisions for current expenditures and diminished income are also listed. The Report is joined by a prospectus on the financial impact on the net State balance, on the public administrations balances, and on the net debt of the consolidated account of the public administrations. The Report is updated when the proposed regulation passes from one branch of the Parliament to the other.

Public consultation and communication

The transparency requirements for the simplified RIA have not changed. In accordance with Law 246/2005, each ministry decides autonomously on the form of publicity beyond the minimum requirements set by the law and the allocation of resources. The responsible administration may decide to publish its RIAs also during the preparatory phase. No central administration has so far done so.

Final RIA reports are de facto public, because they are attached to the acts transmitted to Parliament by the government and hence they can be retrieved from the Parliament's website. However, the Parliament website does not provide direct links to the RIA reports, but to the parent act only. It is therefore very difficult to access a RIA report, unless one knows exactly the number of the parent act, and that this latter has already been transmitted to Parliament. It is also unclear if it is possible to request RIAs to the responsible administrations, directly. The new regulation states that the RIAs have to be published and be available on the Government and ministries websites.

DAGL is tasked with the preparation of an annual report to the Parliament on the implementation of both RIA and *ex post* evaluation (VIR, see below). The necessary information underpinning the reports is collected from each administration. In such reports, regional experiences are also listed, as well as those of the independent authorities.[19] Little information is available on the effectiveness of the preliminary quality check by the Legislative Offices of each ministry / department. The Offices are not formally requested to produce general monitoring and evaluation reports.

Appraisal in early 2011 from DAGL of RIAs carried out in the central administrations indicates a number of strong points and weaknesses in the current practice.[20] The strong points can be summarised as follows:

- RIA reports often provide descriptions of the context in which regulatory interventions take place, although mainly in qualitative terms;
- the description and assessment of the problem is accurate, outlining juridical, economic, and social reasons;
- objectives are generally described clearly and appropriately;
- there is always an explicit commitment to carry out the *ex post* evaluation (VIR).

Areas where further improvement is necessary:

- RIAs do not properly consider and compare a variety of options: in many cases, only the "do-nothing" and one alternative are considered;
- generally there is only a qualitative assessment of the preferred option, and estimates of costs and benefits are rare; and
- even when departments carry out consultations, often the results are not included in the RIAs, nor do RIAs indicate the stakeholders consulted.

According to DAGL, the constraints relate to timing, allocation of resources, and availability of expertise. RIAs are often prepared too late, when there is no concrete possibility of considering different alternatives. Time spent on preparing RIAs is residual, which gives little chance to officials in charge of preparing the RIA document to improve the content (e.g. by searching for new data). Finally, RIA drafters are often located in the legislative offices of the department. They normally have a juridical background and no technical expertise on the issues covered by the proposal.

DAGL has committed to address these challenges in the forthcoming new regulation, notably by:

- *intervening on the forward planning and streamlining the scope*. RIA should be more closely connected to the normative agenda, so as to identify the most relevant acts earlier in the process and allocate resources where RIA is necessary. At the same time, DAGL intends to provide enhanced specific technical advice to the ministries;
- *enhancing the interface with public consultation*. To this end, DAGL is planning to introduce an *ad hoc* regulation on consultation and transparency within RIA;
- *informing on the recurrent criticalities when producing RIAs and diffusing best practices*, notably by organizing periodical workshops with the ministries;
- *urging administrations to involve their line general directorates* (and not only the legislative offices) in the RIA process; and
- *enhancing the supporting material for RIA drafters and strengthening training activities*, including through new RIA guidelines, especially for technical directorates.

The role of parliament

In a context where neither the Council of State nor the Court of Audit have so far carried out evaluations of the RIA system and feedback from academia, think tanks and stakeholders associations is not organised, the Parliament plays an important oversight role. According to Law 246/2005, the government is responsible for drafting and proposing RIAs. They are then forwarded to parliament for consideration. Parliament is committed to examine the whole set of information and explanations accompanying proposed legislation.

The Service for the quality of legislation of the Senate (*Servizio per la qualità degli atti normativi*)[21] published a report in October 2010 of the previous two years of RIA performance in the central administrations.[22] This report complements the "annual" screening by the DAGL. Besides listing the normative acts for which no RIA was prepared, the Service comes to the conclusion that the RIA documents do not substantially deviate from the descriptive reports.

The Legislation Committee of the Chamber of Representatives (*Comitato per la legislazione*)[23] made a mere quantitative evaluation, noting that out of the 20 acts screened by the Committee between March 2009 and January 2010, for which a RIA and a legal analysis (ATN) would have been required, only 8 actually attached such documents (representing nonetheless an increase from 27.5% to 40% compared to the period May 2008-March 2009).[24]

RIA and the regulatory agencies

Regulatory agencies are compelled by law to perform impact assessment on regulation since 2003. However, as independent authorities, they are not bound by the 2008 RIA Regulation. In their discretion on how to implement the legal requirement to carry out RIAs, some agencies have developed a RIA system that meets international good standards.[25] The energy regulator (*Autorità per l'energia elettrica ed il gas*, AEEG) is a point in case and it is often described as the agency with the most advanced experience with RIA in Italy. AEEG was the first among the regulatory agencies to establish internal RIA procedures, launching a pilot phase in 2005. In 2008, the AEEG system reached cruising speed and internal guidelines were adopted (*Guida per l'analisi di impatto della regolazione*). A RIA unit (*Nucleo AIR*) co-ordinating the RIA process and dedicated office a (*Ufficio per l'impatto regolatorio*) were set up. The AEEG has produced more than 20 analyses. Specific features of the AEEG system are the close linkages with the agenda and the consultation procedure and the flexibility in the analysis of the various regulatory options.

The Bank of Italy has also developed advanced RIA practices. Carrying out three trial RIAs since 2009, the Bank published its RIA guidelines in March 2010. They foresee two types of RIAs: simplified RIAs differ from fully-fledged RIAs in terms of both content and organisation (the latter case implying stronger centralisation). Simplified RIAs may indicate the opportunity to proceed to more in-depth analyses. The procedure follows to a large extent the classic analytical steps, while the methodologies tend to promote rather qualitative assessments and multi-criteria analyses.

Further experiences with RIA are being made by other agencies. The communication regulator (AGCOM), in particular, has completed some 17 RIAs since 2006. However, it lacks a procedural discipline and its RIAs tend to be market analysis and focus on competitive impacts only rather than being comprehensive regulatory impact analysis. In the last few years, the Authority has not published the RIA reports but included the market analysis in the regulatory decision directly. The Italian securities market regulator (CONSOB) has so far published only a few RIAs, but it has, in the last few years, invested more and more on this tool. However, proper RIA regulation for the sector has not been adopted yet even if two drafts were subject to consultation in 2007 and 2010. The Italian insurance regulator (ISVAP) published a draft RIA regulation in 2008 but it has not realised any yet. Similar situations can be found for the supervisory authority of pension funds (COVIP) and the authority of public contracts (AVCP), which both published regulations concerning RIA and the public consultation procedures in 2011. These agencies are upgrading their systems and they have launched pilot projects.

No systematic training has yet taken place within the independent agencies. The AEEG has organised a few informative seminars.

Each independent regulatory agency decides on the publication of its RIA reports. In general, all the agencies that have developed RIA practices also publish their RIAs. While in some cases the RIA reports are included as an annex in the act (as the Bank of Italy and CONSOB do), in other cases they are easily identifiable online because they have individual links.[26] Law 229/2003 also required the authorities to forward their RIA reports to the parliament. This constituted a relative novelty among OECD countries. However, agencies have complied with these provisions to various extents, in a context where no sanction is envisaged in case of non compliance.

To report on these developments, and to monitor in general the evolution of RIA systems in the independent agencies in Italy, a dedicated independent Observatory was established by academic institutes in 2009 (see Box 4.4).

Box 4.4. Monitoring RIA in regulatory agencies: The Osservatorio AIR

The Observatory on Italian Independent Regulators' RIA, was founded in 2009 following an agreement between the Department of Legal Sciences of the *University of Tusci* (*Viterbo*) and the Faculty of Law of the *Parthenope University of Naples*. The Observatory is funded by the Institute for Research on Public Administration and consists of political scientists, economists, jurists and communication experts. Its main purpose is to constantly monitor the application of Regulatory Impact Analysis (RIA) methodology by the eight Italian Independent Regulators with regulatory and surveillance powers in the economic sector. It also produces analyses, papers and case studies as well as investigations and comparisons with the most significant international experiences.

Source: www.osservatorioair.it.

Ex post *evaluation of regulations*

Ex post evaluation of regulations has been formally foreseen since the Prime Minister Directive of September 2001. Parliament put renewed emphasis on regulatory review through two important provisions included in the Simplification Act for 2005 (Law 246/2005): the *ex post* evaluation of regulation (*Verifica dell'impatto della regolamentazione*, VIR), and the cutting-laws mechanisms (see Chapter 5).

The law establishes that the responsibility for carrying out the VIR lies with the administration that originally performed the RIA or, in case no RIA was originally performed, with the administration "competent by subject". However, the instrument has not been fully implemented, yet.[27]

In November 2009, a Prime Minister Decree was issued[28] to regulate the tool in more detail. As provided for in the law, the Decree indicates that the VIR should be carried out two years after the entering into force of the legal act, and be regularly updated every two years. A VIR should be undertaken on the acts for which a RIA was produced, on all legislative decrees and laws converting legislative decrees into law, and upon request of the parliamentary committee and the Council of Ministers. The generic formulation of the Decree gives the possibility to derogate from these requirements only in those cases where the DAGL allows a RIA exemption. While a template for the VIR report is provided, further guidelines supporting *ex post* analysis still need to be outlined. An Annex[29] attached to the enabling regulation provides some basic indications on how to perform the analysis. As for RIA, each administration is responsible for the VIR evaluation and decides on the type and form of its publication.

In principle, Law 246/2005 extends the requirement to carry out *ex post* evaluation to the regulatory acts adopted by the independent agencies. While no concrete implementation of such requirement has been registered so far, some agencies have undertaken initiatives that link *ex post* evaluation to other practices. This is the case notably of the Bank of Italy, CONSOB, ISVAP and COVIP, which are also subject to Law 262/2005 requiring a review of the impacts at least every three years after entering into force. The CONSOB, for instance, complemented its guidelines on impact assessment in 2010 with a provision on consultation, insisting on the "maintenance" of its existing regulation through monitoring and evaluation. The AEEG has emphasised the importance of assessing the baseline option when doing a RIA, in order to include *ex post* evaluation elements.[30] In accordance to Law 262/2005, ISVAP, AVCP, CONSOB, Bank of Italy and COVIP have proceeded in the last few years to updating pieces of regulation.

Regional involvement in central impact assessment

Conscious of the need to better integrate the EU, national and sub-national RIA processes for the development of new regulations, Italian authorities signed an agreement in 2007 on simplifying and improving the quality of regulation.[31] The agreement reiterates for each level of government the principles of regulatory quality shared in Europe: necessity, proportionality, subsidiarity, transparency, accountability, accessibility and simplicity of the rules. The agreement is expected to identify shared methodologies and principles, with the aim to extend to the entire regulatory process the main analysis tools such as technical standards (ATN), RIA and consultation, *ex post* evaluation (VIR), regulatory simplification, and the measurement and reduction of administrative burdens. It also provides for the establishment of adequate support structures or other centres of responsibility for the drafting of legislation and for the carrying out of RIAs.

Alternatives to regulation

Italy has developed self-regulation practices in a variety of sectors. As in many other OECD countries, environmental policy is one of the main fields in which such an approach has been followed. Since the end-1990s, the Ministry for Environment has promoted voluntary agreements in a variety of economic sectors, including in the framework of the implementation of the Kyoto Protocol. Initiatives have ranged from the use of bio-fuels in the transport sector, the so-called "car-sharing initiative", and the diffusion of methane in automotive vehicles, to the creation of protected natural reserves.

However, the use of alternatives to regulation has remained limited, despite the fact that the 2001 Italian RIA Guidelines explicitly required administrations to consider and evaluate alternatives to the regulatory option when carrying out RIAs. Under the current RIA regime, while the "zero option" is clearly pointed out as the baseline for measurement of the effects of the proposal, the simplified RIA approach allows for a less detailed analysis of options other than the chosen one. To get through this crucial phase, the new RIA regulation under development envisages deeper analysis of all the options.

Risk-based approaches

Forms of risk management are applied to a number of policies and sectors, including regulatory activity. Some examples include hydro-geological and seismic risks as well as technological risks related to public health and the environment. Scientific and technical support on environmental policies is provided by the National Environmental Protection Agency (APAT – renamed ISPRA in 2008). Further to the Environmental Code of 2006, the ISPRA has acquired an autonomous status in terms of internal organisation, management and budget, as well as technical and scientific advice and regulatory powers. Since 2001, ISPRA is integrated into a network, the Environmental Agency System, which includes 21 Regional (ARPA) and Provincial (APPA) Agencies established by special regional laws to perform inspection and enforcement.

Risk-related issues may also be addressed as part of the environmental impact assessment. The *Valutazione dell'impatto ambientale* (VIA) assesses potential impacts of projects, while the *Valutazione Ambientale Strategica* (VAS) seeks to integrated environmental considerations in the design and implementation of policy programmes and strategies as mandated by EU requirements.[32]

In the field of health, the *Consiglio Superiore di Sanità* is the technical consultative organ supporting the Ministry of Public Health. The *Istituto Superiore di Sanità* (ISS) is the leading technical and scientific public body of the Italian National Health Service. The National Committee for Food Safety (CNSA) became operational in February 2008. It serves as a technical advisory body participating in the network of the European Food Safety Authority (EFSA). As such, the CNSA provides scientific opinions to the relevant ministerial administrations as well as to the regions and Autonomous provinces.

Notes

1. Art. 3 of Law 246/2005.
2. Decree by the Presidency of the Council of Ministers, Internal Rules of Procedure of the Council of Ministers, 10 November 1993.
3. Directive by the Presidency of the Council of Ministers, Investigation of government regulations, Official Gazette No. 82, April 8, 2009, *www.governo.it/Presidenza/AIR/normativa/direttiva_pcm_260409.pdf*.
4. *www.attuazione.it*.
5. Directive by the Presidency of the Council of Ministers, Investigation of government regulations, Official Gazette No. 82, April 8, 2009.
6. On the matter, see Mattarella, G.B. (2010), and Cocconi, M. (2011).
7. Directive by the Presidency of the Council of Ministers, timing and modalities in carrying out legal technical analyses, 10 September 2008.
8. In 2006, draft regulatory instruments submitted by administrations to the President of the Council accompanied by RIA reports accounted for only 50% of all draft regulatory instruments examined (source: *First Progress Report to the Parliament on the Implementation of the Regulatory Impact Analysis* (RIA), of 13 July 2007, pursuant Art.14, par.10, of Law 246/2005.
9. Art.3(2) of the 2008 RIA Regulation.
10. Directive by the Presidency of the Council of Ministers, Investigation of government regulations, Official Gazette No. 82, April 8, 2009, *www.governo.it/Presidenza/AIR/normativa/direttiva_pcm_260409.pdf*.
11. *www.governo.it/Presidenza/AIR/index.html*.
12. Information provided by DAGL to the review team, January 2011.
13. See in particular Art. 6 of AS 2626 of 20 October 2011, at *www.senato.it/leg/16/BGT/Schede/Ddliter/36585.htm*.
14. *http://ec.europa.eu/enterprise/policies/sme/small-business-act*.
15. *www.governo.it/Presidenza/AIR/impatto_concorrenziale.pdf*.
16. *www.governo.it/Presidenza/AIR/cooperazione_AIR_Romania.pdf*.

17. On the matter, see Cavallo (2010), p.10ff.

18. *www.agcm.it/studi-e-ricerche/5412-2-analisi-di-impatto-della-regolazione-sulla-concorrenza-linee-guida-e-applicazione-al-caso-della-regione-toscana.html*.

19. Decree of the President of the Council of Ministers 170/2008.

20. Information provided by DAGL to the review team, January 2011.

21. *www.senato.it/leggiedocumenti/152388/152432/152434/genpagspalla.htm*.

22. *www.senato.it/documenti/repository/dossier/drafting/2010/Dossier%2037.pdf*.

23. *www.camera.it/803*.

24. *www.camera.it/application/xmanager/projects/camera/file/documenti/Rapporto_Duilio_sintetico_2.pdf;*
www.governo.it/Presidenza/AIR/rassegna_stampa/sole24ore_15_2_2010.pdf.

25. The Osservatorio AIR collects documentation on the main Italian agencies and publishes it on its website www.osservatorioair.it/?page_id=406. Detailed information can be retrieved there (in Italian).

26. For an example of the latter approach, see *www.autorita.energia.it/it/_pagine_informative_/air.htm*.

27. *www.osservatorioair.it/wp-content/uploads/2010/10/Paper_Cacciatore_AI-VIR_sett2010.pdf*.

28. Decree by the President of the Council of Ministers, 19 November 2009 No. 212, Regulations on carrying out *ex post* analyses (VIR), pursuant to Article 14, Clause 5, of the Law of 28 November 2005, No. 246.

29. *www.governo.it/Presidenza/AIR/normativa_vir/Allegato_A.pdf*.

30. *www.osservatorioair.it/wp-content/uploads/2010/10/Paper_Cacciatore_AI-VIR_sett2010.pdf*, pp. 26-28.

31. Accordo Stato-Regioni-Autonomie locali in materia di semplificazione e analisi di impatto della regolazione of 29 March 2007, signed by the State, the Regions and Autonomous Provinces of Trento and Bolzano, provinces, municipalities and mountain communities.

32. EC Directive 97/11, and EC Directive 2001/42, respectively. Besides the VIA and VAS, so-called "super-VIAs" can be performed on projects with high strategic priority. The super-VIA is a simplified and accelerated environmental impact assessment that facilitated the fast adoption of a piece of legislation.

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

Legislative simplification – in all its different manifestations – has long been a cornerstone of Italian regulatory policy in response to the continued production of new laws. The guillotine mechanism has proved to effectively reduce the stock of legislation. However, with many laws in force, it is hard to identify which are applicable, and the "cutting-laws" threshold had on a few instances to be complemented with supplementary interventions to "rescue" relevant provisions. A further complicating element of more recent stock is the diffuse Italian practice of adopting so-called "omnibus laws" which include various and disparate legal provisions, in some instances regrouped in a single article.

Italy has acknowledged the challenge of using drastic simplification instruments that exclusively focus on the quantity of regulations and has complemented its guillotine mechanism with forms of codification and rationalisation. The guillotine mechanism allowed identifying areas where codification was needed. Reorganisation and consolidation of legislation have been accomplished or are under way in a number of sectors. For example, the code of the military has already been adopted, so have those in relation to industrial property, the code of tourism, the consular functions reorganisation, the code on agricultural activity and the code of anti-Mafia policy. However, this has been done on a rather ad hoc basis, and Italy has so far not applied a proper assessment of the consequences of simplification measures, failing for instance to set net benefits criteria for codification and repealing.

Recommendation:

1. Consider integrating on a systematic basis simplification processes with forms of cost-benefit analysis.

Administrative burden reduction for businesses

The measurement of administrative burdens on businesses from State legislation is considered one of the crown jewels of Italy's regulatory and administrative reform efforts. It enjoys significant political leadership and backing (also confirmed by the programmatic statements of the Ministry for Public Administration and Simplification in November 2011) – as signalled also by the increase of the reduction target from 25 to 32% by 2012 – and comparatively higher visibility. Moreover, it has been crafted so as to take into account the particularities of the Italian context – including the structure of Italian businesses (predominantly consisting of small and micro enterprises).

The MOA system has been successful in diffusing the notion of evidence-based approach (under the motto: "what gets measured, gets done") and in enhancing participatory mechanisms (notably with the structured and systematic involvement of stakeholders at early stages) and communication practices. Administrations have benefited

from the programme, including from concrete spill-over effects and synergies with other reform actions, notably legislative simplification and e-Government (reform of the CAD). In general, AB reduction programmes have helped diffuse a more result-driven (instead of procedure-based) logic when organising and implementing the reform agenda. The debate is moreover slowly shifting towards addressing particularly burdensome regulatory frameworks, rather than dwelling on parochial quarrels or battles on principles not supported by adequate evidence.

The Italian MOA model stands out also for its relative cost-effectiveness, allowing for reliable measurements with reasonable investments. Performance is remarkable in terms of potential impacts. Over just about four years, the MOA task force has measured administrative burdens amounting to some EUR 23 billion. Considering the few areas screened, this amount is particularly high compared to experiences in other European countries. This can partly be explained by the fact that Italy focuses exclusively on burdens with highest impact and relies on constant contribution of employers ' associations, renouncing to any baseline measurement. The methodology for measuring and reducing burdens has also evolved over time, with the extension of the surveyed firms sample, the identification of gold plating and the adoption of the proportionality criterion in the simplification measures and in triggering monitoring and evaluation. All this with the aim of enhancing the reliability and quality of the data collected.

According to the Italian authorities, initial concerns at the slow pace of adoption of burden reduction measures have also been overcome, as illustrated by the simplification measures approved in 2011 in areas such as privacy, cultural heritage, environment, taxes, contracts and fire prevention. Nonetheless, the allegedly slow pace with which measurements are launched and concluded may still represent an area for further improvement, especially with regard to the proposal and adoption of simplification measures. The time elapsing from the identification of a sector as priority area for intervention and concrete reduction interventions is considerable. The length of the process is partly due to the limited resources allocated to the MOA Task Force and the technicalities of the measurement phase. In part, it also depends on the negotiations with administrations and stakeholders on the type and design of simplification measures. There are in addition no fast track procedures in the parliamentary decision-making to speed-up adoption, and often the proposals are hijacked and delayed by the parliamentary agenda.

Until recently, the split of responsibility between the two ministers in charge of administrative and legislative simplification and a lack of interface between the MOA and RIA were raising some concerns that the achievements of MOA might be offset by poor *ex ante* assessments and continued production of new regulations. The unification of competences under the guidance of a single Minister since November 2011 may help enhance the integration of activities. Similarly, recently approved Law 180/2011 on the statute of enterprises requires the *ex ante* measurement of (newly introduced or deleted) administrative burdens in the framework of the regulatory impact analysis, as already envisaged by the RIA regulation (d.P.C.M. No. 170).

It is also encouraging that the MOA has now been extended to authorities at other levels of government, but time is pressing to achieve a comprehensive and coherent approach. The decision to apply a proportionate approach to administrative burdens is also welcome. It reflects the significant learning throughout the design and implementation of the programme.

Experience in other European countries suggests that perception of entrepreneurs of the result of administrative burden reduction programmes is rather neutral – if not negative – despite alleged substantial cuts. To avoid similar scenarios, the Italian MOA now needs speedier measurement and adoption procedures; certainty of implementation and enforcement of adopted measures; and enhance monitoring and evaluation of current practices.

With regard to other administrative simplification fronts, the various initiatives establishing, merging and partly replacing one-stop-shops as well as SCIA (former DIA) may give rise to confusion among operators and delays in efficient service delivery both in terms of front and back office. SCIA is a recent instrument, whose application uncertainties have been addressed by interpretative circular and interpretations by ministries and the national legislature, for which consistent implementation is now needed. Overall, there is an issue for all Italian public administrations to ensure that new procedures are not creeping into the system just as the old ones are being sorted.

Recommendations:

2. Agree on speedier procedure with Parliament for the adoption of simplification proposals.

3. Strengthen the resources allocated to the "MOA Task Force" to speed up the administrative burden measurement process.

4. Strengthen the monitoring and evaluation capacities to check progress and results of burden reduction initiatives and ensure wide communication of results.

Administrative burden reduction for citizens and for administration

Italy has so far focused almost exclusively on business concerns, while initiatives to identify and measure administrative burdens on citizens and administrations remained limited. Both dimensions nevertheless represent important avenues for administrative streamlining, especially in consideration of the increasing burden caused by regulation inside government in the Italian public administration. The latter should be an explicit focal point in Italy's reform agenda, given the de-centralisation of regulatory competences and on-going public sector reform initiatives.

Background

Simplification of regulations at the central level

Early approaches

The legislative simplification agenda has evolved over the last few decades. Throughout the 1990s, recourse was predominantly made to consolidate legal texts (*testi unici*), which also aimed at reducing the scope of laws (de-legislation). So-called *testi unici "misti",* introduced by the First Simplification Act of 1998 (Law 50/1999) addressed sectoral consolidation. Experience with this mixed type of legal instrument suggested that such practice was not necessarily conducive to a clear and easy understanding of the stock regulating a given policy area. The Third Simplification Act (Law 229/2003) put less emphasis on de-legislation imperatives and replaced the *testi unici misti* with sectoral recasting codes (*codici di settore*).

Recent developments

While previous approaches have not been fully abandoned, Italy has recently opted for a more drastic simplification instrument, the so-called "cutting-laws" (*taglia-leggi*) or guillotine mechanism, which was introduced in 2005 for repealing State legislation (Box 5.1).

Box 5.1. Italy's "guillotine" mechanism

The 2005 Simplification Act introduced a "guillotine clause" to scrutinise the existing stock of national legislation and repeal redundant and unnecessary acts. The so-called "cutting-laws" (*taglia-leggi*) mechanism[1] started with a stock-taking of State legislation in force, establishing the boundaries of the areas of the State legislative framework under the responsibility of each Ministry, highlighting the inconsistencies (*incongruenze* and *antinomie*) related to the various legislative sectors. The inventory was undertaken by the administrations with the co-ordination of the USQR and the support of the then *Centro Nazionale per Informatica nella Pubblica Amministrazione* (CNIPA). The legal acts published between 1861 and 2008 and in force at that time were 450 000. A supporting database was developed.

Total number of laws repealed from the launch of the cutting law decrees has reached over 200 000. With Decree 179/ 2009, the government then proceeded to a systematic review of the norms adopted by the State before 1 January 1970[3] with a view to identifying those considered essential to be maintained in force. Consequently it has created a so-called "guillotine" effect that covered all acts not expressly repealed, or "saved" (because they are not explicitly planned in Legislative Decree 179/2009), or belonging to the so-called "excluded sectors" (i.e. not concerned by the cutting law mechanism). Moreover, 195 000 non-normative acts from the existing databases have been cut. As a result, about 10 000 laws and 35 000 regulations are active in the Italian system, as of 31 December 2008.

1. *www.semplificazionenormativa.it/approfondimenti/dottrina-e-commenti/il-taglia-leggi/il-taglia-leggi.aspx*.
2. Through the Decree-law 112/2008 (converted by Law 133/2008) and the Decree-law 200/2008 (converted by Law 9/2009), respectively.
3. This is the date when the regions, foreseen by the 1948 Constitution, were introduced in Italy.

Source: Office of the Minister for Normative Simplification, 2010.

Review and sunset clauses for individual legislation

So-called "sunset clauses" are not regularly used. Simplification and recasting exercises in the framework of *ad hoc* codifications through the *testi unici* offer opportunities to examine the relevance and effectiveness of existing legislations.

The inclusion of review clauses in legislation – and regional legislation in particular – is becoming more widespread. Such clauses include so-called "evaluation requests" (*domande di valutazione*).

Administrative burden reduction for businesses at the central level

General context

Italy reputedly suffers from heavy bureaucracy and significant burdens imposed on businesses. The government acknowledges that excessive administrative burdens stemming from bureaucratic methods are one of the first reasons for the competitive disadvantage of Italy within the European context and in the entire OECD area. A wealth of estimates,

available both from domestic sources and from comparative international data, point to the extent of the problem. As an illustration, Doing Business Index 2011 ranked Italy 25th among the 26 EU countries.

The main legal basis for administrative simplification is Law 241/1990, which contains the key principles governing administrative procedures at State level (effectiveness, transparency and efficiency). De-legislation has been used very broadly to streamline administrative procedures. Reform of Title V of the Constitution has however limited the possibility for the government to adopt decrees on the matter.

Current policy on administrative burden reduction for businesses

The programme on administrative burden reduction for businesses started under the XV legislature and was confirmed and expanded in 2008. In line with EU objectives, the target was set to reduce administrative burdens by at least 25% for State legislation by 2012. The comprehensive Legislative Decree 112/2008 (converted in Law 133/2008) enabled a full-fledged adoption of the measurement for all areas under national responsibility through the "cutting-burden" (*taglia-oneri*) mechanism. The Decree also foresaw the adoption, on the basis of the measurement results, of central administrations reduction schemes. These must include fixed deadlines and result indicators, and they must define the organisational, technological and regulatory measures aimed to achieve the agreed objective.

With the adoption of the Plan for Administrative Simplification 2010-2012 of October 2010, the Government speeded up the simplification measures even further. The objective for reducing administrative burdens on businesses generated by national legislation was brought to 32% by 2012. The 2010-12 Plan follows three courses of action:

- the completion by 2012 of the measurement and reduction activities in all areas falling under State competence. In parallel, the application of the so-called "MOA" (*Misurazione degli Oneri Amministrativi*, Administrative Burden Measurement) is broadened to encompassing administrative burdens stemming from the national independent regulators, as well as those affecting citizens;
- the extension of the MOA to the sub-national level. This aims at reducing red tape originated in regulations issued by regions and local authorities; and
- the targeted simplification of compliance requirements for SMEs, applying a proportionate and risk-based approach. Along the lines of the European Small Business Act, future requirements for administrative compliance will be differentiated according to the size of the firms and their sector, while taking into consideration the public interest.[2] This represents a complete novelty in the Italian context and it is expected to lead saving for SMEs of EUR 1.5 billion.

Decree-law 70/2011 has extended administrative burden measurement to regions, local authorities, independent authorities and introduces the measurements of burdens falling onto citizens. A Joint Committee for the co-ordination of measurement methods and burdens reduction has also been created between the State, Regions and local authorities in matters of shared competence in key sectors such as construction. Decree-law 70/2011 has also introduced further simplification measures in relation to public procurement, the institutions are now required to prepare the tenders on the basis of models approved by the Supervisory Authority for public contracts; in relation to personal data protection the gold-plating of national legislation, that extended information obligations on privacy even between legal persons, has been removed. The expected savings is about EUR 760 million.

The two regulations concerning simplification measures for SMEs in matters of fire prevention and the environment have been approved. When fully implemented, these measures are expected to produce savings for SMEs estimated at 1.5 billion euro. Originally applied only to the stock of legislation, the administrative burden measurement and reduction programme now covers also the regulatory flow. Further to Law 180/2011 (on the Statue of Enterprises), burden measurements are mandatory as part of RIA of all information requirements introduced or eliminated by a proposal.

Decree-law 112/2008 affects a number of areas, including the extension of the life-span of identity cards and its renewal procedures; the simplification of information obligations for installing electric, sanitary, heating and other systems in buildings; the liberalisation of transferring shares of limited liability companies; and the simplification of formal obligations in keeping documentation related to work and in setting working hours, identified on the basis of the measurement of administrative burdens.

Institutional framework

The measurements are carried out and co-ordinated by the Department for Public Administration through a dedicated MOA Task Force managed by the Office for Administrative Simplification (USA), in collaboration with the "Unit for Simplification and Better Regulation". The main employers' organisations[3] are also involved in the process. The National Institute of Statistics (ISTAT) and FORMEZ (*Centro di Formazione Studi*) provide technical assistance.

Methodology and process

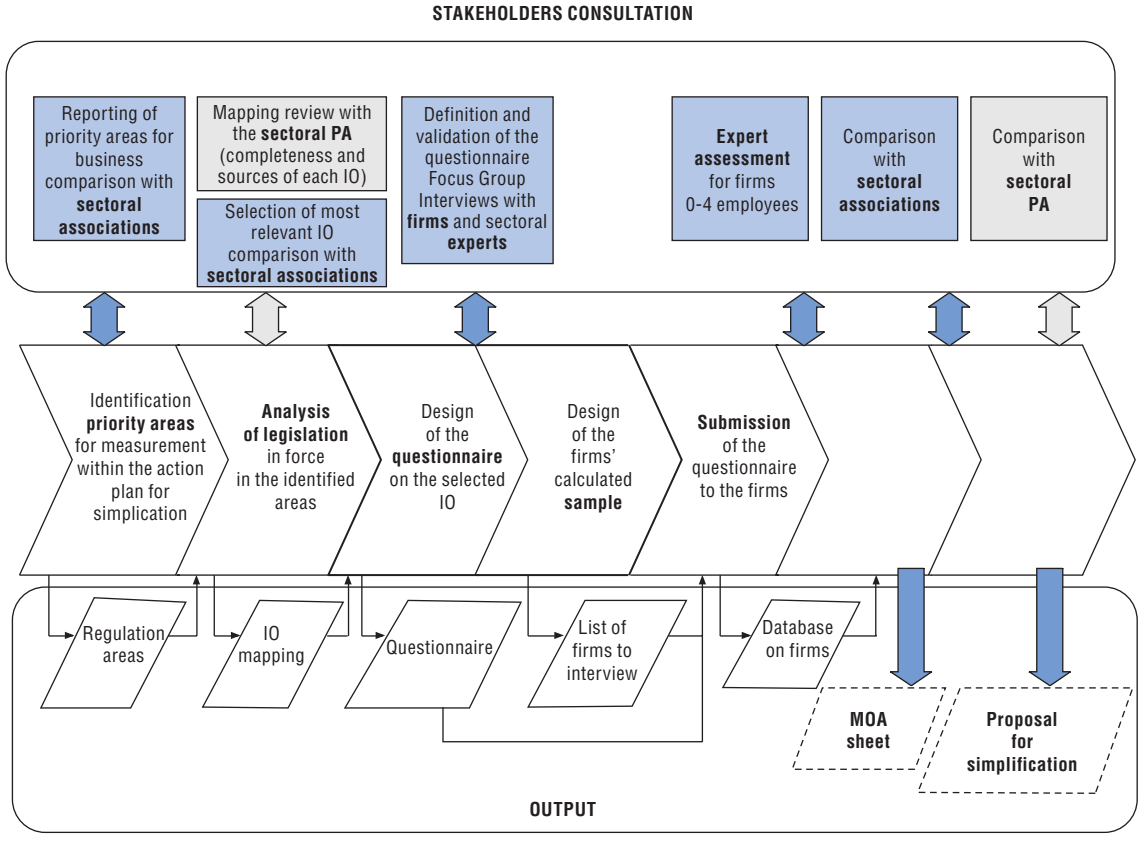
Italy's methodology to measure administrative burdens – the *Misurazione degli oneri amministrativi* (MOA) – builds on the reference Standard Cost Model (SCM). The methodology has been modified to account for the Italian business structure, characterised in particular by great heterogeneity and the prevalence of SMEs (89% of which with less than 5 employees).[4] The MOA stands out as a particularly efficient approach as it allows to identify the most expensive procedures and burdens affecting enterprises and citizens and to assess the real effectiveness of each intervention on the basis of the savings gained. The MOA methodology strongly relies on data collected through interviews and business surveys and the use of focus groups with experts and professionals. Progressively, the involvement of stakeholders and administrations has been strengthened.

The MOA process unfolds along three main stages, which are outlined in Figure 5.1:

- Measuring. The method begins by reconsidering the activity carried out by administrations with regards to the costs of compliance with bureaucracy and the burdens borne by enterprises. For each regulatory area, "major impact" procedures are detected building on feedback from business associations and competent authorities. For each procedure, all the requirements and administrative activities that businesses have to comply with are identified in detail. The costs are then estimated using different techniques according to the firms' size: *i)* focus group associations and professionals for businesses up to 5 employees; *ii)* sample phone surveys for businesses between 5 and 249 employees carried out by ISTAT and involving from 1 000 to 2 000 businesses, followed by direct interviews on a comparatively big sample of enterprises (identified through the phone surveys). Administrative costs are then estimated on the basis of average cost (internal personnel costs and external costs for consultants and intermediaries) multiplied by the number of times the activity is carried out and the number of undertakings involved.

- *Cutting*. Decree-law 112/2008 requires each ministry to provide detailed reduction plans, for which guidelines were issued by the Minister for Public Administration and the Minister for Normative Simplification (whose competences have now been conferred on the Public Administration and Simplification Minister). The plans define the organisational, technological and regulatory interventions necessary to achieve the 25% reduction in administrative burdens, the estimated savings associated with them and the monitoring system to be used to give periodic accounts of the results. By setting targets and deadlines and drawing a clear framework of accountability, the plans aim to introduce a results-based logic according to which the success of interventions is proportional to the effective reduction of costs and bureaucratic inconvenience for citizens and businesses, and not just to the number of rules adopted or withdrawn. In addition, Decree-law 78/2010 has empowered the Government to adopt simplification measures, in particular for SMEs, in areas such as the environment and fire prevention. More generally, the Italian approach relies on the use of various instruments, including Decree-laws and administrative interventions, and insists on the principle of proportionality of the requirement according to the type of sector and size of enterprise as well as the safeguard of the public interest.

Figure 5.1. The process of measuring administrative burdens in Italy



Source: Adapted from Presidenza del Consiglio / Dipartimento per la Funzione Pubblica, 2008.

- *Monitoring*. One of the main innovations introduced in relation to administrative burden reduction is the adoption of a performance based approach. All administrations are asked to adopt tools to assess the effectiveness of the measures taken. To this end, the guidelines to prepare reduction burdens plans define an assessment system articulated on three levels: *i)* the monitoring tool, which builds on criteria and indicators defined in the reduction plan; *ii)* an audit of the results, which seeks to determine *ex post* the achievement of the specific objectives of intervention, also based on a set of indicators identified in the reduction plan. These first two levels of the evaluation system are carried out by the administrations responsible for the reduction plan with the participation of stakeholders. *iii)* The final impact assessment, aimed at verifying the attainment of the program targets, is performed by the Department of Public Administration once the entire measurement and reduction process is deployed. It aims to assess, on the basis of information provided by recipients of this intervention, the results achieved in terms of actual reduction of bureaucratic burden and induced changes on the activities of the firms, citizens and public administration.

Public consultation and communication

A strong feature of the Italian MOA process is its continuous consultation of stakeholders and administrations, under the co-ordination of the MOA Task Force. The stakeholders are involved at all stages of the measurement and reduction process, as provided by the guidelines on reduction plans. The identification of critical procedural issues, the formulation of hypotheses for intervention, and the preparation of the plans including savings estimates and business planning are informed by consultation practices. Stakeholders are actively involved in working groups with the relevant central administrations, under the aegis of the Department for Public Administration and Innovation, in order to contribute to the selection of the most burdensome procedures.

A conference on simplification was created with representatives from major business associations: Confindustria and Rete Imprese Italia (Confartigianato, National Confederation of craft and small and medium-sized businesses, Confcommercio, Confesercenti, and Casartigiani).

To ensure wide publicity of progress and achievements, the Department of Public Administration publishes a regular report on simplification measures adopted and on progress achieved in terms of reduced burden. This enables stakeholders to assess the overall effectiveness of the reduction programme and provides a source of information on the results of individual responsible administrations.

Administrative burden measurement and reduction is a front where Italian government has been particularly active to profile itself in the wider European context. The website of the Department for Public Administration informs of various international practices, methodologies and achievement, contributing thereby to increase the awareness and relevance of MOA.[5]

Relationship of the central programme with the regions

Italian regions pay more and more attention to administrative simplification, as illustrated by the appointment of twelve regional councillors (*assessori*) or presidents with delegated portfolio in charge of this type of reforms. Some regions have already started or foresee the measurement and reduction of their administrative burdens. Sicily, for instance, has adopted a legal framework (Regional law 11/2010), which equips the regional administration with the same instruments developed at the central level. The Region Campania has approved a resolution (Delibera 18/2010) addressing both the transposition of the EC "Services Directive" and the adoption of the MOA with the aim of cutting administrative burdens on businesses by 25% by 2012. In addition, collaborations have been signed through bilateral agreements (*protocolli d'intesa*) between the Minister for Administrative Simplification and Innovation and the regions. A handbook for measuring burdens has been issued.

In the framework of the so-called "Development decree" (Decree-law 70/2011), it is foreseen to extend the MOA to regional and local legislation. A Joint Committee for the co-ordination of measurement methods and burdens reduction has been established within the Unified Conference bringing together State representatives, regions and local authorities. The Committee has started a joint activity measurement in the key sector of construction. Each region, province and municipality will then issue legislative, administrative and organisational programmes in accordance with the respective competences, with the aim of achieving the 25% reduction target by end 2012. The Plan for Administrative Simplification 2010-2012 foresees a related potential saving of EUR 5.3 billion.

Achievements so far

Table 5.1. Annual aggregated total cost, reduction plans, and savings per sector per business

Sector	Administrative burdens (EUR billion)	Instruments	Savings (EUR billion)
Labour and welfare	9.94	Reduction plan Law 133/2008	4.78
Fire prevention	1.41	Reduction plan SMEs simplification regulation	0.65
Landscape and cultural heritage	0.62	Reduction plan	0.17
Public procurement*	1.21	Provisions within the "Development Decree"	0.16
Environment	3.41	SMEs simplification regulation	0.81
Privacy	2.19	provisions within "Development Decree"	0.61
Taxes	2.76	Revenue Agency measure	0.46
Safety at work	1.54	n.a.	n.a.
Total	23.08		7.64 (33.1% of costs)

*. No data about businesses with less than 5 employees is available for the measurement in the Public procurement sector.

Source: Compiled by the authors, based on Dipartimento della funzione pubblica – Ufficio per la semplificazione, La semplificazione amministrativa per le imprese, Dossier del 3/11/2011, at: *www.innovazionepa.gov.it/media/875495/dossiersemplificazione_iv_nov2011_def.pdf.*

The MOA methodology has so far been applied to 10 regulatory areas through 14 surveys. In the 8 regulatory areas for which information is available, 81 procedures have been examined and measurements led to an overall aggregate annual burden of State legislation of approximately EUR 23 billion (see Table 5.1). Reduction interventions have been approved in 8 areas, and implemented through instruments such as the three burden reduction plans (related to fire prevention, labour and welfare, and landscape), targeted simplification measures for SMEs and other normative measures, generating savings for EUR 7.64 billion (equivalent to 33.1% of the burden measured in those areas). As outlined in the Plan for Administrative Simplification 2010-12, further measurement activities are planned by June 2012, including measurements concerning transport and safety at work in the building sites. Transversal measurement on control activities is under way. Measurements concerning agriculture and construction (in collaboration with the regions) are equally under development.

Other simplification measures for businesses

The Italian government has sustained its efforts to re-engineer administrative procedures and reduce delays. Good practices for measuring the time to complete procedures were identified among central administrations. To this end, and further to the experience gathered from trial cases, specific guidelines for measuring procedural times were drawn up in April 2008.

The contribution of Decree-law 112/2008 in this regard was significant. Art. 30 simplified administrative controls in the environmental sector, providing that for certified enterprises the periodical controls carried out by qualified private companies replace administrative controls. The so-called "Development decree" (Decree-law 70/2011) of May 2011 includes provisions on its implementation.

The so-called "cutting-time" instrument was introduced by Law 69/2010, which sets to 90 days the maximum time for public administrations to adopt regulations setting the deadlines for procedures, if these are not already regulated by law. Only exceptional and motivated justifications allow administrations to issue de regulations later but in any case not after 180 days. Missing the 90 days deadline implies the reimbursement by the administration because of the delay, and constitutes an element in the evaluation of the management.

Other simplification measures include Self-certification (*auto-certificazione*). The "silent is consent" rule (*silenzio-assenso*) implies that licences are issued automatically if the competent licensing office has not reacted by the end of the statutory response period.

A number of simplification measures inspired by the *Burocrazia: diamoci un taglio!* initiative are currently being discussed in Parliament. Several simplification measurement have been adopted with the new Code of Digital Administration, while others are still being examined by the Parliament, including the obligation that public organisations' management databases ensure electronic access through agreements with other public entities to eliminate redundant and duplicative certificate requests; the obligatory use of electronic certified mail for communication within the public administration; the online provision of information and forms needed for all procedures; and the complete digitisation of the relationship between business and public administration.

Further initiatives to speed up administrative simplification are:[6]

- The introduction of *certified notice of commencement of business* (*Segnalazione Certificata di Inizio Attività*, SCIA).[7] This system replaces and simplifies the previous "start-of-activity" notice (*denuncia di inizio attività*, DIA). SCIA allows the activities to start immediately, which is a substantial simplification and speeding up compared to DIA. The latter established 30 days as a limit before activities could start.[8] A simple communication with attached self-certifications and attestations of qualified technicians will be a sufficient proof of the qualifications required by the law. The public administration, when verifying the absence of the requirements, can ban within 30 days the continuation of the activity or ask the business to comply with regulations. Thereafter, the public administration can intervene only in case of danger of a serious and irreparable damage to the artistic and cultural heritage, the environment, health, public security or national defence.
- The introduction in 2011 of the *principle of proportionality in administrative compliance requirements*, in line with the Small Business Act adopted at the European level. This seeks to take into account the needs of numerous SMEs in Italy. As outlined in the Plan for Administrative Simplification 2010-2012, simplification regulations for SMEs should be adopted on the basis of the following criteria: *i)* proportionality in relation to the companies' dimension, their field of activity and the need for public interest safeguard; *ii)* elimination or reduction of unnecessary or non-proportionate procedures; *iii)* digitisation; *iv)* extension of self-certification and attestations of qualified technicians and agencies for the enterprises; and *v)* co-ordination of controls. So far, two regulations affecting SMEs directly have been adopted in 2011 – on the simplification of environmental authorisations and on fire prevention certificates.[9]

Administrative burden reduction for citizens at central level

In 2011, a first experimental initiative on measuring burden on citizen took place in relation to social benefits for disabled people. A different methodology had to be used for the calculation of costs. The measurement process involved the associations for the protection of rights of disabled people and the organisations involved in granting rights (the "*patronati*"). This participation made it possible to determine "standard costs" related to the realisation of certain basic obligations on behalf of citizens. Another dimension to be included in the measurement of burden for citizens relates to the time spent waiting for the actual disbursement of the benefit.

In the case of measurement in the construction sector, which already involves both the national Government and the regions, it will be the first measurement exercise which will concern both businesses and citizens.

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, e.g. taking account of the impact of new regulations in meeting target reductions.
2. Law Decree 78/2010.
3. Confindustria, Confartigianato, CNA, Confcommercio, Casartigiani and Confersercenti.
4. See for instance the description by Cavallo, L., G. Coco and M. Martelli (2009), Evaluating administrative burdens.
5. See *www.innovazionepa.gov.it/i-dipartimenti/funzione-pubblica/attivita/politiche-di-semplificazione/misurazione-e-riduzione-oneri-amministrativi/il-contesto-internazionale/presentazione.aspx*; and *www.innovazionepa.gov.it/i-dipartimenti/funzione-pubblica/attivita/politiche-di-semplificazione/misurazione-e-riduzione-oneri-amministrativi/link.aspx*.
6. A list is published in the dossier by Department for Public Administration, *La semplificazione amministrativa per le imprese. Dossier*, 22 December 2010, p. 27ff.
7. Legislative Decree 78/2010.
8. The national legislature had already moved in this direction with Legislative Decree 59/2010 transposing Directive 2006/123/EC (Services Directive), which had introduced the DIA "with immediate effect", with which the SCIA is fully in tune.
9. See *www.innovazionepa.gov.it/media/710160/d.p.r.%20ambiente.pdf* and *www.innovazionepa.gov.it/media/710160/d.p.r.%20ambiente.pdf*.

Chapter 6

Compliance, enforcement and appeals

It is not enough to improve regulations themselves, how they are designed and developed, and make them "smarter". Available evidence and experience shows that how regulations are controlled and enforced is crucial to how the regulatory sphere in general affects businesses and the economy. Inspections and enforcement actions are generally the primary way through which businesses, in particular SMEs, "experience" regulations and regulators. Inadequate approaches or lack of changes in enforcement and inspections can mean that changes in regulations fail to deliver their full benefits. On the contrary, evolutions in inspections and regulatory delivery to make them more compliance-focused, more supportive and risk-based can all lead to real and significant improvements for economic actors, even within the framework of existing regulations. Finally, enforcement and inspections are as much about methods and culture as institutions, and as much about organisational mechanisms as legislation. All these need to change for outcomes to actually improve.

In many countries, inspections and enforcement systems have been subject to criticism due to their costs and the burden they create, with critics often focusing on overlaps and duplications between agencies, conflicting or unclear requirements, too frequent visits, or the behaviour of inspectors. All these are intimately linked with organisational structures and set ups, and with governance models.

Across OECD countries, inspections' effectiveness and efficiency are being sought through the introduction of different tools, such as risk-based approaches to inspections planning (and also during inspections, to focus on the key issues). Better co-ordination and information sharing among inspections authorities is also important – sometimes combined with consolidation of inspection agencies, and elaboration of joint IT systems.

Finally, to assess the effectiveness of regulatory enforcement and inspections, it is essential to know the level of compliance and analyse reasons for non-compliance – but also to have data on the actual outcomes, i.e. on the situation in terms of the public goods that regulation is supposed to promote (health and safety, environmental protection etc.). Regulators and inspectors seem to be at the right place to gather such data, but in practice there are often considerable gaps in data, difficulties in collection and attribution.

Assessment and recommendations

Compliance and enforcement

The Italian Government has been putting genuine emphasis on improving the way regulatory enforcement activities, and in particular business inspections, are conducted. At the same time, recent events have again demonstrated the real problems that have hitherto hindered the effectiveness and efficiency of many inspections, while at the same time resulting in real burden for most businesses. Progress made so far on the reform of inspections is very encouraging and has potential to yield considerable benefits for businesses, but also for the public in terms of greater transparency, improved compliance, and subsequently better outcomes (safety, health, environment, etc.). To fully reap these benefits, however, the reform will need to be continued, including implementation at the regional and local levels, and also deepened (e.g. through use of IT) and eventually broadened in scope (to include inspections that have so far not been covered, e.g. tax, labour legislation).

The initial impulse for reform was indicated in the decree-law 70/2011 (13 May 2011 – *Urgent Economic Measures*), which in particular foresaw co-ordination of tax and revenue inspections (of which there are currently many different kinds, conducted by several agencies). On 9 February 2012 was adopted the decree-law 5/2012 (*Urgent Dispositions in Simplification and Development Matters*), which provided a real framework for reform of inspections in Italy. In particular this decree-law:

- Set the principles on which organisation of inspections should be based – simplicity, proportionality to risk, co-ordination at all levels (national, regional, local)
- Delegates to the Government (in particular the Minister for Public Administration) authority to develop and adopt regulations reforming the inspections system.

On this basis, there have been significant steps undertaken under the Government's leadership, with strong involvement from several key regions – these steps have included a burden measurement exercise, the development of Guidelines for Inspections (to be adopted early 2013), initiatives to improve co-ordination at the regional level. At the same time, strong resistance by some institutions has led to their exclusion from the reform process (tax administration, labour inspection).

In contrast to these improvements, the (still ongoing) scandal and crisis linked to the Ilva steelworks in Taranto has shown in a dramatic way the relevance of inspections and enforcement reforms in Italy. For years, political connections have allowed the owners of the steelworks to avoid compliance with environmental regulations, resulting in a major environmental and health crisis in the surrounding city. When prosecutors finally moved to seize assets, suspend the operation (and arrest the owners), this resulted in a major economic and social disaster (the steelworks are Europe's largest, and employ 12 000). The Government resorted to a decree-law to allow the operations to resume, this was approved

by Parliament but contested by the judiciary and is now pending a decision by the Constitutional Court. The whole story shows how enforcement in Italy has long been fully ineffective to address major hazards, when created by the politically-connected – how, also, things gradually improved with the growing independence of inspection authorities (the Regional Environmental Protection Agency – ARPA – increased its pressure on the establishment throughout the 2000s). At the same time, the current situation is disastrous, whereas early action to put the steelworks in conformity would have not only avoided the health crisis but also the economic and social ones. Finally, the owners and operators of the steelworks (the Riva family) were able to avoid all earlier attempts by prosecutors to hold them liable for their major violations thanks to Italy's excessive system of appeals and of statute of limitations. Thus, the case is in many ways a microcosm of everything that still urgently requires improvement in Italy regarding regulatory enforcement (and, to an extent, appeals).

Recommendation

1. Continue implementation of inspections reform already initiated, in particular through generalisation of risk-based targeting, increased efforts to inform businesses and promote compliance, and us of IT for co-ordination. Consider reduction of overlaps and duplication through institutional reform. Include tax and labour inspections in the reform.

Appeals

Regulatory quality requires clear, fair and efficient procedures to appeal administrative decisions. The issue of administrative appeals to regulatory decisions has received increased interest in Italy in the wake of the saturation of the civil law system. This was initially the case for administrative justice, where a number of fast track procedures have been established – for example for the appeals of the regulatory authorities. The possibility of suspending appeals has also helped streamline processes. The focus has more recently shifted to civil justice, where delays seem to have been much higher than the international average. Procedures are usually more complex in Italy and take more time. Room for improvement may exist in increasing the small size of the bailiffs in Italian courts.

Another underlying problem is the excessive "demand" for the Italian court system. Economic disputes are generally of notably low monetary value. In addition, a minority of proceedings result in final judgments with the majority settled out of court only after the proceedings have been drawn out over a long period of time. This demand for legal redress may in part be driven by the formula for calculating lawyers' fee that creates incentives for extending proceeding and making them unnecessary complex.

Judicial appeals are generally suspensive of the sentence and can last for years. This is particularly problematic in view of the fact that in the Italian legal system the statute of limitations is applied in a very peculiar way, i.e. lawsuits must be *ended* (and not just started) within the time applicable for the statute of limitations. As a result, there are instances where judgments are not served in the first instance or even in appeal, because the statute of limitations comes into force while an appeal is still ongoing.

A number of decentralised alternative dispute mechanisms exist in Italy. In March 2010, mediators were introduced for civil and commercial matters. The Justice of the Peace is the court for less significant civil matters. This court presides over lawsuits in which claims do not exceed EUR 5 000 in value or EUR 15 000 in certain circumstances. While Italy has not established an Ombudsman at the national level, a number of regions

introduced the office of the Regional Ombudsman as an alternative mechanism to judicial appeal. At the regional level, other forms of alternative dispute settlement mechanisms have also been pioneered, with satisfactory results.

Recommendation

2. While the diagnostic is clear, possible appropriate solutions that meet with consensus remains open. The Online Civil Trail Initiative may help towards speeding up proceeding and facilitating access to documentations through ITC. The Initiative has been launched as a pilot in a number of courts. Further steps should be taken to enhance its implementation and diffusion across Italy. In addition, consideration should be given to establishing a national Ombudsman as an alternative dispute mechanism.

Background

Compliance and enforcement

The scope of the issue (number of institutions involved, regional nuances etc.) means that it is not possible in this report to present a comprehensive view of all aspects of enforcement, inspections and compliance promotion in Italy. The focus in this section is therefore on the key problems highlighted as part of the measurement and assessment work conducted by the Government, and on the main reform steps undertaken so far.

Measurement and assessment

Overall: a high burden on businesses

In order to fully ascertain the level of burden created by inspections in Italy, as well as the main difficulties in terms of overlap, duplication etc., and thus to provide a solid foundation and impetus for reforms, the Office for Administrative Simplification (part of the Civil Service Department under the Presidency of the Council, tasked with leading the reform work) conducted a business survey in 2011. The survey was implemented by ISTAT and covered a representative sample of 1 500 SMEs with 5 to 250 employees.

This survey showed that 36% of Italian SMEs were inspected at least once during the year, and each inspected SME was visited on average more than five times a year. The burden on the smallest businesses appeared slightly lower than on the more "medium sized" – a similar percentage of businesses with 5-10 employees was inspected, but they received on average slightly less than 2 visits per inspected business.

Even though the survey covered only SMEs, estimates for the administrative burden created by inspections suggest that it is quite high. The estimate for all MSMEs (including an estimate for micro businesses with 1-5 employees, based on the results for the 5-10 employees population with some corrections) is around EUR 370 Mln. This includes only administrative burden in the narrow sense, i.e. cost of time spent during inspections as well as to prepare them and costs related to information requested by inspection agencies. Costs related to testing or sampling, revenue loss, inspector requirements, etc. were not covered in this calculation.

While it is difficult to find adequate comparisons in other countries, because very few EU and OECD countries have conducted similar measurements so far, and because administrative burden calculations are done with somewhat different methodologies, a few data points allow to confirm the fact that the inspections burden in Italy is indeed high:

- In the Netherlands, the inspections burden measurement exercise conducted in 2007 yielded an estimate of EUR 180 Mln for the 18 "domains" (sectors) covered, which would suggest a proportionally *higher* burden than in Italy – however, this measurement *i)* included large enterprises and *ii)* was significantly more comprehensive in terms of types of costs included, and relied on more in-depth measurement in businesses – hence the burden in Italy is likely to be significantly higher in fact. Most recent data from the Netherlands ("snapshot" for 2011) showed that in most sectors there was at most around 1 inspection per business per year (calculated on all businesses), and only in food/catering/hospitality did it reach to 2-3 per year. In contrast, only for SMEs, the comparable figure for Italy is 2 per year across all sectors.
- In Lithuania, which conducted two successive business surveys on inspections in 2011 and 2012, the percentage inspected is higher than in Italy (around 60%), but the number of visits per inspected business is far lower than in Italy. Again, the average number of visits per year for all businesses is now around 1 (it was higher before reform), against 2 in Italy.

Thus, inspections burden in Italy, in aggregate, appears higher than in other countries of the EU. In addition, the burden tends to be very high *for those businesses that are actually inspected,* with 5 visits a year on average. This is as high as the numbers of yearly visits found in countries of the Former Soviet Union such as Ukraine.

Some types of control – and some sectors – present a particularly acute situation

As in many other countries, the most frequent types of controls in Italy are fiscal ones. This is compounded by the fact that both the Tax Inspection and the Tax Police (*Guardia di Finanza*) conduct fiscal inspections. While it may make sense for specific issues to have a specific police force in charge of tax issues, and to have certain enterprises (suspected of criminal activities) checked by this "tax police" rather than by usual tax inspectors, the situation in Italy (again, like in other countries where these two institutions coexist) suggests that they in fact end up both doing essentially a general inspection job: in 2011, the Italian *Guardia di Finanza* appeared to visit *more* SMEs than the Tax Inspection (around 10.5% of businesses with 5-250 employees, vs. around 9.5% for the Tax Inspection, based on survey data). This is a case where clearly the institutional duplication and lack of co-ordination result in more burden than would be optimal, without necessarily yielding better results in terms of compliance.

Another area of considerable duplication and resulting burden is occupational health and safety and labour legislation. Three national entities have directly overlapping responsibilities in supervising this field – the Labour Inspection (under the Ministry of Labour and Social Policy), the National Institute for Social Security (*Istituto Nazionale Previdenza Sociale – INPS*), the National Institute for Insurance against Hazards on the Workplace (*Istituto Nazionale per l'Assicurazione control gli Infortuni sur Lavoro – INAIL)* – and the police forces tend to intervene too, and are very active in inspecting businesses in general, and on this topic in particular. Of course, the scope of responsibilities, level of competence and effectiveness of these different "inspectors" is very different, but the duplication is obvious, with clearly adverse effects for state expenditure and business costs. This makes labour-related inspections the second most frequent type of controls in Italy, just behind fiscal ones – with more than 17 visits for 100 businesses every year (considering only businesses with 5-250 employees) – without counting the checks conducted by the police and *carabinieri* (as there is no disaggregated data on these based on what issues they check – but based on survey data the police forces conducted close to 10 visits for every 100 businesses during the year.

Sector-wise, some types of businesses are clearly also inspected far more often than others, without this necessarily reflecting a higher risk level, but rather corresponding to the institutional structure and agency priorities and practices, which are not always being re-examined regularly through a data-based risk analysis.

Thus, even though they make up less than 7% of all businesses (and employ 7.5% of the total private sector occupation), businesses in the hotel, restaurants and catering sector made up nearly 25% of inspections. Transportation businesses (3% of business entities, 6.5% of occupation) made up 26% of inspections. Construction businesses made up a smaller share of inspections (close to 12%) than of businesses (close to 14%). Trade and manufacturing businesses were inspected in a way that was proportional to their share of total business entities. Most service businesses were rarely inspected. Food processing industries were massively over-inspected: 6% of all inspections, while they make up only 1.2% of all businesses (and 2.3% of occupation).

This over-burdening of specific sectors is clearly linked to the specific focus of some of the most active inspectorates. The *Guardia di Finanza* has a heavy focus on transportation and trade businesses, as do police forces. The public health authorities (*Aziende Sanitarie Locale*) focus also on transportation and trade, and on food processing. Labour-related inspections mostly target these same sectors, plus construction. All of them put a heavy focus on hotels, restaurants and catering.

From this picture, it is clear that the allocation of inspection resources is not proportional to risk, is unlikely to yield optimal results in terms of effectiveness, over-burdens strongly some sectors while potentially leaving some others inadequately supervised.

It is noteworthy that 2012 has seen many "revolts" by businesses against perceived "excessive pressure" by the state, in particular on the fiscal side. While much of this can be seen as reactions against legitimate policies aimed at reducing fraud, and reactions to tax increases linked to the crisis situation, the excessive burden of inspections also may play a role – as well as their low effectiveness in terms of promoting compliance. The fact that Italy has a very specific system for collection of taxes and social payments also may explain part of these tensions – *Equitalia*, the agency in charge of all collections (since a 2005 reform, replacing previous collection by private contractors for the state) has been a particular target of ire, with not only demonstrations but physical attacks and even terrorism against the agency. While this is not the place to assess the effectiveness of this system (which has the merit to consolidate taxes and social payments), once again the institutional structure appears to play a role in the difficulties (with collection being, unusually, separated from tax assessment and inspections), and these are again concentrated in the areas of taxes and labour legislation.

Key problems

As the above data and examples indicate, the inspections and enforcement system in Italy suffers from a number of major problems – these include:

- High burden for businesses, in particular SMEs, both in terms of time and money, and because of the confusion resulting from many agencies checking similar or related issues with different approaches and at different times.
- Lack of co-ordination and consolidation, with several agencies checking the same issues without joint planning or shared information – resulting not only in administrative burden but in extra costs for the state and lower efficiency.

- Insufficient focus on risk – most agencies inspect heavily based on what they consider priorities, but this is insufficiently informed by regular analysis of data on hazards and outcomes, and some sectors are clearly over-inspected relatively to the hazards they pose. Due to weaknesses in enforcement, even when inspections are conducted and reveal major risks or violations, these do not always lead to timely action (e.g. Taranto case).
- Weak (at best) efforts to promote compliance through active information of businesses or clear communication about requirements, and differentiated treatment to reward "good performers".
- Very complex and numerous requirements for most sectors and most types of inspections, resulting in businesses having to make considerable efforts and hire consultants to know how to be compliant.
- Focus by many inspectorates on compliance with all "paperwork" requirements rather than paying more attention to the most critical compliance points (those that have a direct health and safety impact) – likewise, tendency to treat all non-compliances as serious threats, without a proper risk-analysis.
- Sanctions may be burdensome for many, but not necessarily deterring for the most criminal activities, meaning that overall effectiveness is not very high.

This is of course not to say that all inspections in Italy are affected by these shortcomings – there are many centres of professional excellence and of good practice (and for instance tax authorities have a well-developed risk analysis system, even though the overall burden of fiscal controls is high), but these problems were nonetheless all too widespread, which led the Government to initiate reforms.

National initiatives

On the basis of the decree-law 5/2012, the Office for Administrative Simplification launched a series of initiatives aimed at improving the situation of inspections in line with the decree, i.e. greater proportionality to risk, improved co-ordination, decreased bureaucracy:

- Survey of businesses on the inspections topic and preparation of a "dossier" reviewing international best practices as well as most positive and interesting initiatives within Italy
- Round-tables and workshops with businesses and with inspecting authorities and regional and provincial authorities to build consensus around the need to reform and the possible directions for such reform
- Jointly with the Fire Safety Service (*Vigili del Fuoco*), development and adoption of new procedures for opening/start of use of premises, with a strong differentiation based on risk, cutting red tape for low risk businesses – and publication of information brochures to help businesses take advantage of these new procedures
- Development of guidelines to serve for national, regional and local authorities to improve their procedures, processes and rules in line with the decree-law. These guidelines are still to be officially published, but adoption is foreseen early 2013.

In particular, these guidelines recommend the following:

- Transparency and clarity of regulation: development, adoption and publication of inspections check-lists to help make requirements clearer and harmonise inspectors' practices – inspectors also need to always present an official ID (currently only the case in less than half inspection visits)
- Proportionality to risk: risk analysis to be based on data and on outcomes (risk to the public and not just "probability of a violation"), planning to be based on risk analysis
- Changing relations with businesses: re-training of inspection staff to emphasise co-operation with businesses, increase in transparency (check-lists, prior notification of visits when possible, etc.)
- Co-ordination: agreements between agencies covering related issues, joint planning, joint forms and documentation, development of unified databases and planning systems – most of this co-ordination to happen at the level of regional authorities, in line with the devolution of powers to regions under the federalist reform.

Regional initiatives

In Italy's reformed constitutional and institutional framework, most of the co-ordinatioin of inspection activities is to happen at the regional level – with some inspections implemented by authorities under the regional governments (e.g. the *ASL* for public health), some by regional offices of national authorities (some structures are still organised at the provincial level, but this is gradually changing). Given the country's size and diversity, the regional level is indeed an adequate place to plan and co-ordinate work even for entities that report to the national government.

The most promising initiatives so far in this perspective are the Single Registries of Inspections (RUC – *Registro Unico dei Controlli*) that have been introduced for inspections in the agricultural and food/agricultural processing sectors in Lombardy, Tuscany and Emilia-Romagna. The registry system is most operational in Lombardy (where a 2008 law created it) and, more recently, in Emilia-Romagna, and at earlier stages for now in Tuscany. While these systems would need a specific review to see how well and effectively they are working, they are definitely a very positive development. Looking at them more in depth, and incorporating lessons from best practice in use of information systems for inspections co-ordination and planning, would allow to develop a realistic model to extend a similar system to inspections of all sectors. A very important next step would also be to move from *registration* of inspections already conducted (of course the RUC very usefully includes also their findings) to a system that would facilitate *planning* of future inspections.

Situation and further plans

Implementation of inspection and enforcement reforms in Italy is still at early stages, and the latest political developments mean that it can only resume once elections take place and a new Government is formed. They remain, however, essential to improve effectiveness and efficiency, improve trust in the public administration and relations with businesses, safeguard health and safety while facilitating growth and employment. Extending the reform to cover tax and labour inspections will be needed.

Appeals

In addition to civil and penal courts, the Italian Constitution provides for specific administrative courts, which are mandated to monitor the legitimacy of administrative acts and may lead to their annulment. The appeal procedure normally consists of three stages:

- *Courts of First Instance*, usually made up of professional judges (*giudici togati*) and established in the main town of each province, have jurisdiction in any case not expressly within the jurisdiction of another court; territorial jurisdiction is determined in accordance with the rules defined by the *codice di procedura civile*. All decisions of first instance may be appealed, except those expressly excluded by law. The parties must conduct their defence with the assistance of a practising defence lawyer. They may agree in advance to forego their right of appeal and apply directly to the *Corte di cassazione*.
- *Courts of Appeal*, situated in the main town of each judicial district and organised in divisions, it always sits as a collegiate body. The Courts of Appeal exercises jurisdiction in appeals against judgments given at first instance and takes on matters referred to it by law (in such cases, the Courts act as a judge of first and final instance, excepting the possibility of an appeal to the *Corte di cassazione*).
- The *Corte Suprema di Cassazione*, which is the court of last instance, ensures the exact observance and uniform interpretation of the law. The Court is the judge of legitimacy and its sole function is to ensure that the law is applied correctly by the judge deciding on the merits.

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

- *Administrative appeals* are filed with the region itself or the President of the Republic. They enable the parties involved to request the adoption of a new decision on the contested case from the administrative authority above the one that took the decision, or to petition for cancellation of the contested ruling. These hierarchical appeals have lost importance with the lifting of the finality requirement for acts to be eligible for appeals to administrative justice.
- *Judicial* appeals can be filed with the regional Administrative Tribunals (*Tribunali Amministrativi regionali*, TAR). Only interested parties may file appeals with such courts.

An important strand of the digitalisation of public activities is the so-called Online Civil Trial (*Processo civile telematico*). Established by law since 2001,[1] the initiative is sponsored and managed by the Ministry of Justice. It seeks to speed up the proceedings and facilitating access to documentation by the parties through ICT, thereby reducing costs. An agreement to enhance its implementation and diffusion was signed in January 2007 between the Minister of Justice and the Minister of Public Administration. To date, lawyers are able to access the chancelleries of almost all Italian tribunals electronically. In the Tribunal of Milan, moreover, since 2007 it is possible to file requests and submit documents. In other tribunals (such as the ones of Catania, Padova, Neaples and Genova) since December 2008 an electronic procedure allows to request and receive cease-and-desists orders (*decreto ingiuntivo telematico*). Furthermore, the internal electronic communication between tribunals has been boosted.

While the trial system was originally not included in the scope of the Public Administration Code (Legislative Decree 82/2005) and was regulated autonomously (it was believed that, for security reasons, it required different and separate electronic instruments), the approach has now changed. The administration of justice is also about to benefits from the provisions included in the Code.[2] Accordingly, measures are being issued for the mandatory use of the certificated email (PEC); for incentivising the use of electronic instead of paper communication; and for regulating electronic auctions as well as payments.

The implementation of the new Code of Administrative Action is supposed to further speed up digital justice. It is calculated that the Tribunal of Rome alone will be able to reduce the arrears of one entire year by introducing an electronic notification system. This is expected to reduce the length of the pending procedures. The PEC will help better drain the 2.5 million complaints filed each year, and it will be possible to have recourse to it also when filing class actions. Only in the field of business closing procedures, administrative tribunals will be able to handle some 390 000 annually.

The central administration established an additional tool to enhance citizen participation in 2009. Law 99/2009, implemented by Legislative Decree 198/2009, establishes the so-called "class action": citizens and companies may take collective action against the relevant public administrations and public service providers in case of inefficient provision of services. In view of implementing this legislative decree, the National Commission for Evaluation, Transparency and Integrity (CIVIT) has recently issued Guidelines for the Definition of Quality Standards of Public Services. The guidelines set the "actual quality" of public services as the reference definition to determine the relevant quality dimensions and properties, as well as the indicators and the methodology for the identification of service standards.[3]

Performance of the system[4]

The issue of delays has been a source of growing concern. This was initially the case for administrative justice, where a number of fast track procedures have been established – for example for the appeals of the regulatory authorities. The possibility of suspending appeals has also helped streamline processes.

The focus has shifted recently to civil justice, where delays seem to have been much higher than the international average. Procedures are usually more complex in Italy and take more time. According to *Doing Business* data, Italy appears least-well placed within the OECD area in terms of the length of its procedures.[5] This assessment is generally shared by Italian sources. For example, the "Green Book on public expenditure" published by the Treasury in September 2007 identifies a number of challenges faced by justice in Italy.[6] The key factors highlighted by the Green Book are room for improvement in addressing the effectiveness and efficiency of public spending and achieving economies of scale (Marchesi, 2003). In particular, the Green Book suggests tackling the excessively small size of the bailiffs: a quarter of the Italian courts employ less than 10 judges in 2007 (Marchesi, 2007). The consequence is that the same judge has to rule on both civil and criminal cases, with implications in terms of specialisation and productivity. In addition, in 2007 still 72% of the courts were under-staffed.[7]

Further analysis suggests that the underlying problem refers to demand aspects. During the last decade the number of cases has doubled for criminal and civil cases. Over the last twenty years the duration of civil proceedings has increased by 90%, or 97% if only proceedings of an economic nature (for example breach of contract, debt recovery etc.) are considered. Economic disputes are of remarkably low monetary value: 60% of them are litigations for less than EUR 5 000, and of this 60%, only a quarter concerns disputes for

more than EUR 2 500. In addition, even in the first degree proceedings only 38% of cases conclude with a judgment. The other 62% in the main end in the withdrawal of one of the parties, or in a settlement reached during the suit, which generally occurs after the proceedings have been drawn out over a long period of time. This may suggest that recourse to the judge may be sought less to resolve a controversial judicial issue than for reasons of a different order, for instance to opportunistically delay deadlines, or have suspending clauses. In addition, the formula for calculating the lawyers' fee creates incentives for professionals to extend the proceeding and make it more complex. The analysis is broadly confirmed by the 2007 annual report of the High Cassation Court. Because of the length of the proceedings, legal disputes have resulted in EUR 41.5 million expenditure for the State in the past five years. The President of the High Cassation Court defined as "alarming" the increment rate: from EUR 1.8 million in 2002 to EUR 17.9 million in 2006, *i.e.* an approximate increase of 800%. The number of civil proceedings in arrears has almost tripled over the past twenty years, amounting to more than 3 million, among first and second degree proceedings in 2004 (Corte Suprema di Cassazione, 2008). Contributions for *Confindustria* report estimations of the overall costs caused by the inefficient civil justice system of about EUR 2.3 billion for the year 2005, corresponding to an average cost per firm of EUR 384 000 (Trento, 2007, pp. 194-195).

Alternative dispute settlement mechanisms

A number of decentralised alternative dispute mechanisms exist. In March 2010, mediators (*mediatori*) were introduced for civil and commercial matters (Law Decree 28/2010).[8] Mediation is overseen by the Ministry of Justice and may be exercised by registered professionals likely to meet impartiality requirements. Whether facultative or mandatory, mediation cannot last more than four months.

The Justice of the Peace (*giudice di pace*) is the court for less significant civil matters. It is an honorary position, not a career judge, and nomination is by the *Consiglio Superiore della Magistratura* on the basis of fixed requirements (including a law degree). The office is held for a period of four years, which may be renewed once. The *giudice di pace* adjudicates individually. The court replaced the old Praetor Courts (*preture*) and the Judge of conciliation (*giudice conciliatore*) in 1999. This court presides over lawsuits in which claims do not exceed EUR 5 000 in value or EUR 15 000 in certain circumstances.

While Italy has not established an Ombudsman at the national level, a number of regions introduced the office of the Regional Ombudsman as an alternative mechanism to judicial appeal (*Difensore civico regionale*). The Ombudsman is usually appointed by the regional Council and selected among citizens with sound legal and administrative professional experience, and serves for the entire legislature. Competences of the office have evolved over time since 1998 to cover information on the initiatives undertaken by the peripheral offices of the State, with the exception of fields such as defence, public security and justice.[9] The Ombudsman constitutes an interface between the citizens and the regional public authorities, providing free support to citizens in cases of mal-administration. In Lombardy, the *Difensore civico* currently also serves as the guarantor of tax payers and prison inmates.[10] Interventions follow *ex officio* or on online request of the parties – citizens, enterprises or associations. The Ombudsman's decisions are not binding. Efficacy therefore depends on the respect of the independence of the office, as well as the acceptance of its interventions by the public and the government.

The office of the regional Ombudsman was first instituted in 1974 in Tuscany and was progressively diffused and consolidated in the 1990s further to Law 142/1990 on the Reform of Local Autonomy. In some regions, however, the person has never actually been nominated, or the office functions have been temporarily suspended.

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

Notes

1. See the Decree of the President of the Republic 123/2001, and the decree of the Minster of Justice, of 17 July 2008.
2. In particular, see Law Decree 193/2009 and Law 24/2010.
3. *www.civit.it/?p=1494*.
4 This section draws extensively on OECD (2010).
5. However, the methodology of such data has been subject to discussion in Italy. This data starts from the hypothesis that the most suitable procedure for the "standard case" is the procedimento ordinario di cognizione. However, the features and the assumptions of the "standard case" would rather suggest the possibility to file a lawsuit following a special procedure, called procedimento d'ingiunzione, ruled by Art. 633 ff. of the Italian Code of civil procedure (ccp). This procedure is very common in commercial litigation: it is a sort of "summary judgment" and allows in a few steps (and in a few days) the plaintiff to obtain a judgment against the defendant. This judgment can be provided with an enforcement order from the beginning or, at most, within maximum 6 months (Art. 648 ccp) and allows the plaintiff to proceed directly to the enforcing procedure.
6. Ministero dell'Economia e delle Finanze (Commissione Tecnica per la Finanza Pubblica), Libro verde sulla spesa pubblica. Spendere meglio: alcune prime indicazioni, Doc. 2007/6, 6 settembre 2007, pp. 24-35.
7. Green Book (2007), p. 35.
8. The decree transposes the related Directive EC/52/2008, *www.giustizia.it/giustizia/it/mg_2_7_5_2.wp*.
9. Laws 127/1997 and 191/1998.
10. Such a function will be extended upon the entry into force of the new regional statute, which establishes the office of a Difensore regionale (Article 61) and of a Commissione garante dello Statuto (Articles 59-60).

Chapter 7

The interface between Member States and the European Union

An increasing proportion of national regulations originate at EU level. Whilst EU regulations[1] 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 sub-national) 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

Transposition and implementation of EU law have been a relatively dynamic front compared to other areas of reform in Italy. The country's negative track record has been curbed in the past five years and infringements and delays in transposing directives has now stabilised slightly above the EU average level. While the situation remains unsatisfactory, considerable progress has been made especially in light of the challenges posed by the current decision-making framework. Arguably, the various initiatives undertaken by the Department for European Affairs in this respect constitute the maximum that can be achieved under the current system. In particular, both co-ordination mechanisms and communication tools have been enhanced.

In the current context of multi-level governance, the revision of the so-called "Buttiglione Law", currently under discussion in Parliament, is a promising occasion to make the decision-making procedures structurally speedier and more effective, as well to make transposition decisions more accountable and minimise infringement cases.

The revision should also address the need for closer co-ordination and joint participation of the regions, as appropriate and where foreseen by the constitutional allocation of competences. For instance, the mechanism of "fall-back" norms may deserve further consideration. While it ensures that no legal vacuum and potential infringements are triggered by inaction at the regional level, the mechanism might *de facto* lead to permanent interventions of the State regulator and overlapping in areas pertaining to regional competences. The mechanism might also dis-incentivise the responsibility of the regions to equip themselves adequately so to directly, timely and fully transpose and implement EU law.

Recommendation:

Contribute to strengthen the responsibility and capacity of the regions to timely and fully transpose and implement EU law through their closer involvement in the ascending phase of EU decision making; through closer collaboration with the State in the appraisal of infringement procedures; and through burden sharing (or full liability by the regions) in case of ascertained infringement in areas of exclusive regional competences.

Background

General context

The interface between the government and the EU level used to be governed by the so-called "La Pergola" Law (Law 86/1989), which *inter alia* established the Department for European Policies (*Dipartimento per il coordinamento delle politiche comunitarie*) as an autonomous entity within the Presidency of the Council. However, Law 11/2005 (so-called "Buttiglione" Law) repealed it and introduced a two-tiered process that includes:

- An "ascending phase", which refers to the way in which Italy takes part in the process of framing EU decisions.
- A "descending phase", which encompasses the process of transposing and implementing EU directives into the Italian legal system.

In 2011, the Parliament discussed the revision of Law 11/2005, triggered by the institutional changes further to the reform of Title V of the Constitution, and by the innovations introduced by the EU Lisbon Treaty. A legislative proposal, already adopted by the Chamber of Deputies in its first reading, is currently discussed at the Senate.[2] It seeks, among other, to establish an autonomous procedure for acts transposing and implementing EU laws, notably by conferring enhanced competences to the executive and splitting the current Community Law (*Legge Comunitaria* – see below) into two distinct and leaner instruments. A second proposal,[3] by contrast, frames the reform of the transposition and implementation of EU obligations within the existing legislative process, taking account of the formal allocation of competences between institutions and at various levels of governments, as set by the Constitution.[4]

Negotiating EU regulations

Institutional framework and processes

The negotiation ("ascending") phase was not formally regulated before the "Buttiglione" Law. Each ministry was autonomous and responsible for directly following up legislative and policy dossiers in its area of competence. At political level, the Inter-ministerial Committee for European Community Affairs (*Comitato interministeriale per gli affari comunitari europei*, CIACE) acting as a form of "European Affairs Cabinet" was responsible for defining the Italian position on all EU dossiers.

The involvement of the regions

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

With regard to channels for participation of the regions in EU decision-making, the law foresees the participation *de officio* of a representative of the State-Regions Conference both in the CIACE and in the technical committee's meetings. Regions can also request to participate directly in the CIACE. Since 2005 the government is required to forward all draft EU acts and related preparatory documents to both chambers of Parliament. At the same time, the government forwards the same documentation to the regions and the autonomous provinces in relation to matters within their spheres of competence. This allows regions to contribute to and consolidate the Italian official position.

In order to facilitate the co-ordination and sharing of information across levels of governments, representatives of the regions are also allowed to participate in the work of various EU working groups and committees.[6] To this end, a co-operative General Agreement concerning the participation of the regions and autonomous provinces in the preparation of Community acts was signed in the Conference State-regions in March 2006.

The agreement foresees that regions notify the name of their representatives participating in the various EU bodies. Discussions continue concerning the modalities for co-ordination and functioning of the national delegation. Guidelines have been drawn in 2008 and a list of working groups has been proposed by the regions and is at present under examination by the responsible administrations. Nevertheless, pending the formal decision, in certain occasions the Government has included regions in the Italian delegation participating in working groups of the Commission dealing with matters of exclusive competence of the regions (as in the case of the mutual evaluation process of the Service Directive and the performance check in the tourism sector).

Under the current provisions, the so-called Community sessions (*sessioni comunitarie*) of the Conference State-regions are an important opportunity for co-ordination and information sharing between the central and regional levels on EU matters. Community sessions may take place several times a year, and are devoted to the examination of the annual proposal of Community Law as well as discussions on general approaches for implementation and respect of EU legislation. Efforts have been made to reform the organisation and strengthen the efficacy of the Community sessions with the aim to ensuring more timely and complete information from the government on EU legislative proposals and dossiers. If the proposed regulation concerns a matter of exclusive competence of the region, the government has to convene the State-regions Conference to find a common position that will be defended in the EU Council of Ministers.

The regional representations to the European Union continue to be a fundamental contact point and antenna for the regions in Brussels. Besides this, Italian regions are active members of the European Union committee of the regions, which is supporting EU wide efforts for better law making.[7]

Specific training and capacity building programs at the local level are a further contribution to a greater participation of the local authorities in both the negotiation and the descending phases. These initiatives are organised by the Department for European Policies in co-operation with the Local Advanced School of Public Administration (*Scuola Superiore della pubblica amministrazione locale*, SSPAL). The training outlines the mechanisms in place to guide negotiations in Brussels and the allocation of responsibilities at the different levels of government. Training programs also involve several specific issues of European relevance, including public procurement, state aids, and the use of European databases.

Ex ante *impact assessment*

Local governments have an important role to play in contributing to the quality of the impact analysis, and in improving the effectiveness of the negotiation. While *ex ante* impact assessments on EU draft legislation are not systematically performed, efforts are being made to build the capacities of local government to develop RIA and facilitate the co-operation among the different levels of government on the matter. To this end, the Department for European Policies started a pilot project in 2011 in co-operation with the SSPAL, the University of Naples "Partenophe" and the LUISS (Rome).

Further to the enhanced role of Parliament in the negotiating phase, as foreseen by the EU Lisbon Treaty, the Department of European Policies will be required to forward all draft EU acts and all preparatory documents to both chambers of Parliament. These acts will have to be accompanied by an assessment of the impact of regulation at the local level. The 2007 agreement on simplifying and improving the quality of regulation signed by the State and the autonomous authorities[8] provides a viable platform for further improvement (see Chapter 5 above).

A particularly useful tool helping close the divide between levels of governments is *e-urop@,*[9] a database accessible to all institutional actors involved in the transposition and implementation of EU law. In order to provide increasingly qualified information and to enhance involvement in the development of European laws, this instrument brings together all legislation in draft of the European Commission and the Council of European Ministers (regulations, directives, decisions and recommendations), the related amendments, as well as the impact assessment of the final version of the act. The Office of the Secretariat of the CIACE selects the relevant documents to be circulated to the parliament and asks the competent administrations to provide a more detailed analysis of the legislative acts to facilitate the parliament in taking a decision on completion of the verification of the principle of subsidiarity.

Transposing EU regulations

Institutional framework and processes

The Department for European Policies is responsible for co-ordinating the "descending" (transposition) phase. It does so notably through the establishment of so-called co-ordination groups (*tavoli di recepimento*), which are chaired by the Legislative Office of the Department and involve representatives of all the administrations involved in the specific transposition process. The Department ensures that the transposition is timely, consistent with the underlying policy objectives, appropriate to the smooth functioning of the EU Single Market.

To further underpin Italy's efforts in the descending phase, a dedicated unit (*Struttura di missione per le procedure di infrazione*) was created within the Department for European Policies in July 2006 with the specific task of preventing new infringements and better co-ordinating mechanisms aimed at settling existing ones. The *Struttura* seeks to liaise with the European Commission at the earliest stage possible to ensure the full and timely application of EC law. Internally, the unit has contributed to better organising common responses to information requests, letter of formal notice and reasoned opinions. So-called "package meetings" are another important instrument to jointly examine infringement proceedings or problematic cases in a given sector.

Legal provisions and the role of Parliament

The implementation procedure of EC legislation unfolds through the annual European Community Law (*Legge comunitaria*). This "omnibus law" provides for three main tools for implementing EU obligations: direct enactment within the Community Law itself; delegated powers to the government to legislate in compliance with general and specific guiding principles and criteria; the authorisation to adopt government regulations (i.e. administrative measures) regarding matters for which the State has exclusive competence and which are already governed by law, provided that they are not matters reserved exclusively to Acts of Parliament. Community laws encompass therefore in a single text all the principles and criteria for delegating powers to the government; the modalities for direct and delegated implementation, including proposals for the related legislative decrees and so-called "falling norms";[10] and the lists of directives that need to be transposed and implemented by administrations for that year.

Steps have been taken since the adoption of the Community Law in 2007 to speed up the transposition process. In particular, the deadline for transposing individual directives has been adjusted with the deadline to exercise the legislative delegation. The reform of the annual Community Law also addresses the need to further simplify and speed up the transposition of directives. Under the provisions of the mentioned reform of Law 11/2005, the deadline for exercising the legislative delegation has been brought forward of two months with respect to the deadline of transposition of the single directives. Moreover, the reform "splits" the previous Community Law in two separate annual laws:

- the law of the European delegation, to be presented to Parliament by end of February each year, deals exclusively with legislative delegations and authorisations implemented by way of regulation; and
- the European law, which may be presented to Parliament separately from the first, lays down provisions for direct implementation, i.e. amendment or repeal provisions either in conflict with European obligations or subject to infringement proceedings, direct implementation of European Union acts, implementation of international treaties; as well as provisions enacted in the exercise of state replacement power.

The decision to opt for two distinct annual laws rather than a single "omnibus law" was dictated by the need to swiftly grant the government the legislative powers necessary for the transposition of EU legislation. Recent experience has shown that the long time required by parliament to approve the annual Community law has caused substantial delays, resulting in initiation of a number of infringement proceedings by the European Commission. A "leaner" bill only providing for the powers to delegate the government should by contrast allow for a quicker parliamentary stage, thereby yielding to faster implementation practices.

In case of emergency, or if expressly requested by rulings of the EU judicial organs, since 2005 EC obligations can be implemented through lower level regulations to guarantee the necessary promptness in complying with obligations that are so urgent that they cannot wait for the annual Community Law.

The role of the regions

The Regions have the power to directly implement directives on matters within their area of competence, whilst respecting the basic principles specified by the Community Law in cases of concurrent competence. For the transposition of EC directives, Law 86/1989 (the so-called *Legge La Pergola*) introduced some guidance on the way regions could participate in the regulatory process of the EU and the implementation of the directives regarding their exclusive and concurrent legal power. The matter is now regulated by Law 11/2005 and the principal tool in this respect is regional law, which serves to transpose the directives.[11]

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

government on matters of regional legislative competence contains a "fall back clause" (*clausola di cedevolezza*), according to which the act is in force until equivalent measures are adopted by the region. The regions, the autonomous provinces and the local authorities are jointly responsible for the application of the Community *acquis*.[12]

After the constitutional reform of 2001, Art.120 of the Constitution states that the State has "substituting powers" (*poteri sostitutivi*), should the Regions and the Local Authorities fail to comply with EC law or rulings of the European Court of Justice. Since the 2007 Budgetary Law, the State may also ask the same entities, including the municipalities, for damage compensations equivalent to the financial burdens and the fines accorded by the Court in cases of proven infringement.

Box 7.1. The transposition of the Services Directive in Italy

As in all other EU Member States, the transposition of the Services Directive constitutes an important opportunity to organise and accelerate administrative simplification also at sub-national levels of government. The directive is implemented in Italy by means of Legislative Decree 59/2010, which entered into force in May 2010.

Because it involves competences shared notably between the State and the regions, the implementation requires an intense co-ordination activity. The Department for European Policies is in charge of such co-ordination. It oversees activities and reviews and evaluates all authorisation schemes concerning access to a service activity or its exercise, with the aim of rationalising procedures and making them more efficient.

A discussion group with the authorities concerned contributed to the preparation of the implementing decree. All social partners and stakeholders were consulted and invited to submit their observations on the draft of the Legislative Decree. The inputs were published on the website of the Department for European Policies, and a mail box (*direttivaservizi@politichecomunitarie.it*) was also set up to allow anyone interested to send observations related to the agenda of the meetings. The European Commission is reported to have appreciated such open approach, fostering dialogue and co-operation in facilitating implementation.

The Department for European Policies is constantly engaged, in co-operation with all institutions involved and with the support of the stakeholders, to assist with the correct and timely implementation of the Directive, and with the use of the administrative simplification instruments introduced. An extensive information campaign and training has been organised on the matter. A dedicated portal has also been created (*www.direttivaservizi.eu*) with an e-learning platform and an interactive forum open to all stakeholders, with the aim of offering a useful tool to improve communication and sharing of information and to facilitate the removal of problems and of barriers to the full opening of the services market.

Most regions have already adopted transposition measures in the areas which fall within their competence. These notably include tourism and commerce. Where implementing regional laws or regulations have not been adopted, yet, Legislative Decree 59/2010 applies until relevant regional acts are issued.

Other specific agreements have been signed within the unified Conference on the ways to abide by the Community *acquis*. A first improves the dialogue between administrations at various levels of government in order to prevent sentences of the European Court of Justice and in any event to identify the roles and responsibilities in instances of infringement procedures. A second calls for harmonising and simplifying the communication to the European Commission of information related to infringements of Community law.

A further example of efforts by the Italian government to facilitate the interaction between the regions and the EU is the creation of the Project on Opportunities for regions in Europe (*Progetto Opportunità delle regioni in Europa,* PORE).[13] Established by the Presidency of the Council jointly with the Department for regional Affairs, PORE seeks to exploit the opportunities offered by the EU regional policy and stimulate transborder and transnational collaboration. The initiative "PORE-VALORE LOCALE" works towards enhancing the participation of the Italian regions and local authorities in European programmes and funds, assisting in the identification and preparation of calls for proposals as well as the implementation of EU-funded projects. The initiative also contributes to capacity-building at the local level. PORE organises seminars on "Local Governance and the European Union", in collaboration with ANCI, UPI, the *Scuola di Specializzazione in Studi dell'Amministrazione Pubblica* of Bologna and the *Università di Roma III.*

Ex ante impact assessment

Like any piece of legislation, legislation transposing EU directives is subject to approval by the Council of Ministers. Accordingly, the draft legislative proposal must in principle be accompanied by a RIA and be followed up with periodic reviews (VIR) after their entry into force. The procedures followed for the transposing acts are the same as those initiated domestically (see Chapter 5).

Monitoring transposition

The transposition deficit in Italy has been significantly reduced thanks to the activity of the *Struttura*. According to the survey in September 2010, Italy registered the best result ever achieved since 1997, when the Internal Market Scoreboard was first published. In addition, Italy led the largest European countries between 2009 and 2010 in reducing the delay in transposing internal market directives. Italy has an average of 4.7 months compared to the European average of 7.1 months.

Box 7.2. Italy's performance in the transposition of EU Directives

While Italy still shows a combination of a high transposition deficit and a high percentage of incorrectly transposed directives, its record has improved significantly since the mid-2000s to reach a deficit of between 1.2% and 1.6% of Market Directives – slightly above the EU average. Between November 2010 and September 2011, Italy has been the only EU country together with Estonia to reduce the overall number of outstanding directives. In September 2011, open infringements procedures amounted to 129 (the lowest number in the past ten years), of which 39 for failure to transpose directives and 90 for breach of EU law.

	Nov-97	May-98	Nov-98	May-99	Nov-99	May-00	Nov-00	May-01	Nov-01	May-02	Nov-02	May-03
Transposition deficit as a % of Internal Market Directives	7.6	6.4	5.7	5.5	3.9	3.4	3.2	2.6	1.7	1.7	2.6	3.9
	Jul-04	Jul-05	Dec-05	Jul-06	Nov-06	Jul-07	Nov-07	Jul-08	July-09	Mar-10	Sept-10	May-11
	3.1	4.1	3.1	3.8	2.2	2.7	1.3	1.2	1.7	1.4	1.1	1.6

Source: European Commission (2011), including its *Internal Market Scoreboard No. 23* (September 2011), SEC(2011) 1128 of 29 September 2011.

This progress has been achieved notably thanks to the mentioned alignment of the deadline of the legislative delegation to that of the transposition and the continuous monitoring of the approval process of implementation measures. The mentioned reform of Law 11/2005 is expected to have a positive immediate feedback in terms of further simplifying the procedures and reducing the transposition deficit of EU directives and the number of infringements procedures.

Monitoring the transposition of European legislation is carried out by the dedicated offices of the Department for European Policies through appropriate "control" and co-ordination of the implementation process, in accordance with the provisions of the delegated power to the Government provided for by the annual Community Law. The Department also monitors the implementation of the directives also in the case this unfolds through administrative procedure.

Reducing and avoiding "gold plating" (i.e. the practice of inserting additional rules or specifications that go beyond the requirements defined in the EU legislation and on which simplification measures taken at European level cannot be applied) is a primary task of the Department for European Policies. To this end, the Department collaborates with the other ministries participating in the work of its Inter-institutional Co-ordination Groups for the transposition of EU directives. The Department is also engaged in discussions with other governments with a view to intensify the co-ordination with the European institutions and share good practices. The "Stability" Law (Law 183/2011, Art. 15) introduces a specific provision against gold-plating by amending Art. 14 of Law 246/2006.

When the directive foresees it, the transposition act can be integrated by a correlation table showing for each item of the directive the corresponding provisions of the implementing regulation. The correlation tables are not published in the Official Gazette together with domestic regulatory act, but shall be notified to the European Commission in order to facilitate its verification activities on the correct and full transposition of the directive.

Box 7.3. Public monitoring of Italy's infringements: EUR-Infra

EUR-Infra is a dynamic electronic national archive introduced by the Department for European Policies in January 2008 (*http://eurinfra.politichecomunitarie.it/ElencoAreaLibera.aspx*). It seeks to improve the way the government handles infringement proceedings in relation to the transposition and implementation of EU legislation. EUR-Infra is constantly and timely kept up-to-date, which allows access to complete, reliable and official data on Italy's infringement status. EUR-Infra serves not only as a database but also as a tool to organise and manage information. It contains all the documentary material available for each infringement procedure and for the related activities (such as the correspondence among the administrations, information on meetings and co-ordination activities).

For the first time, this tool allows to search the archive according to specific keywords and criteria, identifying the kind of infringements, the policy areas, the stage where the procedure stands, the administration responsible, providing useful statistical as well as operational information. EUR-infra has proved to be a valid working tool to foster co-ordination among administrative actors that are various in nature and scattered on the territory – ranging from the central administrations and the Ministry for Foreign Affairs to the Italian Delegation to the EU in Brussels. EUR-infra works also as an interface between the administration and the citizens and economic operators on infringement cases. Its introduction has remarkably increased the transparency of and accessibility to information, while keeping the necessary confidentiality on the open proceedings. This system was set up and run at low cost, thanks also to the support of the *Struttura di missione per le procedure di infrazione*.

The Department for European Policies has developed an active interface with other administrations, business and citizens to enhance transparency and access to information. Measures include upgrading the official website (*www.politicheuropee.it*) as well as launching "EUR-Infra", a monitoring system for infringement procedures (see Box 7.3).

Interface with Better Regulation policies at EU level

Italy has traditionally promoted the debate on regulatory policy in international fora. Since 2006, at least one Italian expert has been attending the quarterly meetings organised by the European Commission reviewing progress with the measurement of administrative burdens at the EU level. A Single Point of Contact (Spoc) was appointed in 2006. The expert is part of the teams at PMO office level dealing with the actual implementation of the simplification programmes. This has enabled fruitful co-ordination between the European and the national measurement activity. Since 2007, the same expert is representing Italy in the Standard Cost Model meetings.

Notes

1. Not to be confused with the generic use of the term "regulation" for this project.
2. See A.S. 2646 "Norme generali sulla partecipazione dell'Italia alla formazione e all'attuazione della normativa e delle politiche dell'Unione europea".
3. A.S.2254 "Nuove norme in materia di partecipazione dell'Italia al processo normativo dell'Unione europea e procedure di esecuzione degli obblighi comunitari – so-called "Marinaro bill".
4. The Senate produced a dossier on both proposals in May 2011 (see *www.senato.it/documenti/repository/dossier/studi/2011/Doss_292.pdf*). The remaining part of this review considers the system currently in force in Italy for the negotiation and transposition of EU regulations.
5. See for instance: G. Di Danieli (2005), "I rapporti tra regioni e Unione europea. Il nuovo potere estero delle regioni", in Osservatorio Legislativo Regionale (a cura di), Nuovi Statuti Regionali: Lo Stato dell'Arte, at: *www.consiglio.regione.toscana.it/leggi-e-banche-dati/Oli/Pubblicazioni/NUOVI%20STATUTI%20REGIONALI/Indice.htm*.
6. Article 5 of Law 131/2003.
7. In its opinion on Better Law Making 2005-06, CONST-IV-010. CDR 397-2006 fin.
8. See the *Accordo Stato-Regioni-Autonomie locali in materia di semplificazione e analisi di impatto della regolazione* of 29 March 2007, signed by the State, the Regions and Autonomous Provinces of Trento and Bolzano, provinces, municipalities and mountain communities.
9. See *www.politicheuropee.it/banche-dati/?c=e-urop*.
10. These are State norms which cease to be effective as soon as regional or local legislative acts are enacted on the specific matter (*norme cedevoli*).

11. For a more detailed analysis of the matter, see the chapter on ensuring regulatory quality at the national level above.

12. Art. 120 of the Constitution, as reformed in 2001, confers thereby "substituting powers" to the state.

13. See *www.PORE.it*.

Chapter 8

The interface between sub-national 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 sub-national 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

With the 2001 constitutional reform, Italy has experienced devolution of legislative and regulatory powers to the regions. This raises a number of difficulties for better regulation, which the central government has yet to address fully. In particular, the reforms have resulted in significant competence overlap (concurrent competences) between the regions and the centre. In this case, as in others, the tendency of regions to equate autonomy with regulatory production and differentiation constitutes a major strain on efforts to streamline administrative procedures.

Addressing the complexities of decentralisation will require a more effective use of co-ordination mechanisms. A structure is in place around three levels of "conferences" or "tables". The effectiveness of the conference of the regions, a centrepiece of the system, may need to be strengthened. More generally, the system does not seem to sufficiently and systematically integrate multi-level dynamics, and the recently established Joint Committee for the co-ordination of methods of burden measurement and reduction by its nature can only partly compensate for the limited implementation of the General Agreement of 2007 on regulatory quality and simplification.

To fully exploit the potential of regulatory policy, greater awareness and capacity building on the Better Regulation agenda are needed at sub-national level. While a few regions are advancing on individual reform fronts – for instance by experimenting with RIA and addressing administrative burden reduction programmes, sub-national authorities in general and municipalities in particular need to be involved systematically and comprehensively, and take pro-active, responsible action. Capacity to do so and heterogeneity of situations nonetheless appear to be a major issue which needs to be tackled.

Recommendations:

1. Pursue a longer-term strategy towards closer co-ordination in regulatory policy matters across different levels of government.

2. Support the implementation of the programme for measuring and reducing burdens at regional and local level, including through a strengthening of capacity for regulatory policy in sub-national administrations. The project for operational assistance to the regions (POAT), run by DAGL with some Regions on RIA and *ex post* evaluation, could serve as a basis.

3. Enhance co-ordination and information sharing as fundamental elements informing the *ex ante* assessments. Systems like the *e-urop@* database could be piloted in that respect.

Background

Structure, responsibilities and funding of sub-national governments

Structure of sub-national governments

Italy is divided in 20 regions (five of which have a special autonomous status), 106 provinces and 8101 communes. Each of these entities decides on the form, organisation and functioning of their institutional and administrative systems by means of the regional statutes. These are adopted autonomously, apart from those of the five regions with special status (Friuli Venezia Giulia, Sardinia, Sicily, Trentino Alto Adige and Valle d'Aosta), which are adopted through a law of the Republic.

Responsibilities and powers of sub-national governments

The 2001 reform sought to integrate competences among levels of government rather than separating them strictly. Article 118 of the Constitution and Article 7 of Law 131/2003 basically overturned the hierarchic levels and attributed to the Republic a "bottom up" structure based on the subsidiarity principle.

The main reallocation of competences can be summarised as follows:

- National legislative powers are generally retained in matters that have a highly "transversal" nature, such as competition policy, environment and equalisation of financial resources.
- Concurrent competences have been allocated at the State level in areas where the existence of 20 different regional laws would be impractical. This is the case for instance of transport and navigation networks; energy, foreign trade and R&D.
- In other matters, competences have been attributed exclusively to the regions (*e.g.* local development in the industrial, commerce, handicraft and tourist sectors).
- The five regions with special status enjoy particularly extensive legislative powers.
- The State may exercise substitutive powers with respect to regions and local bodies, for example in cases of failure of compliance with EU directives.
- Administrative competences are allocated as a norm to the provinces and the municipalities.

The competence regime resulting from the reform requires a strong formal and informal co-operation[1] among all institutional actors concerned. While the transition phase generated considerable discussion and raised issues, case law by the Constitutional Court contributed to clarify the provisions of the Constitution. In addition, the so-called "*Legge La Loggia*"[2], adopted in 2003, defined general limits to the legal powers of the State and the regions as well as the concurrent legal powers between the State and the regions. The Law also confirmed the equivalence of explicit and inferred principles and transferred administrative powers to the regions and local authorities. It defined the legal power of the local authorities; outlined the status and legal power of the regions in relation to EU legislation and international law; clarified the new competences of the Court of Accounts (*Corte dei Conti*); and integrated the right to appeal to the Constitutional Court.

The regions and the autonomous provinces of Trento and Bolzano exercise legislative power in the subject areas which are not exclusively governed by State legislation, in accordance with the provisions of Article 117 of the Constitution and the obligations

deriving from EU law and international undertakings. Regional laws (adopted by the Regional Councils) and provincial laws (adopted by the Provincial Councils of Trento and Bolzano) have a limited scope in terms of subject matter and territory as specified in Articles 123 and 117 of the Constitution. For the regions with special autonomy, limits on legislative power are contained in their statutes adopted under constitutional law.

Municipalities, provinces and metropolitan cities adopt their own statutes. They have regulatory power with respect to the organisation and the fulfilment of the functions assigned to them. Apart from the matters of exclusive competence of the State and in the health sector, municipalities are responsible for delivering most services, including the co-ordination of retail and business activities; building and commercial permits; urban and road network planning; local public transport; local police; social services; etc. The municipalities can issue implementing bye-laws as part of their responsibility for granting most of the permits and licences, and for running public services.

Funding of sub-national governments

The constitutional reforms of 2001 implied an expansion of the transfer of administrative functions from the centre to the regions, resulting in a roughly equal sharing of total government expenditure between the central and regional levels (53% and 47%, respectively) (OECD, 2005, p. 77).

The Constitution structures the financing system of the sub-central governments as follows (Article 119):

- *Ordinary resources*. Municipalities, provinces, metropolitan cities and regions have the power to introduce taxes within their own boundaries. In addition, equalisation transfers, established by a central law, are allocated to regions according to their fiscal capacity. The use of the equalisation grants is not constrained by specific spending purposes.
- *Additional resources*. The state may allocate additional resources or carry out special actions to the benefit of certain municipalities, provinces, metropolitan cities and regions, in order to promote economic development, social cohesion and remove economic and social inequalities.
- *Borrowing to finance investment outlays*. Municipalities, provinces, metropolitan cities and regions have their own assets, established by central law. They may contract loans to finance investment expenditure, but not current expenditure. The law sets a limit to the level of local borrowing at 25%. No state guarantee can be provided on debt issued at the local level.

A law implementing the principles provided for in the Constitution was adopted in 2009 (Law 42/2009). The related decrees outlining the details of the new "fiscal federalism" were issued in the following areas: federal state property, needs standards, municipal taxes, regional taxes, Rome, harmonisation of the budgets of government departments, removal of regional imbalances, mechanisms of reward and punishment for responsible authorities.

The central government supports the regions through specific actions, technical assistance and focused training, with the aim to develop policies of high quality regulation at regional and local levels. These are addressed to all the regions, but in particular to the southern ones (*regioni del Mezzorgiorno*), through the funds of the Inter-ministerial Committee for Economic Planning (CIPE). This institution has co-ordination functions regarding the planning and national economic policy, in particular: *i)* defining the main lines of economic policy at national, EU and international level; *ii)* identifying the priority

areas for economic development in the country and co-ordinating with the regions, provinces and local authorities, assigning the financial resources from the State through institutional programmes of territorial development; and *iii)* defining the guiding lines for the public institutions that have regulatory functions of public services.

The government devotes a part of the European structural funds in favour of four Southern regions regrouped under the objective "convergence" (Calabria, Campania, Puglia and Sicily) in accordance with the national operative programme (PON). Some of those projects seek the implementation of better regulation principles and tools., including initiatives on administrative simplification, the measurement and reduction of administrative burdens, and public consultation (see below).

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

Better Regulation policies deployed at sub-national level

General context

Most of the regions have traditionally been equipped with comprehensive and formal procedures for drafting law proposals and have introduced some other tools and mechanisms for regulatory quality, such as measures for administrative simplification and RIA. In many aspects, regions have served as important laboratories for the design and implementation of regulatory tools, sometimes beyond the experience of the national government and before the 2001 constitutional reform.

As an illustration, since the 1980s, a number of regions have started developing methodologies to improve the production of laws. Tuscany, for instance, adopted in 1984 a directive making suggestions for the drafting of laws. The first feasibility analysis structure was developed at the Institute of Social and Administrative Sciences of Palermo (ISAS) in Sicily. Lombardy and Piedmont initiated activities for the computerisation of procedures and the linguistic articulation of regulations.

Prompted by the OLI (Inter-regional Legislative Observatory)[3] in 1989, the Conference of Presidents of regional councils launched a working group composed by the officers of the Senate, the Chamber, the Presidency of the Council and by experts in legislative studies in charge of the conception of a unified legislative technique manual. In December 1991, the Group presented the "manual Rescigno" comprising rules and suggestions for legislative drafting. Since then, the regions have developed through OLI their Better Regulation agenda and become more sensitive to issues of regulatory quality.

For instance, Tuscany was among the first regions to adopt simplification laws, in 1999.[4] In Lombardy, an Annual Programme for Simplification and De-legislation was adopted in 2001,[5] and the first regional simplification law dates back to 2002 (regional Law 15/2002). RIA practices were launched in Tuscany at the end of the 1990s, while the first region regulating on the matter was Basilicata (regional Law 19/2001) (Libertini, 2002).

This approach has allowed, after the constitutional reform of 2001, to include key regulatory policy principles in the new regional Statutes, in particular those in relation to quality, legislative transparency, *ex ante* and *ex post* analysis.[6] Regions – such as Sardinia and Veneto – which had not included better regulation principles in their statutes, have adopted normative acts regulating the matter.

Clear references to impact assessment (both *ex ante* and *ex post*) and to the clarity of drafting are common in most statutes.[7] Most statutes also foresee the creation of dedicated structures. In addition, the Tuscany regional charter includes the explicit rejection of legislative proposals that do not meet the regulatory quality standards laid down in the statute. On the other hand, the new statutes govern the establishment and functioning of the Council of local authorities, a body representing the various local entities with advisory functions (Article 123 of the Constitution).

In recent years, a more comprehensive strategy for enhancing regulatory policy at all levels has been progressively designed, not least further to inputs from the private sector,[8] in the framework of the National Integrated Programme for Growth and Employment (PICO) of 2005.[9] A few regions have explicitly included regulatory quality in the work programme for the VIII regional Legislature.

Institutional structures and capacities

In addition to the specific role played by the bodies mentioned above, in two regions (Abruzzo and Umbria), a Committee on Legislation (*Comitato della legislazione*) is statutorily foreseen and made responsible for controlling the quality of regulation. In Abruzzo, the committee should be composed equally by council members from the majority and the opposition, and serve as an advisory body. The committee reports on its activity annually to the Regional Council. In several regions, the control of regulatory quality in the process of legislative approval is delegated to Board committees (Tuscany, Marche). In Tuscany, the President of the Regional Council plays an important role. He is charged with declaring the admissibility of the proposed regional law in case of failure to comply with the provisions to protect the quality of legislation. In Lombardy, a Joint Committee for monitoring and evaluation was set up, composed of representatives of the majority and the opposition in the same proportion. It can propose inclusion of clauses in the texts of the law and carrying out evaluation missions to monitor the implementation of passed laws.

The central government supports the regions in the development of high-quality regulation through specific actions, technical assistance and training, with particular attention to the *Mezzogiorno* – notably through FORMEZ (*Centro di Formazione Studi*). A recent initiative in this respect is the agreement between the Department of Public Administration and DAGL on enhancing normative capacities in four Southern regions (*Assistenza tecnica alle Regioni dell'obiettivo convergenza per il rafforzamento delle capacità di normazione*, POAT DAGL). Since December 2009, the programme diffuses methodologies and know-how for high quality regulation – including initiatives to introduce ATN, RIA, and *ex post* evaluation (VIR) – in Calabria, Campania, Puglia and Sicilia.

Planning and programming

Many statutes include provisions on planning and programming as a strategic method to rationalise, streamline and better organise the public administration. Of particular relevance is the provision enshrined in the Tuscan statute to issue a general law on regulation (Article 445), adopted in 2008. A number of regional decrees have followed, regulating the decision-making and the drafting processes as well as the main instruments for the

measurement of regulatory impacts. Similar provisions are enshrined in the statutes (and related acts) of Lombardy, Emilia-Romagna, Piedmont, and Puglia. Liguria also approved Law 13 of 2011 entitled: "Rules on the quality of regulation and administrative simplification".

Legal assessment and drafting

Almost all regions perform preliminary legal analyses (*Analisi tecnco-normativa*, ATN) both for acts issued by the Giunta and the Regional Council. This wide use of ATN contrasts with the limited implementation of RIA, reflecting a general tendency by the Italian administrations to favour legal approaches. In Lombardy, a formal checklist is used by the legal services of the Giunta and the Council enforces ATN, while some regions (Marche, Molise, Tuscany and Aosta Valley) grant the power to amend the legislative proposal without consulting the responsible administration.

The Conference of the Presidents of the Legislative Assemblies of the regions and the autonomous provinces produced in December 2007 the third edition of the 1984 handbook in collaboration with OLI.[10] On an individual basis, Tuscany uses specifically elaborated indicators, which to date are the only attempt to measure and benchmark regulatory quality in Italy.[11] As specified above, Abruzzo, Emilia-Romagna and Lombardy, Tuscany, Piedmont, Umbria also present some forms of monitoring already in operation.

Public consultation and communication

The statute of Piedmont is the only one to explicitly articulate participation and consultation practices. In Emilia-Romagna, this is provided for in a regional law since 2010. Where not formalised, consultation practices are diffused and various in their forms and procedures. Most commonly, they consist of *ad hoc* closed negotiations and hearings (*concertazione*), often leading to a "memorandum of understanding". Interested parties are invited to express their positions at different stages of the decision making, often through informal meetings. Most of the regions involve stakeholders and third parties on a facultative basis, at the voluntary initiative of the administration in charge of the legislative dossier. Few of them only (Calabria, Campania, Marche and Veneto) abide by their own specific legal requirements – enshrined either in their statutes or in regional laws.[12]

Consultations are not systematically extended to the whole citizenship, and recourse to online practices remains limited. In Veneto, the initiative *Terzo Veneto* seeks to expand upon the notion of e-democracy, and foresees the access to online consultations.[13] Public hearings are mandatory if required by at least one-fourth of the members of the committee responsible for the legislative proposal or on request of the provinces, municipalities, and of the presidents of the main social and economic organisations.

The situation is more favourable in terms of communication, transparency being one key principle enshrined in some regional statutes. Particularly developed is the communication on the overall regional institutional setting and legal framework. All the Italian regions have official websites, which very often include the online publication of the official journal, and a dedicated Communications Office (*Ufficio per le Relazioni con il Pubblico*, URP).

A number of regions – Abruzzo, Emilia-Romagna, Lazio, Lombardy, Tuscany and Umbria – decided to make the online publication of their regional legislation obligatory. The statutes commit regions to enhance the online communication of their legislative activity to the citizens. Generally, the right of the citizens to be informed is recognised and extended to the entire administrative activity. In Tuscany, a 2007 law specifically calls on

the executive to promote the communication of information on legislative proposals as widely as possible.[14] In Piedmont, a database has offered access to regional norms for many years ("Progetto Arianna"). In Emilia-Romagna, regional legislative and administrative acts (in draft and in force) are published online.[15]

Box 8.1. Examples of public consultation in the regions

- The Veneto region has acquired a certain experience with consultation since the mid-1970s (regional Law 25/1974), with articles in the regional statute and in the rules of the Regional Council. The executive authority has also developed and consolidated consultation practices, notably by establishing consultative boards (*tavoli*).
- In Tuscany, the *Giunta* interacts with third parties in formalised institutions such as a *Tavolo generale* and an Inter-Institutional Consultation Board (*Tavolo di concertazione inter-istituzionale*) open to the presidents of the regional association of local authorities (ANCI Toscana, UNCEM and URPT). The Tuscan statute foresees consultation practices (Articles 19, 72 and 73), but on an optional basis. The executive offices have always consulted with local constituencies in the framework of their RIAs. More elaborated forms of consultations have been designed, such as "focus groups", and "notice and comment" practices supported by the Computer Assisted Web Interviewing (CAWI) method.
- In Lombardy, although not expressly foreseen by the law, consultation practices are relatively well structured and consolidated within a dedicated unit of the *Giunta*'s Presidency office. In 2000, moreover, permanent sectoral tables were established to consult economic operators while regional Law 1/2005 foresees the recourse by the region to external organisations to integrate the stakeholder's view in the framework of *ex post* evaluations.
- In Piedmont, consultations are normally carried out by the *Giunta*, and reaching out to stakeholders is promoted by the statute (Articles 2, 12, 72 and 86).

There is currently no overall obligation to publish the technical documents supporting the preparation of the legislative acts. Some regions have introduced a spokesperson (Calabria), implemented regional communication plans (Basilicata, Calabria and Tuscany), and open access to newsletters, journals and databases. In Veneto, a section of the website of the Regional Council seeks to familiarise citizens with the administrative jargon and illustrate the decision-making process.[16]

Ex ante *impact assessment of new regulations*

In a few regions, RIA has been made obligatory by law: Basilicata pioneered this approach in 2001, and Lombardy and Piedmont followed in 2005.[17] The region of Tuscany has a longer-standing practice with impact assessment, with experience dating back to 2001. Tuscany is most advanced in terms of *ex ante* evaluation practices which involve stakeholders and formal consultation processes.

The latest regulation of 2009 establishes RIA and consultation within the various phases of the regional decision-making process. The selection of the proposals subject to RIA takes place annually and follows a set of criteria for exclusion and inclusion.[18] A technical unit at the Presidency's Directorate General of the *Giunta* serves as the steering committee and contributes to parts of the analytical work. The findings are collected in a final technical report joined to the legislative proposal. RIA practices in Tuscany have been enhanced in 2009, when a new Handbook was issued. Emilia-Romagna Lombardy and Puglia have also introduced forms of RIA in their respective administrative settings.

Generally, however, RIA at the regional level is still at an early stage and most Italian regions are far from conducting RIA in a systematic way. This is also valid for conducting RIAs on acts transposing EU legislation. Procedure and institutional settings remain to be adjusted. The majority of the regions[19] use evaluation clauses in specific pieces of legislation. Besides regions, trial projects also exist at the municipal level but this remains sporadic. The Commune of Lucca (Tuscany) has for instance worked with the *Consorzio* MIPA towards introducing RIA practices.[20]

Legislative simplification

Regions are increasingly aware of the need to simplify the regulatory environment, especially further to the constitutional changes of 2001. The recourse to consolidated texts (*testi unici*) for the consolidation and simplification of sectoral legislation is almost generalised, although the procedures differ from one case to the other. Only the statues of Campania, Liguria and Puglia do not contemplate the use of *testi unici*. However, initiatives often remain sporadic and lack consistency. At the forefront of action, Tuscany has introduced annual simplification laws. Abruzzo and Lombardy[21] foresee regular interventions. Other regions, still, proceed to punctual initiatives. As an illustration, Sardinia launched a "guillotine" mechanism in 2009.

Administrative simplification and e-government

Administrative simplification and the re-engineering of administrative procedures have recently received a higher profile, with the extension of the scope of SCIA (*Segnalazione Certificata di Inizo Attività*) which replaced the previous institution DIA (D*ichiarazione di Inizio Impresa*) and the removing of various authorisations for a simple notification (where required supplemented by sworn qualified professionals) to the competent authorities. A number of Framework Programme Agreements on Information Society have been signed between the central administrations, the former CNIPA (now DigitPA) and individual regions. Lombardy has signed an agreement with the National Association of Communes (ANCI) to unify the procedures for business start-up declarations, resulting in a single declaration, instead of 1 465 previously (one for each of the municipalities of the region).[22] Overall, 15 authorisation procedures have been abolished or simplified. The resulting time reduction is estimated to represent a gain for businesses of about 1% of Lombardy's GDP, or about EUR 2 billion, in the food sector only (production, processing and distribution).

With regard to the measurement and reduction of administrative burdens, the Department of Public Administration signed memoranda of understanding with 15 regional Presidents, with the aim of establishing effective and co-ordinated procedures to achieve the reduction goals in line with the e-Gov Plan 2010-2012. Guidelines for burden measurements at the regional levels have been issued. Sicily is considering introducing a "cutting-burden" mechanism similar to the one launched for central administrations. Campania is also drafting enabling acts for measuring administrative burdens from regional legislation and Puglia already proceeded to screening relevant sectors (such as construction permits). In 2010, the region of Sicily adopted a simplification law that introduces an instrument similar to that used at the national level for burden measurement and reduction.

Ex post *evaluation of regulation*

Italian regions have acquired some experience with "closing the loop" of the policy cycle through *ex post* evaluations of regulations, although practice is not evenly diffused and initiatives are not yet systematic or consistent. Apart from a few cases where the requirement is enshrined in either a regional law or the statute (such as in Emilia-Romagna,

Lombardy, Tuscany and in Campania), there is generally no legal obligation for carrying out *ex post* evaluation, and so-called "sunset clauses" are not regularly used. Simplification and recasting exercises in the framework of *ad hoc* codifications through the *testi unici* offer opportunities to examine the relevance and effectiveness of existing legislations.

One of the most recent developments is the CAPIRe project, established by the Conference of the Presidents of the Legislative Assemblies of the regions and the autonomous provinces in 2002.[23] CAPIRe seeks to disseminate a policy evaluation culture, building on the capacities of regional administration in carrying out evaluations and promoting the use of evaluation clauses in legislative texts. Reports on regional experiences posted on the CAPIRe website allows for information and best practice sharing. Of particular interest are the so-called "evaluation missions", which are launched on the initiative of a committee or by a quorum of regional counsellors to monitor and control legislation. The adoption of such an instrument is helpful in the absence of formal evaluation clauses in the original legislative text, and it makes the legislators themselves promote and commission such activities outside the legislative process. For those regions with longer participation in the CAPIRe project, *ex post* evaluation has become a much more established practice than at the national level. Lombardy has a dedicated office to assist the Regional Council since 2004 on this matter.[24] A clear benefit from research and activities prompted in the framework of CAPIRe is the enhancement of the accountability principle and the institutionalisation of the oversight control function in a number of regions (e.g. Lombardy, Tuscany, Emilia-Romagna and Umbria).

Co-ordination mechanisms

Vertical co-ordination

The Conference system

Held in the Prime minister's Office and managed by the Department for Regional Affairs, the main co-ordination mechanism is the so-called "Conference" system. It consists of three distinct bodies ensuring the vertical management of multi-level practices, including regulatory reform:

- *The Conference of State-regions*. Instituted by Law 400/1988 and enhanced ten years later (Law 59/1997 and Legislative Decree 281/1997), it constitutes the "privileged platform" for multi-level political negotiation and collaboration in Italy. It is composed of the Prime minister (or the Minister of Regional Affairs) as its chairman; the Presidents of the regions; and other ministers when matters related to areas of their competence are discussed. The central government consults the Conference on any legislative initiative related to areas of regional interest. At least twice a year, the Conference State-regions meets in a so-called "Community session" to address European Union matters that also affect regions and provinces. The Conference can play an advisory, normative and programmatic role and serve as a platform facilitating information sharing.[25]
- *The Conference of State-Municipalities and other Local Authorities*. Active since 1996, its functions include: the co-ordination of the relations between state and local authorities; and the study, information and discussion of local authorities' issues. This conference consists of the Prime minister, as President of the Conference, the Minister of Interior, the Minister of regional Affairs, the Minister of the Treasury, the Minister of Finance, the Minister of Public Works, the Minister of Health, the President of the Association of Italian Municipalities (ANCI), the

President of the Association of the Italian provinces (UPI) and the President of the Association of Italian Mountain Communities (UNCEM), 14 mayors and 6 presidents of provinces.[26]

- *The Unified Conference of State-Regions-Municipalities and Local Authorities*. Since 1997 (Decree 281/1997), this conference is the institutional place for relations between central government, regions and local authorities. It is to be consulted on any act in fields of common competence, notably on the financial law and on the decrees concerning the allocation of personnel and financial resources to regions and local authorities. The Unified Conference is charged with implementing the 2002 Inter-institutional Agreement on the implementation of the reform of Title V of the Constitution. It includes all the members of the two other Conferences.

Co-ordination over regulatory simplification and quality

The law requires all Italian authorities to sign agreements and memoranda of understanding to improve the quality of regulation.[27] The regional and local executive offices signed an Agreement on normative simplification and quality with the national government in March 2007.[28] The Agreement, which is rather political and not legally-binding, is an encompassing document that:

- sets common principles for the improvement of the quality and the transparency of the normative system, in particular, by enhancing communication on legislative issues among levels of government and better access to regulation by the citizens;
- provides for improving evaluation practices, both *ex ante* (through ATN, RIA and feasibility studies) and *ex post* (VIR);
- commits the parties to adequate consultation mechanisms with social partners, trade associations and consumers for those laws or regulations of greater impact on the activity of citizens and enterprises;
- extends to the regions the target of a 25% reduction in administrative burden on business by 2012 set at the central level, calling upon regions to consider harmonised procedures and legislation across the national territory; and
- calls for the creation of specific databases led by the national Parliament and the Regional Councils as well as the standardisation of the regional and national guidelines and handbooks for legal drafting, with a view to guarantee a better knowledge of the normative actions.

The State-Region co-operation is normally regulated through so-called "Institutional Agreements" (*Intese istituzionali di programma*), within which the central administration and each region negotiate major public investments on a multi-year basis. This instrument allows the regions to direct national resources for public investment towards their priority projects. Institutional Agreements are carried out through several regional Framework Programme Agreements, which lay down the foreseen initiatives and related financial resources; allocate role and responsibilities; define mechanisms for monitoring; and establish procedures for dispute settlement.

Co-ordination over administrative burdens

Further to the Simplification Law of 2005 (Law 246/2005), the State and the regions have the possibility to sign agreements on issues related to business activity with a view to co-ordinating the application of relevant normative competences and identify specific forms

of simplification of administrative requirement across the national territory. Any agreement signed in this context needs to encompass all "better regulation" tools and techniques in order to simplify the administrative environment for businesses.[29] This makes administrative burden reduction a central policy objective around which a number of regulatory reform initiatives pivot across various levels of government.

To better manage simplification activities within a very heterogeneous regional framework, a Joint Committee was established in 2011 within the Unified Conference. It is tasked with the co-ordination of burden measurement and reduction methods. The joint Committee will promote peer learning on best practices of administrative simplification among the regions and promote common methodologies and shared programs of burden measurement and reduction. It is expected that the first sector to undertake joint methodologies and simplification strategies in a multilevel approach will be the construction industry.

Co-ordination in the decision-making process

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

Co-ordination among legislative assemblies

A Protocol (*Protocollo di Intesa fra il Senato della Repubblica, la Camera dei Deputati e la Conferenza dei Presidenti dei Consigli regionali*) was signed in June 2008 to promote further exchange of expertise and experiences among legislative bodies. The Protocol includes provisions on the development of better regulation tools and training between the legislative assemblies at the national and local levels, as well as on the publication of related studies. A specific committee was established consisting of three Senators and three Deputies, the President of the Parliamentary Committee for regional Affairs and three Presidents of the regions, appointed by the Conference of the Presidents of the regions.[30]

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

Horizontal co-ordination

Italy has a longstanding tradition of promoting horizontal co-operation among regions, notably in the forms of the Inter-regional Legislative Observatory (*Osservatorio Legislativo Interregionale*, OLI).[31] Created in 1979 as a tool for exchange and training among all the legislative offices of regional Councils (*Consigli*) and the regional executive bodies (*Giunte*), OLI organises periodical meetings on issues of interest for regions, such as recently approved laws, particularly challenging policy objectives, the sentences of the

Constitutional Court, the acts of the EU that are relevant to the regions, etc. Members of the national assembly, the Senate, the central government, universities and research institute are invited to participate in the debates. OLI also publishes specific thematic studies and handbooks. In 2002, the OLI published a Manual on Legislative Techniques, which contains rules and suggestions for the drafting of legal instruments. Many Italian regions use it as a point of reference to harmonise practices in legal drafting. The OLI has a permanent secretariat in the region of Tuscany.

A further platform promoting permanent co-ordination is the Conference of Presidents of the regional Assemblies (*Conferenza dei Presidenti delle Assemblee regionali e delle province Autonome*),[32] which in 1991 launched an information system that helps the legislative activity, sharing standards for communication and experiences among regions and the centre. One of the results was the creation of a shared database of regional laws in 1996, which paved the way to the portal *Normeinrete*[33] in 2003.

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

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

Notes

1. See the ruling 31/2006 in which the Constitutional Court states that the so-called principle of loyal collaboration (*principio di leale collaborazione*) must underpin any type of relationship between the various institutional entities.
2. See Law 131/2003 on *Disposizioni per l'Adeguamento dell'Ordinamento della Repubblica alla Legge Costituzionale 18 ottobre 2001*, No. 3.
3. *www.consiglio.regione.toscana.it/leggi-e-banche-dati/oli/default.asp*
4. See Regional Law 12/1999; Regional Law 19/2000; and Regional Law 11/2002.
5. See Programme Annuale di Semplificazione e Delegificazione della normative regionale (P.A.S.), adopted through the D.C.R. VII/268 of 10 July 2001.
6. See l.r. Calabria 25/2004; l.r. Emilia-Romagna 13/2005; l. statutaria Lazio 1/2004; l. statutaria Liguria 1/2005; l. statutaria Marche 1/2005; l.r. statutaria Piemonte 1/2005; l.r. Puglia 7/2004; Statuto Toscana of 2005; l.r. Umbria 21/2005; l.r. Abruzzo 28/2006, and Delibera 8/L/2004 (first reading) for the region Campania.
7. In Piedmont, nonetheless, an article explicitly entrusts the Consiglio with the responsibility for ensuring regulatory quality and checking the effectiveness of the legislation adopted.
8. Confindustrie regionali del nord-ovest d'Italia (Liguria, Piemonte, Valle d'Aosta), Guidelines per la Qualità della Regolamentazione, July 2004, at *www.semplificazione.it/Documentazione/Guidelines.pdf.* For an overview of the experiences of the regions in the field of better regulation during the VII regional legislature (2000-05), see Osservatorio sulla Legislazione della Camera dei Deputati (2005), "Tendenze e problemi della legislazine regionale", in Rapporto 2004-05 sullo stato della legislazione, XIV Legislative Session, 11 July, p. 101ff.
9. See Contributo delle Regioni Italiane alla Definizione del Programma Innovazione, Crescita e Occupazione (PICO) di Rilancio della Strategia di Lisbona, adopted by the Conferenza delle Regioni e delle Provincie Autonome on 22 September 2005, at *www.regioni.it/mhonarc/details_confpres.aspx?id=85131.*
10. Regole e Suggerimenti per la Redazione dei Testi Normativi. Manuale per le Regioni, December 2007.
11. *www.consiglio.regione.toscana.it/leggi-e-banche-dati/indici-di-qualita/default.asp.*
12. For Calabria, see Article 4 of the new statute and Regional Laws 5/2001; 26/2001; 19/2002; 11/2003; and 23/2003. For Campania, see Article 55 of the internal regulation of the Regional Council. In the Marche region, a number of specific laws require consultation, such as Regional Law 46/1992. In Veneto, the Giunta and the Council must consult in accordance with Articles 22, 35 and 36 of the statute, Article 21 of the Council's Regulation and Article 3 of Regional Law 25/1974.
13. *www.consultazioni.terzoveneto.it.*
14. Article 19 of the Regional Law 69/2007 on Norme sulla promozione della partecipazione alla elaborazione delle politiche regionali e locali.

15. *http://demetra.regione.emilia-romagna.it.*

16. *www.terzoveneto.it.*

17. See l.r. Basilicata 19/2001, and l.r. Lombardy 1/2005, and l.r. Piedmont 13/2005, respectively. In Lombardy, the trial phase was carried out in 2006 on two cases: intellectual property rights and disabled persons.

18. See Regional Law 55/2008, the Giunta's regulation 1/2009, and the d.p.g.r. 172/2009 in particular.

19. Exceptions here are the regions Lazio, Sicily, Aosta Valley and probably Liguria.

20. *www.consorziomipa.it/qualita_1_scheda_lucca.html.*

21. For Abruzzo, see Regional Law 26/2010; for Lombardy, see Art.40 of the regional statute.

22. Further to the regional "simplification package 2007" (further to regional laws 1/2007 and 8/2007).

23. *www.capire.org.*

24. *www.consiglio.regione.lombardia.it/web/crl/Servizi/Analisi.*

25. *www.statoregioni.it.*

26. *www.palazzochigi.it/Presidenza/CSCA/index.html.*

27. See the new Article 20-ter of Law 59/1997 as modified by the Simplification Law 246/2005.

28. Accordo fra lo Stato, le Regioni e le Province Autonome di Trento e Bolzano, le Province, i Comuni e le Comunità Montane in Materia di Semplificazione e Miglioramento della Qualità della Regolamentazione.

29. Such tools and techniques are RIA, *ex post* evaluation, the "guillotine" procedure, consultation, administrative simplification, self-regulation, de-legislation and identification of best practices. On this point see Carbone *et al.*, 2007, p. 209.

30. *www.consiglio.regione.toscana.it/leggi-e-banche-dati/Oli/Corso-qualita-normaz-unifi/bibliografia/docum-n-95-2007bibliogr-qual-governo.pdf.*

31. *www.consiglio.regione.toscana.it/leggi-e-banche-dati/Oli/default.asp.*

32. *www.parlamentiregionali.it.*

33. *www.normeinrete.it.*

Bibliography

Cavallo, L. (2010), "L'AIR nell'Autorità Garante della concorrenza e del mercato", in Ossevatorio AIR, *www.osservatorioair.it/?page_id=441*, p.10ff.

Cocconi, M. (2011), "La motivazione degli atti regolatori generali delle autorità indipendenti e la qualità della regolazione", in Osservatorio AIR, April.

Corte Suprema di Cassazione (2008), Relazione sull'Amministrazione della giustizia nell'anno 2007, 25 January, pp. 11-18.

European Commission (2005), "Better Regulation for Growth and Jobs in the European Union", COM (2005) 97 final of 18 March; European Commission (2010), *Smart Regulation in the European Union*, COM(2010) 543 final of 8 October 2010.

Marchesi D. (2003), *Litiganti, avvocati, magistrati,* Il Mulino, Bologna.

Marchesi D. (2007), *The Rule Incentives that Rule Civil Justice*, ISAE, Working Paper 85, October.

Mattarella, G.B. (2010), "Analisi di impatto della regolazione e motivazione del provvedimento amministrativo", in Osservatorio AIR, September.

OECD (2011), *OECD Economic Surveys: Italy 2011*, OECD Publishing, doi: 10.1787/eco_surveys-ita-2011-en.

OECD (2009a), *OECD Reviews of Regulatory Reform: Italy 2009: Better Regulation to Strengthen Market Dynamics*, OECD Publishing, doi: 10.1787/9789264067264-en.

OECD (2009b), *OECD Economic Survey of Italy: 2009*, OECD Publishing, doi: 10.1787/eco_surveys-ita-2009-en.

OECD (2009c), *OECD Employment Outlook 2009: Tackling the Jobs Crisis*, OECD Publishing, doi: 10.1787/empl_outlook-2009-en.

OECD (2009d), *OECD Government at a Glance 2009*, OECD Publishing, doi: 10.1787/9789264075061-en.

OECD (2007), *OECD Reviews of Regulatory Reform: Italy 2007: Ensuring Regulatory Quality across Levels of Government*, OECD Publishing. doi: 10.1787/9789264037984-en.

OECD (2005), *OECD Economic Surveys: Italy: 2005*, OECD Publishing. doi: 10.1787/eco_surveys-ita-2005-en.

Trento S. (2007), "Inefficienza della giustizia: un nodo cruciale per la produttività", in *Una democrazia funzionante per una politica economica riformatrice*, Confindustria Centro Studi, Quaderni di Ricerca No. 4, September.

Annex A

State and regional legislative power in Italy

The Italian Constitution, in its Article 117, establishes the way different matters are subject to State and/or Regional Legislative power. The following list provides a picture of the division of legislative power in the Italian context.

Exclusive legislative power of the State	Concurrent legislative power between the State and the regions
Foreign policy and international relations of the State; relations of the State with the European Union; right of asylum and legal status of the citizens of states not belonging to the European Union	International and European Union relations of the regions
Immigration	Foreign trade
Relations between the republic and religious denominations	Protection and safety of labour
Defense and armed forces; State security; weapons, ammunitions and explosives	Education, without infringement of the autonomy of schools and other institutions, and with exception of vocational training
Money, protection of savings, financial markets; protection of competition; currency system; state taxation system and accounting; equalisation of regional financial resources	Professions
State organs and their electoral laws; state referenda; election of the European Parliament	Scientific and technological research and support for innovation in the productive sectors
Organisation and administration of the State and of national public bodies	Health protection
Law, order and security, aside from the local administrative police	Food
Citizenship, registry of personal status and registry of residence	Sports regulations
Jurisdiction and procedural laws; civil and criminal laws; administrative tribunals	Disaster relief service
Determination of the basic standards of welfare related to those civil and social rights that must be guaranteed in the entire national territory	Land-use regulation and planning
General rules on education	Harbours and civil airports
Social security	Major transportation and navigation networks
Electoral legislation, local government and fundamental functions of municipalities, provinces and metropolitan cities	Regulation of media and communication

Exclusive legislative power of the State	Concurrent legislative power between the State and the regions
Customs, protection of national boundaries and international prophylactic measures	Production, transportation and national distribution of energy
Weights, units of measurement and time standards; co-ordination of the information, statistical and information-technology aspects of the data of the state, regional and local administrations; intellectual property	Complementary and integrative pension systems
Protection of the environment, of the ecosystem and of the cultural heritage	Harmonisation of budgetary rules of the public sector and co-ordination of the public finance and the taxation system
	Promotion of the environmental and cultural heritage, and promotion and organisation of cultural activities
	Saving banks, rural co-operative banks, regional banks
	Regional institutions for credit to agriculture and land development

Source: OECD (2007).

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Better Regulation in Europe

ITALY

The importance of effective regulation has never been so clear as it is today, in the wake of the worst economic downturn since the Great Depression. But how exactly can Better Regulation policy improve countries' economic and social welfare prospects, underpin sustained growth and strengthen their resilience? What, in fact, is effective regulation? What should be the shape and direction of Better Regulation policy over the next decade? To respond to these questions, the OECD has launched, in partnership with the European Commission, a major project examining Better Regulation developments in 15 European countries, including Italy.

Each report maps and analyses the core issues which together make up effective regulatory management, laying down a framework of what should be driving regulatory policy and reform in the future. Issues examined include:

- Strategy and policies for improving regulatory management.
- Institutional capacities for effective regulation and the broader policy-making context.
- Transparency and processes for effective public consultation and communication.
- Processes for the development of new regulations, including impact assessment, and for the management of the regulatory stock, including administrative burdens.
- Compliance rates, enforcement policy and appeal processes.
- The multi-level dimension: interface between different levels of government and between national processes and those of the EU.

The participating countries are: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden and the United Kingdom.

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