Regulatory Reform in Italy

Government Capacity to Assure High Quality Regulation

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FOREWORD

Regulatory reform has emerged as an important policy area in OECD and non-OECD countries. For regulatory reforms to be beneficial, the regulatory regimes need to be transparent, coherent, and comprehensive, spanning from establishing the appropriate institutional framework to liberalising network industries, advocating and enforcing competition policy and law and opening external and internal markets to trade and investment.

This report on *Government capacity to assure high quality regulation* analyses the institutional set-up and use of policy instruments in Italy. It also includes the country-specific policy recommendations developed by the OECD during the review process.

The report was prepared for *The OECD Review of Regulatory Reform in Italy* published in 2001. The Review is one of a series of country reports carried out under the OECD's Regulatory Reform Programme, in response to the 1997 mandate by OECD Ministers.

Since then, the OECD has assessed regulatory policies in 16 member countries as part of its Regulatory Reform programme. The Programme aims at assisting governments to improve regulatory quality — that is, to reform regulations to foster competition, innovation, economic growth and important social objectives. It assesses country's progresses relative to the principles endorsed by member countries in the 1997 *OECD Report on Regulatory Reform*.

The country reviews follow a multi-disciplinary approach and focus on the government's capacity to manage regulatory reform, on competition policy and enforcement, on market openness, on specific sectors such as telecommunications, and on the domestic macro-economic context.

This report was principally prepared by Cesar Córdova-Novion, with the participation of Edward Donelan, and Scott H. Jacobs, in the Public Management Service. It benefited from extensive comments provided by colleagues throughout the OECD Secretariat, as well as close consultations with a wide range of government officials, parliamentarians, business and trade union representatives, consumer groups, and academic experts in Italy. The report was peer-reviewed by the 30 member countries of the OECD. It is published under the authority of the OECD Secretary-General.

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1. THE INSTITUTIONAL FRAMEWORK FOR REGULATORY REFORM IN ITALY

1.1. The administrative and legal environment in Italy

The stereotypic reputation of the Italian state as a burdensome and inefficient bureaucracy was, for much of the post-war period, not entirely undeserved. The growth of the Italian state and its steadily increasing intervention into economic activity from the 1950s through the 1990s, combined with a legalistic and over-legislated approach to public policy, resulted in a maze of detailed rules and rigid procedures, many of which were anti-competitive in effect, and could not be fully implemented by the public administration nor complied with by the public.

Much regulation became a negotiated relationship between public officials and those regulated, resulting in fertile ground for corruption and non-accountability. Parts of the state were captured by interest groups, and the private sector was used to fulfil an increasingly wide range of social policies, such as regional development and job preservation. Regulatory inflation and low quality laws and other regulations resulted in complexity, ambiguities and overlaps, unnecessary burdens on citizens and businesses, difficulties in enforcement and low compliance. In general, the legal situation has been described as chaotic and subject to "legal hypertrophy".[1] Economic growth in the north of Italy was undermined nationally by a north-south gap in the quality of administration that worsened regional economic and social differences.

Regulatory reform, as it is now being carried out in Italy within a framework for public sector revitalisation, constitutes the first broad-based attempt in post-war years to transform the role and practices of the state. In an impressively wide-ranging approach, competition principles, transparency, simplification, accountability for results, and client-orientation are being built into the national regulatory apparatus through new policies, procedures, skills, and institutions. Particularly since 1997 under the series of so-called "Bassanini reforms," many concrete steps have been taken, based on OECD best practices, and Italy is rapidly improving its relative ranking among OECD countries with respect to regulatory quality initiatives. The Italian government and parliament have also taken leading roles in promoting regulatory reform to their respective peers in Europe. Decentralisation to regions and municipalities is bringing government closer to citizens, though the risks of decentralisation for reducing the quality regulation are only now being assessed.

These reforms to the regulatory capacities of the public administration, by realigning relationships between the state, citizens, and market, are positive steps that, if effectively implemented at all levels of administration, can ease the constraints imposed by poor governance on economic and social progress in Italy. Results are only now becoming concrete, and in a few areas there have already been declines in administrative costs for citizens. This augurs well for the future of the programme.

It is important to verify, though, if the programme is sufficient to reduce significantly the accumulated weight of anti-competitive and inefficient laws and other regulations that inhibit economic performance and reduce policy effectiveness. Traditional regulatory processes are still widespread and, even while reforms get underway, new regulatory inefficiencies are added. If these reforms are to bear fruit, the state faces a two-pronged task of sustaining implementation of the new policy directions and regulatory disciplines at both administrative and political levels.

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This transformation in regulatory practices arises from internal and external forces, and is supported by strong political leadership. The roots of change lay in the fiscal and economic problems of the early 1990s, and the massive anti-corruption movement that transformed the Italian post-war political scene. Economic problems had accumulated rapidly by the end of the 1980s (see Chapter 1 of the report). A huge public debt contributed to economic stagnation.

European policies – the single market program, competition law and policy, the use of EU funds, and monetary and fiscal rectitude as the price for entering the euro area – greatly influenced the Italian regulatory and administrative environment. At the beginning, the main goal was to reduce public debt and balance the state budget, while satisfying European requirements. Restructuring of public enterprises and privatisation were primarily intended to maximise revenues.

By the mid-1990s, reform focussed on unwinding extensive state intervention into economic decisions. The goal became economic stimulation through liberalising and opening markets. The privatisation process accelerated and became one of the largest in the OECD area. (OECD, 1999*a*, p. 124). A turning point was the enactment of a solid competition law in 1990 and its effective enforcement as well as its vigorous and persistent competition advocacy (see Chapter 3). As a result, in less than a decade, Italy has taken important steps from a highly interventionist state in which law was devalued and the private sector was either under-regulated or over-regulated (depending on the size of the firm) toward a modern regulatory state based on transparent rules and competition.

Box 1. **Good practices for improving government capacities to assure high-quality regulation**

The OECD Report on Regulatory Reform, welcomed by Ministers in May 1997, includes a co-ordinated set of strategies for improving regulatory quality, many of which were based on the 1995 Recommendation of the OECD Council on Improving the Quality of Government Regulation. These form the basis of the analysis undertaken in this chapter, and are reproduced below:

A. BUILDING A REGULATORY MANAGEMENT SYSTEM

1. Adopt regulatory reform policy at the highest political levels
2. Establish explicit standards for regulatory quality and principles of regulatory decision-making
3. Build regulatory management capacities

B. IMPROVING THE QUALITY OF NEW REGULATIONS

1. Regulatory Impact Analysis
2. Systematic public consultation procedures with affected interests
3. Using alternatives to regulation
4. Improving regulatory co-ordination

C. UPGRADING THE QUALITY OF EXISTING REGULATION
(In addition to the strategies listed above)

1. Reviewing and updating existing regulations
2. Reducing red tape and government formalities

Source: Scott Jacobs, *et al.* (1997), "Regulatory quality and public sector reform," in *The OECD Report on Regulatory Reform: Thematic Studies*, Paris.

Control of government costs and stimulation of market competition drew attention to the urgent need to reform the state itself. Control of the expensive and inefficient public administrative apparatus became a priority.[2] Administrative "viscosity" and "immobility" and the need to "simplify Italy" rapidly became a national debate.[3]

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Several factors have been responsible for poor regulatory practices in Italy. Many studies confirmed that, in Italy, the public administration suffered from fragmentation and duplication of public bodies, internal and external over-regulation, inefficient use of resources together with the absence of adequate controls, and low qualifications, inadequate training and low productivity of civil servants.[4] Inside the government, policy-making and policy implementation processes were slow and disorganised. The weakness of the centre of government permitted departmentalisation into proliferating and 'semi-autonomous' ministries.[5] Delays due to multiple officials responsible for various parts of procedures delayed actions.[6] In short, the administration was a sea of inefficiency, spotted by islands of excellence.[7]

Box 2. **Aspects of the Italian legal system**

Sources of Law. The Italian legal system recognises different regulatory instruments divided into three levels under the Constitution and the Constitutional Laws.

1. *Primary law* (approved directly or indirectly by the Parliament)

   Law

   Law-decree (issued by the government for emergency cases; they last 60 days, unless the Parliament convert them into law)

   Delegated legislative decree (issued by the government through a specific Parliament mandate given by law)

   Primary regional law (approved by the Regional Assembly)

2. *Secondary law* (approved by the Council of Ministers)

   Governmental regulation (issued through President of the Republic Decree)

   Secondary regional law (approved by the Regional Government)

3. *Tertiary law* (approved by Ministers)

   President of the Council Decree

   Ministerial and Interministerial Decree

However, it is important to consider that the mentioned 'sources of law' do not cover all the 'sources of regulations' such as presidential orders, ministerial and interministerial orders, ministerial circulars, forms, which in fact constitute the majority regulatory intervention of the government (Vesperini, G., 1998, p. 13).

How many laws are there in Italy? The official inventory made by the Chamber of Deputies (Rapporto sulla legislazione, 1999) estimates that more than 35 000 laws exist (including 14 000 national laws, 4 000 national laws enacted before 1948 with dubious legitimacy, and 18 000 regional laws). The Ministry of Public Administration evaluated in 1991 that the central administration applied 5 400 administrative procedures, half of them applying to governmental entities only.[8] The competition authority made an inventory of 224 different concessions.

As a result of the preference to regulate through laws rather than subordinate regulations, Italian laws tend to be extremely detailed, regulating minute details and bureaucratic procedures. Until the recent disciplines established in 1997, the use of tacit repeals of articles or laws – instead of specific repeals – often added confusion during implementation.[9] However, in an important step toward improved rationality and transparency, new Italian laws impose specific repeals of past legislation (Article 20 of Law No. 59 of 1997, and Article 7 of Law No. 50 of 1999). This obligation has also been confirmed for all government regulations by Prime Minister's Decree of March 2000, which also introduced "Legal Technical Analysis" (see below).

Administrative procedures that set out *ex ante* information requirements are preferred to performance instruments, *ex post* criteria, and general standards to be met. The regulatory system relies excessively on licences, permits and concessions that are rarely reviewed. According to the 1991 inventory, around 1 out 5 administrative procedures were regulated by dispositions established before the 1960s (Lacava, 1998, p. 65).

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Excessive discretion can be seen in applying rules and regulations. As was seen in Mexico, the Italian legal system has a paradoxically high and low level of discretion (OECD, 1999*b*). On one hand, each law provides little discretion to the government in implementation. In some cases, laws establish detailed requirements and procedures related to very specific issues (this type of law is dubbed *leggine* or small laws). But the sheer number of laws and the overlaps between them permit the administration wide discretion in implementation, since the underlying legal basis is complex.

Outside the government, elaborated checks and balances between branches of the state and constitutional bodies resulted in difficulties in agreeing, implementing and sustaining policies. The Chamber of Deputies, the Senate, the Court of Accounts, the Council of State as well as the government promoted policies but were unable to control the public debt or impede the adoption of low quality laws. The recurrent instability of fragile governments based on proportional electoral laws was seen as another barrier to sustainable reform, and hence electoral reform became a key part of the general strategy to reinvent the Italian state.[10]

Historical circumstances are also important to understanding the contemporary Italian legal system. Compared to most other OECD countries, the Italian legal system shows an unusually strong preference for using laws rather than subordinate regulations even on minor and highly detailed issues.[11] This is partly a reaction to the fascist period, when the government ruled by decrees, and indicates a post-war determination to retain legislative powers in democratic institutions. Over time, this over-reliance on statute law led to political intrusion into regulatory details, and a rigid and fragmented regulatory environment.. For decades the government and Parliament used laws to intervene in the economy even on minor issues, to establish minute details, and to deal with temporary problems. Also, as seen in other countries, Italian law was sometimes used to make political statements setting out principles and social objectives rather than concretely resolving identified problems.

Regulatory excesses were also due to particular features of the Italian political and administrative system. The government, with parliamentary acceptance, took great liberty in the frequent use of decree-laws supposed to address exceptional and urgent situations. Although decree-laws were valid only for 60 days, the Government simply re-adopted many of them before expiration, extending some for years. As a result, an emergency instrument was transformed into an ordinary regulatory tool. A Constitutional Court decision in 1996 judged this practice illegal, and ended it, improving the simplicity of the regulatory system. Other stimulants to the production of laws included the constitutional provisions requiring that only laws can regulate certain areas (*riserva di legge*), and the preference of law to transpose EU Directives (Sandulli, 1998, p. 33). An important consequence of this is the blurring of responsibility and accountability of the legislative and executive branches and creates a complex regulatory management system (see annex on the sources of law).

Another determinant of the growth of the regulatory framework has to do with control failures in the rulemaking process. The rule making system has been controlled and managed on purely legalistic and procedural grounds. Except for overlapping legality controls by different bodies, regulations have had few preventive restraints on their possible impacts. Parliamentarians, the government and other State bodies had few difficulties introducing a law or amending a legal framework during the discussion of bills.[12] Before recent disciplines, the adoption of the Budget Law was similar to passing an omnibus law covering an impressive number of areas.[13] Other factors in the continuous flow of laws are linked to a constitutional provision permitting the approval of laws by parliamentary commissions without discussion in the plenary.[14] The practice of not eliminating previous laws and articles and the misuse of cross-references to other laws made it particularly difficult to understand the legal system.

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1.2. Recent regulatory reform initiatives to improve public administration capacities

In the early 1990s, the most important reform of the Italian state since 1860 was launched, including a major review of the constitutional framework (see Annex 1).[15] Numerous initiatives, policies, and programmes were launched and supported by six successive governments.[16] Five major governmental policies stand out concerning the reform of:

- The state's intervention in the economy, including privatisation, establishing new regulatory regimes and institutions, and simplifying law on a broad scale;
- The management and control of the public budget and civil service;
- The simplification of the public administration, procedures and controls
- The "reorganisation" and management of the legal and regulatory system, and
- The balance between the centre and subnational governments.

These policies are assessed in the following sections insofar as they have had a direct impact on regulatory quality management. Box 3 summarises some of the main features of the budgeting and civil service reform policies.

Box 3. **Reform of budgeting and civil service in Italy**

Budget management reforms. The reforms responded to a major monetary crisis and the catastrophic public debt, which grew from 98% to 125.3% of GDP between 1990 and 1995. Italy's efforts to join the European Monetary Union brought further resolve. The Italian budget was transformed from a purely financial instrument into an economic one, that is from a model where spending is segmented into allocative cells to a decentralised system where expenditures correspond to each ministry's targets and responsibilities. Based on constitutional precepts unused until then, Parliament and government introduced – and enforced – new tools and procedures.[17] High-level officials were charged with clear responsibilities and accountability mechanisms were set up. The new system permitted for the first time a clear showing of the relations between resources and outcome. These reforms had other enduring effects on policies, in particular simplification of the administration.

Another dimension of the budget reforms (and their success) concerns the relationship between the Ministry of the Treasury and the Parliament. Clear methodologies, enforceable procedures and controls (in particular on last-minute amendments from MPs), and the building up of mutual trust permitted an efficient working relation between the two branches of the state. For instance, today the Parliament's Office in charge of evaluating the budget law concentrates its efforts on evaluating the methodology of the budgetary impact assessments rather than recalculating the sums.

Civil service reforms. Recognising that a major source of expenditure and inefficiency was related to the working methods of the civil service, Italy embarked in 1993, and particularly since 1998, on series of reforms to de-politicise the civil service, to separate the political sphere from administrative tasks and to instil new management practices across the public administration. The set of policies, dubbed by proponents and critics as the "privatisation of the civil service", contained an assortment of measures. The Legislative Decree 29/93 established new labour contracts to be bargained collectively at national and local level, instead of being set by Parliament through an annual law. The Legislative Decree created a specific agency, ARAN, representing the state as the employer to negotiate with the unions. Jurisdiction for civil service disputes was moved from the administrative to the civil courts.[18] In parallel, a law governing union representation was reformed and part-time work was permitted in the public administration. A new merit-based payment system and performance evaluation system was introduced into the public administration, and the first labour contracts under the new provisions became effective in 2000 and early 2001. An audit unit in each ministry, co-ordinated from a central agency in the Prime Minister's Office, sets the definition of objectives and supervises the performance indicators.[19] The government strengthened the ethical criteria of the public administration.[20]

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Concurrently with those reforms, since 1994, Sabino Cassese, at that time the Ministry for Public Administration, promoted new public management techniques through *a Public Service Quality System.*[21] The programme includes a whole range of initiatives, such as a mandatory Citizens Charters ("*Carte dei servizi*") for all public services (*i.e.* transports, sanity, and communications). As the UK model, these charters provide explicit commitments on observable criteria and compensation in case of customers' non-satisfaction, such as equality, impartiality, courtesy, consultation, regularity, openness, continuity, choice, value for money. Charters have also been established for local governments too. One year after the introduction of the requirement (June 1997) almost 7 000 agencies and local governments had adopted their own chart specifying their own standards. Furthermore, the Ministry set up in 1995 an award programme, "*Cento Progetti al Servizio del Cittadino*", to recognise major achievements among public services in terms of user friendliness, consistency with the agency mission, involvement of employees, cost effectiveness, transferability to other public agencies, among others. The project was complemented in 1996 with a "Pilot Projects on Good Governance" programme, aiming at improving service delivery and performance measurement by testing new practices of good governance at central, regional and local government levels. This programme focuses on the coherence of the administration, concentrating on the interaction of instruments such as one-stop shops, multi-service smart cards, benchmarking of performance, customer satisfaction surveys, and in general "total quality management" approaches.

2. DRIVERS OF REGULATORY REFORM: NATIONAL POLICIES AND INSTITUTIONS

2.1. Regulatory reform policies and core principles

The 1997 *OECD Report on Regulatory Reform* recommends that countries "adopt at the political level broad programmes of regulatory reform that establish clear objectives and frameworks for implementation." The 1995 *Recommendation of the OECD Council on Improving the Quality of Government Regulation* (OECD, 1995) contains a set of best practice principles against which reform policies can be measured.

As previously indicated, the Italian regulatory reform programme encompasses a series of policies changing the role and performance of the state. The important programme of privatisation and economic deregulation is discussed in Chapter 1. An Italian regulatory quality policy – or as some authors have called it, the "normative rationalisation" policy – slowly emerged from the administrative simplification policies of the 1990s. The "reorganisation and improvement of norms" is also the result of a gradual transformation from a technical legal perspective concerning regulation into an overall approach to regulatory management and quality of regulations in terms of results (Sandulli, 1998, p. 31).

The emergence of a genuine regulatory quality programme took considerable time. In 1978, the Minister of Public Administration launched a major review of the quality of public administration, including the regulatory management system. Based on his influential report, a second commission recommended the assessment of "administrative impacts of laws" based on the German Blue Checklist and the establishment of a central unit to monitor it.[22] In 1986, the President of the Chamber of Deputies issued a circular containing rules and recommendations about language, structure, quotation, modification, and repealing.[23] A 1988 law created basic institutions to improve regulatory management, such as the Department of Legal and Legislative Affairs (*Dipartimento Affari Giuridici e Legislativi*) (DAGL) under the Prime Minister's Office and the de-legislation mechanism.

During the 1990s, Italy launched an expanding programme of regulatory simplification. The evolution of the policies corresponds to three successive approaches, each one carried out by a respective law and promoted by a distinct government.[24] The continuity of the policy is remarkable as each step builds on previous experiences and instruments.

The administrative procedure law of 1990 (Law 241/90) was the main vehicle for the first step. The focus was on improving the structure of each procedure by reducing steps in the procedures (*e.g.* through the institution of conferences of services) and mechanisms that reduced the administration's

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capacity to delay and forbid action (*e.g.* the 'silence is consent' rule, self-certification, transformation of concessions and licenses into notifications). The law complemented simplification with crucial provisions on the rights of citizens and accountability mechanisms (see Section 3.1).

Building on these efforts, in 1993 a second law (Law 537/93) reformed institutions to simplify procedures.[25] Efforts concentrated on reducing duplication of functions among ministries and governmental bodies. The law eliminated 12 interministerial committees and strengthened the Interministerial Committee for Economic Planning (CIPE), reformed the Ministry of the Treasury, and merged bodies to create a single ministry of environment).

In 1997, the government launched a third phase under Laws 59/97 and 127/97, the 'Bassanini laws'.[26] Using existing instruments such as delegislation and self-certification, the new policy merged both approaches but created a process of continuing improvement (such as through the obligation to prepare an annual simplification law). The new policy rebuilt institutions to improve coherency and the efficiency of the policy process (decentralisation was strengthened by reducing or eliminating the need to seek authorisation from Rome, the legal system was reorganised (see Section 2), and centralised units to promote and monitor reform were created).

The initiatives in 1997, when both the government and the Chamber of Deputies launched major policy initiatives, were a clear turning point for the development of a national quality regulation policy. The 1997 Bassanini reforms had two main aims: to re-balance the powers between the centre and subnational governments, and to re-launch the administrative simplification policy based on a permanent approach and a more aggressive reorganisation of regulatory reform (*i.e.* speeding the delegislation process). Eighteen months later, the first annual simplification law (Law 50/99) and the Prime Minister decrees on public consultation and RIA expanded the regulatory quality policy.[27]

According to Law No. 50 of 1999, the policy has three clear principles for the review, development, and application of regulations in Italy:

- *Rationalise existing stocks* of laws and regulations by downgrading laws concerning administrative procedures and the organisation of public offices to subordinate regulations that can be revised by the public administration (a process called *delegificazione* or delegislation) and by launching a programme to consolidate legal texts (*testo unico*).

- *Review the quality of new laws and regulations* through regulatory impact analysis of consequences for citizens, businesses and the administration (RIA), and Legal Technical Analysis (ATN) to evaluate the quality of the legal text, and enhance public consultation.

- *Pursue the simplification of the public administration* through elimination and improvement of administrative procedures through an Annual Simplification Law and a review of mission and reorganisation of relationships of the functioning of governmental institutions, including a reduction in numbers of ministries and departments.

Two other fundamental principles for regulatory action are integral to the "Bassanini" reforms: the "horizontal subsidiarity" principle where the state withdraws from activities that can be done better by the private sector (citizens and businesses), for profit or not; and the "vertical subsidiarity" principle where responsibilities and relationships between citizens and businesses and the state are decentralised to the lowest capable level of government.

The active role of the Parliament, and especially the Chamber of Deputies, in regulatory quality management is a feature of the Italian approach seldom seen in other countries (Box 4). Because the regulatory quality policies of the administration and the parliament are complementary, it is appropriate to

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define the Italian regulatory reform policy as a dual policy. Largely based on the 1995 OECD *Recommendation on Improving the Quality of Government Regulation*, the Senate and the Chamber of Deputies issued in 1997 a identical circular on the evaluation of bills, addressed to every Parliamentary Committee, requiring a justification that:

- There is a need to intervene through Parliamentary law;
- The proposed law is consistent with the Constitution, European Union legislation and with areas of competence of the regions and local governments;
- The proposed law's objectives and means to achieve them are clear, as well as the deadline envisaged for implementation; and the costs to the public administration, citizens and business are acceptable, and
- The text is clear.

The dual policy presents a broad, structured programme, encompassing economic, social and administrative regulations, and creating a more coherent relationship between institutions. In particular, the dual policy coincided with a major shift from an administrative simplification approach towards a quality of regulation approach. Although proceeding on different tracks, the Parliamentary and government policies complement each other in many areas. For instance, the Chamber's policy focuses on new bills, including those proposed by the government, Parliamentarians, regions and the National Council of Economy and Labour (CNEL) and by referendum initiatives.[28] The government's policy targets the bills and subordinate regulations that it prepares. The justification test (is a new regulation needed?) is prominent in the Chamber's policy, while regulatory impact assessment and public consultation are prominent in the government's policy.

Yet the fact that the regulatory quality programme is based on different laws, decrees and rules of procedures reduces its visibility and impact. To provide a firmer basis for efforts in the ministries and regulators and to hold ministries more accountable for performance, a clearer and unified statement of principles for good regulation, based on the OECD recommendations, would be useful. The OECD recommends in the background report to Chapter 3 that competition principles be more explicitly included in the simplification and codification reforms. The OECD principles accepted by Ministers in 1997 read:

> *Establish principles of "good regulation" to guide reform, drawing on the 1995 OECD Recommendation on Improving the Quality of Government Regulation. Good regulation should: (i) be needed to serve clearly identified policy goals, and effective in achieving those goals; (ii) have a sound legal basis; (iii) produce benefits that justify costs, considering the distribution of effects across society; (iv) minimise costs and market distortions; (v) promote innovation through market incentives and goal-based approaches; (vi) be clear, simple, and practical for users; (vii) be consistent with other regulations and policies; and (viii) be compatible as far as possible with competition, trade and investment-facilitating principles at domestic and international levels.*

Clarifying the tests for quality regulation along the lines of the OECD principles would help make these core principles operational in the ministries. A benefit-cost test that is mandated by law would be of particular value in providing a stable and transparent basis for regulatory decisions across the whole of the government. This test is the preferred method for considering regulatory impacts because it aims to produce public policy that meets the criterion of being "socially optimal" (*i.e.*, maximising welfare) (Deighton-Smith, 1997, p. 221). A positive step in this direction was the government's RIA guidance, issued in 2000, which specifies quantitative methods such as benefit-cost analysis, cost-effectiveness analysis, and risk assessment. The Chamber's checklist, however, indicates only that costs should be "acceptable".

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Other steps to plug gaps in the quality procedures would deepen and speed up results.

- Until the adoption of the March 2000 Prime Minister's Decree on RIA, Italian policy did not advocate the use of competition, market and trade principles. Even now, RIA covers only regulations prepared by the government, excluding new regulations developed by other bodies, such as independent authorities, etc.

- The reform policy has not been, until recently, very accountable or transparent for results. It is true that the Chamber's rules provide for the preparation of a biannual report on results and that Law 59/97 institutes an obligation to prepare an annual simplification law which usually lists procedures to be eliminated and that Law 50/99 institutes an obligation for the Minister for Public Administration to prepare an annual report to the Parliament containing a global evaluation on the policy. However, measurable objectives need to be specified more clearly. For instance, other countries such as the United States, Netherlands, and Korea have included in their policy statements the pledge to reach specific targets by a certain time.[29] Taking account of these practices, Italy recently began to adopt some performance targets. The Government's programme on consolidation and simplicity, prepared by the Minister for Public Administration under law 50/1999, fixes priorities and identified almost 70 procedures to be simplified in 2000.

2.2. The role of the Italian Parliament in regulatory reform

The Parliament, in particular the Chamber of Deputies, has played a dynamic role in the overall regulatory quality policy (see Box 4). Mostly through co-operation, but also institutional competition, today's regulatory quality programme is strengthened by the efforts of both bodies. The regulatory quality programme is expanding as the Senate and regions adopt good regulatory principles.

Box 4. **The virtuous circle: competition and collaboration between the Parliament and the government on regulatory quality**

In 1997, reforms adopted by the Parliament, and especially by the Chamber of Deputies, forced the government to improve the quality of bills it sent. In response, in October 1997, Prime Minister Prodi issued a circular to ministers on improving the government's legal drafting. A few months later, the circular evolved into a directive containing a checklist for drafting and plain language requirements, as well as requirements for three memoranda on (1) the background and motivation, scope, and relations with previous laws; (2) financial and budgetary impacts, and (3) the justification for the proposed law, including a written assessment of the "no intervention" alternative.[30] But these guidelines were only advisory, and few bills complied with the new requirements. In 1999, Prime Minister D'Alema, issued a new directive preventing bills without the three reports from inclusion in the Council of Ministers' agenda, and thus blocking their introduction in the Parliament. To reinforce implementation, the government issued in March 2000 a Prime Minister's Decree formalising a Legal Technical Analysis (*Analisi tecnico-normativa* or ATN) and a full-fledged Regulatory Impact Assessment required by Law 50/99.

These reform policies are not only changing how each institution works, but also adjusting the relationships between institutions of the state. The parliament is slowly evolving toward an oversight and accountability relationship with the administration, rather than one of tight controls and distrust. The administration is slowly taking on more responsibilities and discretion. At the centre of the debate are fundamental questions regarding how to avoid over-detailed primary laws, how to control discretion in subordinate regulations, and the accountability mechanisms to check discretion. These questions are not yet resolved. Some may concern the constitutional framework and the historical check-and-balance mechanisms existing in Italy since the Second World War. However, inventive mechanisms and the regulatory co-management between the executive and legislative branch have solved some issues

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pragmatically, through delegislation and Delegated Legislation (see Box 5). The Chamber's policy on quality of laws is underpinned by new capacities and a resolve to enforce it. Following the successful reforms that permitted Italy to control its budget, the Chamber reviewed thoroughly its Rules and Procedures and introduced the regulatory checklist mentioned above. To help to implement these criteria, the Rules and Procedures created a Committee on Legislation (*Comitato per la legislazione*), as the main adviser for the Chamber's standing committees when preparing draft laws. It is composed of ten deputies chosen by the President of the Chamber in equal numbers among the members of the majority and the opposition, and chaired by each member in turn. The Committee gives its opinion on a bill when requested by at least a fifth of the members of any Parliamentary Committee. Each member can express a dissenting opinion. Every six months the Committee prepares a report on the main problems encountered and on the relevant measures adopted, suggesting further initiatives that could be promoted in other forums.

In addition to its permanent tasks, the Committee has also become an advocate for regulatory quality issues. It has promoted inter-institutional conferences with the government, the regions, the local authorities, the Judiciary branch, independent sectoral authorities, research centres and non-governmental organisations. It established an Observatory on Legislation (*Osservatorio sulla legislazione*) to collect views, review them, and inform the Commission and the Chamber on legal quality issues. The Chamber of Deputies has been instrumental in the Working Group on the Quality of Legislation set up in 1996 within the framework of the Conference of House Speakers of the European Union. The Speaker of the Italian Chamber of Deputies is the current Working Party chair. In September 1999, under his leadership the Conference of Speakers agreed in Lisbon on the findings of the report "The complexity of legislation and the role of parliaments in the era of globalisation".

The Law 59/97 established another parliamentarian body formed by 20 senators and 20 deputies: the Bicameral Commission for Government Reform (*Commissione parlamentare per la riforma amministrativa*). The Bicameral advises Parliament and government on all legislative decrees connected with government reform, including the decentralisation process, the reorganisation of the central administration and the Prime Minister Office, and the civil service. The Bicameral also reports every six months to Parliament on its findings and deliberations.

2.3. Mechanisms to promote regulatory reform within the public administration

Reform institutions with explicit responsibilities and authorities for managing and tracking reform inside the administration are needed to keep reform on schedule, and to avoid a recurrence of over-regulation. As in all OECD countries, Italy emphasises the responsibility of individual ministries for reform performance within their areas of responsibility. But it is often difficult for ministries to reform themselves, given countervailing pressures, and maintaining consistency and systematic approaches across the entire administration is necessary if reform is to be broad-based.

The government normative process revolves around the Department of Legal and Legislative Affairs (*Dipartimento affari giuridici e legislativi* - DAGL) in the Prime Minister's Office.[31] This central unit established in 1988 manages drafts and opinions and negotiates individually or jointly the "readiness" of a project with the legal offices of the ministers, who are the primary drafter of laws and regulations.[32] Its main power consists of being the gatekeeper of the Council of Ministers and screening draft laws and presidential and Council of Ministers' decrees. Until 2000, its review was focused principally on legal quality of the text and political and governmental coherence rather than on a thorough assessment of impacts of the future regulation. The March 2000 Prime Minister's Decree, however, charged the DAGL with the main responsibility, working with the Nucleo (see below), to evaluate the completeness and quality of regulatory impact analyses, prior to submission to the Council of Ministers. This expands the DAGL's role to a wider concept of regulatory quality more consistent with OECD principles. Its workload is heavy, though, and the need to prepare and review dozens of new items each week reduces the depth and quality of its assessment.

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In part to alleviate DAGL workload, and in part to support the new regulatory policy, the *Regulatory Simplification Unit*, or Nucleo (*Nucleo per la Semplificazione delle Norme e delle procedure*) was established in 1999.[33] Attached to the Prime Minister's Office, the Nucleo's main role is to prepare delegislation decrees and consolidated texts (see Box 5). It also provides support to ministries in making regulatory improvements, and provides opinions to DAGL on the quality of regulatory impact analyses and legal drafting assessments (ATN). It is composed of 25 professionals with expertise in law, economics, political science, impact analysis, European affairs, and linguistics. In terms of regulatory quality, the Nucleo has become the main interlocutor of the Committee on Legislation of the Chamber of Deputies and the Bicameral Commission of the Parliament.

Box 5. **Unwinding the legal knot in Italy**

Three legal tools are used in Italy to promote reform. The most powerful one is the Delegated Legislative Decree, where the government can legislate on specific subjects, pursuant to specific principles and criteria set by the enabling law ('delega legislativa al governo') and within a fixed period of time (usually 2 years).[34] For example, the enabling laws that launched the Bassanini reforms (Laws 59/97, 127/97 and 50/99) were implemented by several Delegated Legislative Decrees: No. 300/99 (reduction and reform of ministries); No. 303/99 (Presidency of Ministry Council reforms); No. 112/98 (on administrative attribution to regions and local governments); No. 422/97 (competencies for local public transport); No. 469/97 (competencies of labour markets); No. 143/97 (agriculture and fisheries); No. 115/98 (health regional services).

Since 1988 (with Law 400/88), the government can issue *Delegislation Decrees*, which substitute primary laws with government decrees, under broad principles set by a law, in two main sectors: administrative procedures and the organisation of public bodies.

Both instruments, *Delegated Legislative Decrees* and *Delegislation Decrees*, need an act of Parliament (*legge delega* and *legge di delegificazione*), empowering the government with a set of principles and requiring the Parliament to supervise the drafts. The Bicameral Commission for Governmental Reform of the Parliament is typically in charge of this task. It is important to note that in the case of delegated laws, the Parliament's opinion is non-binding.

The third instrument is the consolidated text (*testi unici*) that combines the traditional codification used in most legal systems with the delegislation and delegation powers the Parliament provides to the government.[35] (See Section 4)

Set up during the same year as the Nucleo, the Observatory on Simplification (*Osservatorio sulla Semplificazione*), is the main national vehicle for public consultation on simplification and regulatory review (see Section 3.1).[36] The *Department of Economic Affairs* and the *Department for Public Administration*, both in the Prime Minister's Office, also support activity in regulatory quality through experimentation with new tools, particularly in the case of RIA.

Three other major institutions participate to the normative process. The Council of State (*Consiglio di Stato*) as advisor on administrative and legal affairs is in charge of reviewing all secondary regulations approved by the Council of Ministers.[37] To speed and improve the review process the government added in 1997 a dedicated commission to the Council.[38] The government can also ask the Council to prepare consolidated texts.

The Court of Accounts (*Corte dei conti*) plays a control role on the government's regulatory powers. In addition to its auditing function on the implementation of the budget by central and local government and agencies, the Court is charged with "preventive control" on all secondary regulations and other governmental decisions.[39] Although recently shortened and modified by the introduction of the "silence is consent" principle, the *ex ante* control of legality performed by the Court is similar to that undertaken by the Council of State. The Court has a reputation of rigidity and even conservativeness in its opinions. In fact, detractors have indicated that the Court's emphasis on a strict interpretation of controls of administrative discretion has impeded experimentation with new public management techniques and

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systems and fostered rigidity in the administration.[40] On the other hand, its ex post auditing controls on administrative performance which form the core of an annual report to the Parliament, has been under-resourced and under-staffed.[41]

The *Constitutional Court* has had an important role in both the reforms and the rule-making process. Concerning the latter, in 1996 the Court declared unconstitutional the governmental habit of recycling decree-laws (*reiterazione dei decreti-legge*), that is, reissuing by the government before the date of expiration the "law-decrees" that were intended as temporary measures for emergencies. Some law decrees had been reiterated 18 times (over two and a half years).[42] As part of the reform, the Constitutional Court has also been the supreme arbiter in controversies concerning regulatory powers between the centre and subnational governments and in controlling the use by the government of its delegated powers to legislate.

The *Competition Authority* has also been active in reforming the regulatory framework through its advocacy powers. Acting on its own initiative, or on the request of the government, the Authority may study and report on issues or problems involving competition and the market. For example, the Authority has produced reports on the use of licences and "concessions" restricting market access, limits on participation in public contract tendering procedures, and the pro-competitive relationship between liberalisation and privatisation.[43] It may report about those issues to the Parliament and the Prime Minister, and relevant local authorities recommending measures to prevent or remove the distortions. In addition, parliamentary committees have often consulted the Authority in formal hearings. The annual report to the Parliament has been the occasion to fix priorities and to suggest regulatory reforms. [44] (See background report to Chapter 3).

2.4. Co-ordination between levels of government

The *1997 OECD Report* advises governments to "encourage reform at all levels of government." This difficult task is increasingly important as regulatory responsibilities are shared among many levels of government, including supranational, international, national, and subnational levels. High quality regulation at one level can be undermined or reversed by poor regulatory policies and practices at other levels, while, conversely, co-ordination can vastly expand the benefits of reform. The policies and mechanisms for co-ordination between levels of administration are thus becoming increasingly important for the development and maintenance of an effective regulatory framework.

In recent years, Italy has reacted to opposing forces at supranational and subnational levels. On one side, powerful forces questioning the role of the centralised state pushed for the regional structure foreseen in the 1948 Constitution.[45] As decentralisation proceeds, Italians are increasingly governed through one of the 20 regions, 104 provinces and 8 120 communes (of which 80% have fewer than 10 000 inhabitants).[46] At the same time, the country has responded to European obligations that have pushed for market liberalisation. From the Single Market programme, to competition law and policy, the use of EU funds and monetary and fiscal rectitude, Brussels has exerted great influence on the regulatory and administrative environment.

The 1996-2001 decentralisation programme is the third major reform of relationships between the central and subnational governments since the Constitution was enacted in 1948 (see Annex 1). The first reform, between 1970-72, after more than 20 years of delay, required that the regions issue their ordinary statutes (*i.e.* regional basic law). The second major step was in 1977 when the central government began to transfer the constitutional competencies of Articles 117 and 118. The third phase of reform, a central part of the Bassanini reforms, is altogether more ambitious. It not only furthers the transfer of specific powers to the subnational governments, but also, based on the "vertical subsidiarity" principle, explicitly delimits the powers of the centre and leaves non-specified powers to regions and local authorities. In January 2000, the reform was completed with fiscal decentralisation, which should be finalised before the end of 2000.

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The acceleration of decentralisation and the move towards the subsidiarity principle has many origins. Increasing discontent with Rome's centralism and unresponsiveness as well as the perception of failure of the *Mezzogiorno* policy contributed. The latter assessment was built on the mounting evidence that excessive reliance on central rules and regulations, ineffective use of subsidies, and a highly inefficient public administration with presence of organised crime impeded regional convergence (OECD, 1999*a*, p. 109). The positive appraisal by citizens of the results of decentralisation of schools, universities, and chambers of commerce has also supported further reforms (L. Cici and B.G. Mattarella, 1998, p. 102).

Is Italy becoming a federal system? Views on this hotly debated question – in particular during the Constitutional discussions of 1995–1998 – diverge. On one hand, the Constitution provides each level of government with a status called *Autonomia* that limits the infringements of higher authorities on devolved powers. Recent transfers of regulatory powers to the regions and new administrative capacities to provinces and communes, together with the direct elections of mayors since 1994 has accentuated such aspects. Further, the strengthening of the "recent regions" and the direct election of their presidents for the first time in 2000 will accelerate the move toward such a system. In March 2001, the Parliament approved an important constitutional reform moving further toward a federal constitutional structure (this bill needs to be confirmed by a popular referendum). On the other hand, links between the centre and the lowest level of government (*i.e.* the municipalities) have not been severed. The historical weight of the communes and the fact that some mayors are more powerful than presidents of the regions have made further decentralisation to regions difficult.

Current distribution of regulatory powers and competencies: The national government is the only level with the power to change the Constitution and exercise judicial authority through a court system. Regions can pass laws and regulations, and establish administrative measures. Provinces and municipalities can enact bylaws, but enjoy political autonomy in terms of administrative procedures. In terms of competencies, the system is still in flux. With the implementation of "administrative federalism", the regions possess all administrative powers not expressively attributed to the state. Law 59/97 provides regions with not only the power to delegate, but also the obligation to transfer administrative functions to provinces and communes. Regions may further delegate and transfer competencies to lower-level authorities. While the Constitution confirms the supervision powers of the centre on regional measures and bodies, it also provides the regions with the power to appeal directly to the Constitutional Court against any action of the centre deemed prejudicial to their competencies.

Implementation of decentralisation gained speed in 1999 with the transfer to the regions of 6 000 civil servants of the Ministry of Labour, 10 000 civil servants in the area of environment, and 7 000 in the area of services to citizens. The final implementation decrees, enacted in December 2000, re-assigned nearly 23 000 civil servants and reallocate 25 000 billion liras from the centre to regions and provinces and municipalities. In the coming years devolution of taxation powers shall secure the financing of subnational levels.

Except for competencies delegated to the regions by the Constitution, the Parliament can reclaim devolved powers. Although this has never happened explicitly, in practice new legislation, in particular based on EU requirements, has often changed the distribution of competences. This is the case, for example with a bill currently being discussed in Parliament to control the regulatory powers of municipalities when opening their local public services (garbage, water, and transport).[47]

Co-operation and co-ordination tools: The centre and the regions have gradually started to co-operate in implementing the new system through a series of instruments ranging from the obligation to share information to the "intesa" ("understanding"). Administrative and regulatory relationships can include proposals, requests of advice, conventions, consultations and sharing of offices.

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Three main bodies co-ordinate and co-operate actions and regulations between levels of government.[48] In terms of power and tradition, the most important is the State-Regions Conference (*Conferenza Stato-Regioni*).[49] This permanent body created in 1988 is composed of the Prime Minister (or the delegated Minister for Regional Affairs) and the Presidents of the regions and the self-governing provinces. Ministers or other regional government members can also be invited. An essential role of the Conference is to provide non-mandatory "opinions" on future national legislation affecting the regions.[50]

During the past decade, the Conference has been increasingly engaged in preparing and negotiating, promoting and monitoring agreements on orientation and co-ordination programmes and activities between the centre and the regions.[51] The direct election of Presidents of the Regions in April 2000 has transformed the Conference from a purely consultative body into a major political forum.[52]

In 1996 a second Conference, the State-municipalities Conference (*Conferenza Stato-Città ed autonomie locali*) was established to pursue co-operation, information-sharing and co-ordination on the government's general policies. The Prime Minister (or a delegated Minister) chairs, and its members are national ministers and representatives of local governments (14 designated by municipalities, six by provincial chairs and two by local governments associations).

For many issues of regional and local-level interest, the two Conferences meet jointly in a single Conference: the *Conferenza Unificata*. This conference gives its opinion on budget bills; financial and economical planning programmes, and most decrees and laws and major decrees implementing the 'administrative federalism' reforms. It also promotes agreements and information exchanges between the centre, regions and local authorities to co-ordinate their activities.

Several complementary co-ordination and control mechanisms complement that basic framework, such as central controls on the legality of regional laws and administrative measures. A Supervisory Committee formed by experts (half elected by the Regional Council and half appointed by the central government) has 30 days to block a new law on grounds of incompetence and breach of law before it is enforced. A five member State Control Commission composed of three officers from the Prime Minister's Office, the Ministries of Interior and the Treasury, one judge from the Court of Accounts, and one expert appointed by the Regional Council, can provide a non-mandatory opinion on new subordinated regulations and administrative procedures. No control on merit, need, or other quality parameters are made.

Regions and local governments are subject to additional controls from the centre. First, budgetary instruments rule the public accounts of local level governments. For instance, the national government has replicated the European Stability Pact to avoid unbalances that may affect the general macroeconomic situation.

Two other watchdogs at the central level have an accountability-enhancing role. The Court of Accounts can perform audits of any administrative body of the local level administration, and give an account of its annual report.[53] The Competition Authority has become increasingly concerned by market abuses based on regulatory measures and practices of local governments (see background report to Chapter 3).

Regions and local government have launched initiatives, some dating from the 1980s, to improve their regulatory frameworks. They have in some cases innovated, anticipating and testing instruments before adoption at the national level. For instance, the Tuscany Region has been developing since 1985 tools such as a checklist to analyse the feasibility of draft laws based on an assessment of potential effectiveness and efficiency. The region published in 1991 guidelines on legal drafting adapted for the regional level. This guide emphasis the need to target quality "from the beginning," assuring that legal texts are clearer, accurate, user-friendly and more compatible with computerised research. Interestingly, this last requirement resulted in shorter articles and clearer headings facilitating the preparation of an index and a sharp reduction in convoluted cross-references. Emilia Romagna too has recently improved its law-

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making process by establishing a 'notice and comment' mechanism for subordinate regulations. Furthermore, both regions have been active in radically reviewing and reducing the number of existing laws and regulations.[54] In some cases, a virtuous competition to improve the quality of their regulatory frameworks may have been triggered between regions, provinces and cities. Such dynamics promote the dissemination of best practice. An important organisation for such a role could be the Conference of Regional Presidents, which acts as a lobby and think tank for the regions and oversees a working group on institutional affairs (http://www.regione.it).

Opinion polls[55] suggest that the degree of satisfaction with the new administrative federalism is high. Regional and local-level civil servants are, as expected, great enthusiasts for a policy that has reduced internal procedures and permitted freedom to innovate on services and regulatory approaches. On the other hand, components of the policy are still in the early stage of implementation and in some cases have been delayed. An overall evaluation is difficult when old and new systems cohabit and when the stabilisation of the system and its outcomes should take years to emerge. However, three general remarks can be made.

Second, despite the co-ordination and control mechanisms discussed above, important issues of accountability and transparency in the rule-making process of subnational government persist. As other countries' experiences show, rapid decentralisation of new powers to regulate and administer regulations can trigger disfunctionalities in the regulatory system. In many cases local capacities are inadequate to assume the new rule-making powers. There may be too little awareness of quality of regulation issues, such as assessing regulatory burdens or compliance. Too, local governments are sometimes unconvinced by essential elements of market-based reforms. For instance, communes have reluctantly implemented and sometimes deliberately undermined the implementation of the 1997 law liberalising retail distribution. Privatisation of local public services, for example of transport sector, has raised important difficulties. Smaller, less-resourceful and 'unconvinced' local governments may be more vulnerable to capture by organised, interest groups or less inclined to bold and innovative regulatory approaches. The support and regulatory overview of higher level authorities, in particular from the centre, cannot compensate for such weaknesses. [56] New co-ordination mechanisms and strong encouragement by the centre of good regulatory practices would be useful, for instance, through benchmarking governments' capacities nation-wide.

Lastly, rapid decentralisation may have short-term costs which could intensify regional disparities, and trigger a backlash. Governance capacities vary considerably across regions, provinces and municipalities. Decentralisation of regulatory tasks may penalise in the short time the weakest ones. However, some southern municipalities, such as Naples and Bari, have been top reformers. Encouraging progress is visible in the quality of many southern public administrations, several of which are above national averages in implementing the new tools such as one-stop shops. A counter argument may be valid in the longer term. The previous centralist and paternalist approach did not succeed in increasing the quality of local administration; in fact, the south suffered more than the north from the previous system of national monopolies and centralised planning. Critics have charged that the 30-40 year *Mezzogiorno* policy was part of the cause of backwardness. Decentralisation together with electoral reform is strengthening democratic accountability. The challenge will be to establish effective monitoring, benchmarking, technical assistance, and follow-up systems to reduce failures and speed cross fertilisation of best practices.

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2.5. National – European levels

Italy's co-ordination mechanisms with Europe have evolved and improved in the past decade. Set up at the end of the 1980s, the main co-ordination body for European policy-making is the *Dipartimento per il Coordinamento delle Politiche Comunitarie* (DPC) in the Prime Minister's Office (except on financial and monetary issues which are the responsibility of Interministerial Commission for Economic Policy). In practice, though, the Italian approach is informal and based on direct negotiations between concerned line ministers and Brussels. By law, consultation with the Parliament and the Conference State-Regions of the EU draft is mandatory, but in practice they have raised few comments.[57] No formal public consultation or *ex ante* impact assessment of proposed Directives is carried out.

As part of the reorganisation of the government, recent reforms are changing and formalising the procedure.[58] The new system will clarify the role of DPC as the main manager, responsible for the establishing the official position and for interministerial consultation. The government is analysing the possibility of setting up a special forum for public consultation on draft directives, as well as establishing, together with Parliament, a European Centre where draft and existing directives would be made publicly available.

A more formalised mechanism exists to transpose directives. Pursuant to Law 86/89 (the La Pergola law), each spring the government presents to Parliament a bill with the provisions needed to implement the EU directives approved during the past year. After scrutiny, the Parliament adopts it as the "Annual European Law". The Annual European Law specifies if the transposition will be direct, through Delegated Legislative Decrees or through Government Decrees. After approval of the Law, the DPC monitors the drafting and implementation by ministries. This procedure has helped Italy to make up for its past delays in implementing European law, caused by the slowness of its legislative procedures. In fact, Italy has become one of the most effective Member states in transposing EU directives.

Both the Senate and the Chamber of Deputies have set up a committee on European Affairs to participate in the making and implementation of decisions concerning the European Union as well as directing and controlling the government's policies on Europe. The committees can arrange for debates and hearing and provide advice on proposed EU directives. They are also in charge of debating and enacting the Annual European Law.

As indicated, EU initiatives have helped modernise the economy and its legal framework. However, frictions and weaknesses remain. First, the lack of transparency in the preparation of directives has meant in the short term that high standards have created difficulties in some sectors and low levels of compliance. Second, the business community has complained that, contrary to what other EU countries do, Italian regulators have tended to favour administrative procedures and formalities rather than performance standards and co-ordinated approaches to inspections (Russomanno, 1998, p. 33). Third, some concerns have been raised that no clear legal framework exists for the central government to enforce transposition by regions and local communities. Lastly, European directives are often transposed into primary law, even when the object would not require such a high (and rigid) level of regulation.

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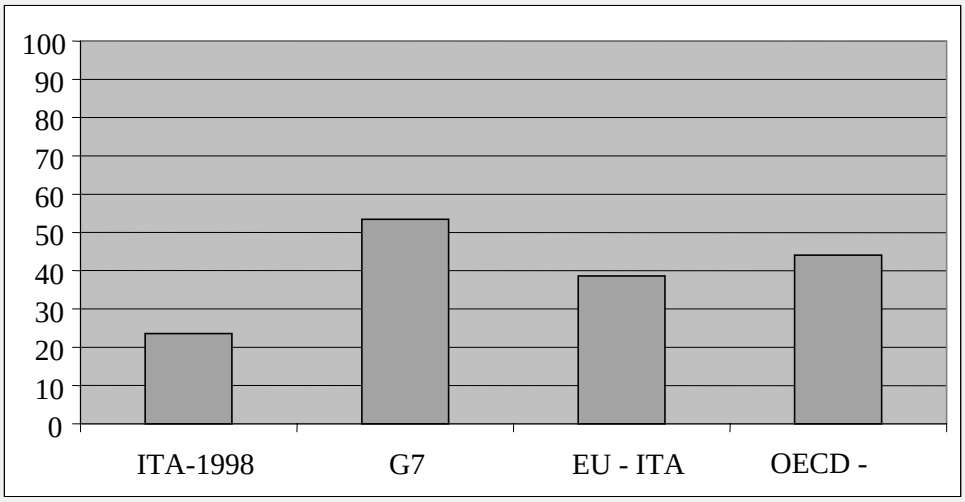
3. ADMINISTRATIVE CAPACITIES FOR MAKING NEW REGULATION OF HIGH QUALITY

3.1. Administrative transparency and predictability

Transparency of the regulatory system is essential to establishing a stable and accessible regulatory environment that promotes competition, trade, and investment, and helps ensure against undue influence by special interests. Transparency also reinforces legitimacy and fairness of regulatory processes. Transparency is a multi-faceted concept that is not easy to change in practice. It involves a wide range of practices, including standardised processes for making and changing regulations; consultation with interested parties; plain language in drafting; publication, codification, and other ways of making rules easy to find and understand; controls on administrative discretion; and implementation and appeals processes that are predictable and consistent.

Box 6. **Transparency of regulatory systems in selected OECD countries**

Based on a 1998 self-assessment survey, this broad synthetic indicator is a relative measure of the openness of the regulation-making and regulatory review system. It ranks more highly national regulatory systems that provide for unrestricted public access to consultation processes, access to regulation through electronic and other publication requirements, access to RIAs, and participation in reviews of existing regulation. Italy scored below most OECD countries, including EU members. It lost points, in particular, due to the lack of forward planning of regulatory activities, the absence of formal public consultation requirements for draft laws and subordinate regulations, the lack of consolidated register of regulations and computerised dissemination processes, and lack of an annual report on regulatory reform. As Figure 1 (based on data from 2000) in Section 5 shows, improvement has occurred in the past two years.



Source: Public Management Service, OECD, 1999.

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3.1.1. Transparency of rule-making procedures

An essential element of transparency is that the administrative procedures to create a law or regulation, that is the normative process, be clear and known. Some countries, such as the United States or Mexico, have established these requirements in their administrative procedures laws. Other countries such as Spain and Hungary have divided administrative procedures into rule-making and adjudicative rules, the latter concerning rights for citizens to defend themselves against government actions.

In Italy, the approach is similar to the latter system, though the administrative procedures are scattered in a series of laws and decrees. Law 400/88 (Article 17) is the main normative instrument here. This law also created the DAGL as the main co-ordinator for the preparation of primary (bills) and secondary government regulations. Additionally, the Prime Minister Decree of 10 November 1993 regulates interministerial consultation on draft laws and secondary regulations, called *diramazione*, as well as the decision-making process by the Council of Minister. The *diramazione* consists of having the DAGL circulate a few days before a Council of Ministers and two days before a pre-council of ministers (formed by legislative offices of ministries) all measures to be discussed in those meetings. Law 50/99 has added disciplines and controls to the process through the RIA, and a March 2000 Decree established the Legal Technical Analysis. The same decree also introduced a forward planning mechanism where, on a quarterly basis, all ministries needed to send to the DAGL a list of regulatory instruments that they planned to prepare. Another recent discipline is based on Law 59/97, which reduced the consultation time of the Council of State. As for the Court of Accounts, Law No. 340/2000 shortened the *ex ante* controls of legality performed by the Court, introducing a silence-is-consent rule that stops the review 60 days after the reception of the act.

The *diramazione* process is considered by officials in Rome to have worked well in clarifying the preparation of regulations for the Council of Ministers. Other countries, too, have found that effective interministerial communication, with adequate information accompanying the draft text and sufficient time for comments, can enhance policy coherence, and be a powerful peer review mechanism, as well as disseminate best practice. However, important entities, such as the competition authority, are not involved in the *diramazione*, although they may provide views on the anticipated effects of future regulations.

3.1.2. Transparency as dialogue with affected groups: use of public consultation

In Italy, public consultation on laws and subordinated regulations is not mandatory unless required by an explicit rule. The typical requirements for consultation concern, for instance, property issues, such as territorial, city zoning and environmental planning. For the vast majority of draft measures, consultation is traditionally considered unnecessary since the Parliament is the supreme organ for redeeming conflicting interests and thus the place where consultation occurs. As for subordinate regulations, they are deemed to apply with limited discretion the substantive elements approved in laws. Recently, these views have been reinforced by fears that too much consultation would reduce the reform process as interested groups may oppose reforms more easily.

A certain amount of public consultation occurs in practice before the *diramazione*. The consultation is done informally and at the discretion of each line minister. A few sectoral consultation bodies exist, such as, since 1998, the Consumers' National Council (*Consiglio nazionale dei consumatori e degli utenti*) in charge of providing advice to the Ministry of Industry, and on environmental protection issues of the specific forum for consultation with NGOs on environmental protection issues operated by the Ministry of Environment.[59]

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In parallel to sectoral consultations, ministries have created new units called observatories, which do not only provide general advice to ministers on technical issues, but also on future regulations and on the results of existing one. Characteristically, an observatory on water tariffs would have from three to five experts appointed by the Minister, very often renowned academics, who would bring high quality advice and independent views.

In addition, and as most continental European countries, Italy has mechanisms to consult the social partners (employers and union associations). This is typically done for major laws on social and labour matters, such as social security reform or civil service reform. The National Council of Economy and Labour (CNEL – *Consiglio Nazionale dell'Economia e del Lavoro*) has been a forum for this kind of consultation. Recent consultations with "social partners" have taken the form of "social pacts", such as the *Patto di Natale* ("Christmas Agreement") (see Chapter 1). [60] In these cases, the negotiations have been opened to consumers and environmental associations. However, tripartite mechanisms can reflect a rigid corporatist view of society, and their formalism can lead to a focus on negotiation and balancing of interests in the law, rather than attention to policy results and efficiency.

In sum, consultation schemes and procedures in Italy are still weak and compare unfavourably to international best practices. Many SMEs have complained that they are seldom consulted and that most of the opinions reflect concerns by large firms or directly involved firms.[61] Furthermore, informal consultation concerns draft bills that are nearly final, and rarely affects subordinate regulations. As many countries have discovered, late public consultation reduces the quality of laws and regulations, because at this stage it becomes more difficult to assess the different alternatives to achieve the regulatory goal at minimum cost. Poor consultation also tends to reduce the acceptance of the rule by regulated entities, and thus reduces the rate of potential compliance, undermining policy effectiveness.

Partly to solve such problems, the government established through Law 50/99 a permanent consultative body known as "*Osservatorio sulle semplificazioni*" formed by: i) one delegate from each Ministry, ii) 34 representatives of the "social partners",[62] and iii) ten representatives of the regions and local governments chosen by the "*Conferenza unificata*" (see Section 2.4).[63] As the advisory body on administrative simplification affairs of the Minister in charge of the Reform of the State, the Observatory should play a crucial role in reforms. Although not explicit in its mandate, the Nucleo has expressed the view that the Observatory should discuss and review legal and regulatory drafts and future RIAs. To ensure accountability, the Observatory will prepare an annual report to the Ministry. The Observatory is also required to organise the following meetings:

- A monthly plenary session, chaired by the Minister delegated by the Prime Minister;
- *Ad hoc* working groups on specific matters (which can meet with or without the government representative) including simplification of administrative documentation, electronic government, one-stop shops and conference of services (see Section 4);
- Periodic meetings on general regulatory and simplification issues; and
- Early consultations with social partners before drafting begins.

Two other points related to Italian consultation mechanisms are worth making. First, while Parliament publishes in the Internet all bills under discussion, the government and independent regulators rarely use the 'notice and comment' mechanism before approving subordinate regulations. The Prime Minister's Office Internet site (www.palazzochigi.it) has also a list, regularly updated, of regulatory measures, which have been approved within the Government (for instance Government bills, Government decrees, Prime Minister decrees, holding back to October 1998. On the website of the Ministry for Public

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Administration (www.funzionepubblica.it), the Nucleo has begun publishing for notice and comment the drafts of consolidated texts and simplification decrees. As many countries have found, the 'notice and comments' mechanism is an important complementary device to actively solicit comments. In many ways, it functions as a «safeguard» in avoiding undue influence by particular interests, from private sector or from the administration. One reported exception is the Emilia Romagna Region's requirement for publishing in its regional gazette a 'notice and comment' for draft laws but also subordinate regulations.[64] Second, until recently, Italy had been unwilling to make public its forward planning of future laws and regulations, which impeded the ability of concerned parties to prepare themselves.[65] With the publication on the government's website of the programme on consolidation and simplification in September 2000, the government has begun to better inform the public of future regulations.

Last, it is important that the new policy was created through intense public and academic debate. Most of the successive components and initiative of the policy were preceded by intensive studies and symposiums.[66] This intense exposure in the media and among experts created a community of reformers, and administrators ready and willing to implement the reforms, and is a good practice among OECD countries.

Recent initiatives, such as the Observatory and the use of Internet to publish bills discussed in Parliament, have enhanced transparency. Moreover, following OECD recommendations in the course of this review, a Prime Minister's decree of July 2000 has placed a representative of the Antitrust Commission in the Observatory, which should strengthen attention to competition impacts of regulations. The Observatory, as a pro-active reform mechanism, should play an essential role in public consultation by providing informed feedback to regulators on the quality of draft rules. However, the Observatory should be supplemented with wider consultation procedures. Its large number of public and private participants may make deliberations and decision-making difficult and inefficient. Its non-governmental representatives are mostly representatives of businesses associations and unions and may not have the first-hand information an entrepreneur or citizen could provide. Moreover, a single and large consultation forum, instead of a dozen of smaller focus groups, may not nurture the specialisation needed for the hundreds of individual rules on which consultation occurs each year.

3.1.3. Transparency in communicating regulations

The effectiveness of regulation is crucially dependent on the awareness of the regulated community of regulatory requirements. As do most countries, Italy requires that all laws and subordinate regulations, as well as decisions of the Constitutional Court and acts or statements that could affect a majority of people, be published in the Official Gazette ("*Gazzetta Ufficiale*"). The Gazette itself is easily available, including on the Internet.[67] However, the number of laws and procedures, as well as the structural elements of the laws, sharply reduces the transparency of the legal system for users, national and foreigners.[68] Furthermore, the government has not compiled a registry of existing regulations, though in early 2001 plans were underway to launch such a registry. There is as yet no system to help businesses and citizens to identify applicable regulations, procedures, and formalities, as there is in France, Spain and Mexico.[69] However, in recent years, the government has made significant efforts, in particular by e-government initiatives, to improve access to laws and regulations by citizens and businesses.

One instrument that the government has used is the so-called "re-publication" of laws that have been substantially modified. The Ministry of Justice, in co-ordination with the competent ministry, redrafts and publishes in the Official Gazette the law, highlighting modifications and repeals of the initial version.[70] Although this procedure is not mandatory, in recent years it has been regularly used, for instance, for civil service reform.

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A 1991 survey revealed that almost 60% of the population was unable to understand administrative language. Based on such assessments, the government has been trying to improve the readability and the use of plain language in the preparation of laws and regulations. In 1993, it published a "Code of Style" defining general principles to simplify "bureaucratic jargon. The code was accompanied four years later by a "Style Manual" ("*Manuale di Stile*") with further specifications and guidance, which is now supported with training courses and a prototype software to automatically check the degree of legibility (GULPEASE project). However, in contrast to some other countries, such as Denmark, readability is not a mandatory criterion and no specific unit enforces the principles systematically.

More recently, as already indicated, the Prime Minister Decree of 27 March 2000 established Legal Technical Analysis ("*Analisi tecnico-normativa*" or ATN) together with the RIA for all governmental measures. Through the ATN, the DAGL and the Nucleo will be able to check the impact of proposed drafts on the legal system, in order to verify:

- Conformity with Constitution, European law and regional and local acts, as well as their coherence with previous "delegislation" measures;
- Correct use of definitions and normative references laid down in the normative text as well as the technique of modifications and abrogation of normative;
- Existence of other bills or drafts on the same issue as well as relevant judicial decisions affecting the discipline that is going to be modified.

Italy has also put much effort into the use of Internet to improve transparency for all governmental actions, including rulemaking. In a joint effort, the Prime Minister's Office and several Ministers, the Senate, the Chamber of Deputies and other bodies launched in 1999 a programme called "Regulations on the net" (*Norme in rete*). The Internet site will offer, when finalised, free and easier access and search mechanisms for European, national and regional laws (www.normeinrete.it). The AIPA project launched in 1993 should computerise in the next 10 years the stock of legislation though a consortium of major ministries (Ministries of Justice, of Finance, etc).[71] In the medium term, the AIPA project will create a single Internet portal for the whole government, which should permit direct on-line interactions with the administration with the help of electronic identity cards and electronic signatures.

3.1.4. Transparency in applying and enforcing regulations

Adoption and communication of a regulation is only part of the regulatory framework. To achieve policy objectives through regulations, citizens and businesses must comply with them and the government must enforce them. An appeal mechanism against regulatory abuse must also be in place.

With the enactment in 1990 of the Administrative Procedure Law (Law 241/90), Italy strengthened transparency in the application and enforcement mechanisms of laws and regulations. The principles of the law are applicable to all levels of governments and include critical obligations requiring administrations responsible for procedures:

- To establish a time limits for the end of a procedure;
- To implement if possible the 'silence is consent rule' ("*silenzio assenso*"). That is, if the authority does not reject a request after 30 days, the applicant can consider it authorised;
- To identify an accountable officer for every procedure ("*responsabile del procedimento*"), responsible for providing information to applicants;

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- To prepare the resolution ("*obbligo di motivazione*") where the administration gives legal and factual reasons for its decisions;

- To communicate the start of the procedure, to provide the right to intervene, to provide additional information and comments to the applicant, and to permit appeals if these principles are not followed.

- To institutionalise the 'right of access' ("*diritto di accesso*"), where the public and the applicant have the right to access administrative information, and where the authorities are required to explain and reveal, whenever possible, the internal actions that led to the decision.[72]

The law and its subsequent modifications have provided a strong framework of rights for citizens, and disciplines for the administrators. Changes to the culture of civil servants have also occurred, though this has been slower than expected, in part due to the lack of awareness by some parts of the population of their new rights (Lacava, 1998, pp. 102-103). The law and its instruments, as indicated above, have also been important platforms for the simplification policy (see Section 4 for an evaluation of the simplification policy).[73]

However, despite the progress in improving the general framework for regulatory decision-making, and subsequent improvements to administrative procedures and authorisations, concerns have been raised about enforcement and inspection procedures. For instance, according to *Confartigianato*, a business may be inspected by a dozen different authorities who enforce part or all of the provisions in the Law on Health Safety for Workers (626/94). In environmental inspections, a business can be inspected by a special police (the *Nucleo Operativo Ecologico* – NOE – a special unit of the *carabinieri*), the environmental ministry, the environmental agency ANPA (*Agenzia Nazionale per l'Ambiente*), the region, the province, and the commune. The inspecting authorities have in some cases performance criteria that is different from or even contradicts other laws. Inspectors tend to concentrate on formal compliance and possession of official documents (*i.e.* if the company has its licences in order) instead of verifying compliance with the rule's intent. A 1997 Confindustria survey of 615 businesses found that, on average, each firm was inspected 15 times a year on different aspects such as environmental protection, health and safety, social security, etc. The survey also indicated that 51% of businesses had at least one dispute with the administration.[74] Such a situation reveals a lack of effective co-ordination among enforcement and inspection mechanisms.

Despite the proliferation of inspection bodies, a low level of regulatory compliance threatens the effectiveness of regulations, public policies, and ultimately the capacities and credibility of governments. It is notoriously difficult to tackle the compliance issue, though some countries, such as the Netherlands, have launched initiatives on this area.[75] In Italy, the issue has received little attention, although some authors have indicated that the Italian economy works in a *de facto* deregulated environment due to the extent of non-compliance by businesses.[76] This state of affairs, related to the level of the "underground economy" and deficiencies in enforcement mechanisms, suggests priorities for the future reform agenda.

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Nonetheless, the situation may be changing. SMEs are becoming more aware of the need for higher standards, in environment and other technical norms, to compete in international markets. More importantly, Italy's decentralisation process may improve regulatory administrations and compliance.

3.1.5. Transparency in appealing regulations

Closely related to the new rights provided by the Administrative Procedures Law of 1990, Italy has in the last decade improved accountability through new appeals mechanisms. Italian administrative justice provides a number of different appeal procedures against abuses of the public administration. The typical "annulment judgement" of the Regional Administrative Tribunal is flanked by other special mechanisms, for instance: i) "*silenzio rifiuto*" to bind an inactive administration to adopt an administrative measure; ii) "*giudizio di ottemperanza*", to bind an inert administration to comply with a judicial decision, even substituting the administration with a "*commissario ad acta*", an officer appointed by the judge; iii) "*giudizio di accesso*", to bind an administration to show administrative acts that have been required by a private. The Council of State acts as the supreme appeals tribunal. The administrative process also guarantees the adoption of emergency measures. An administrative act that seems illegal at a first glance can be "suspended" to avoid "grave and irreparable" damages (the so-called "*sospensiva*", or stay of execution).

Importantly, a decision of the Supreme Court recently reversed a 50-year old jurisdictional principle, and radically innovated the accountability of the administration.[77] The decision states that a public administration may be liable if a legitimate interest of a citizen is thwarted. In practice, the decision compels the public administration to pay when responsible for delays in performing its duties.

A real problem of administrative judicial procedures in Italy is the length of appeals. An administrative appeal can extend to more than four years at the level of a Regional Administrative Tribunal, and two additional years on appeal to the Council of State. Moreover, because of the long delay in the administrative judicial process, people ask judges for *sospensiva* to prevent any irreparable damages (in 1997, 51% of total appeals where "*sospensive*").

In part to remedy such situations, Law No. 205/2000 foresees faster procedures for some conflicts (such as those concerning public tendering), and a 20% increase in the number of judges. The law enables judges to decide the *sospensiva* together with the merits of the case.[78] Also, Italy has looked for alternative mechanisms to traditional administrative appeals. Two important innovations can be mentioned. First, Law 127/97 created a Civic Advocate ("*Difensore civico*") in each region who provides a defence of citizens' rights similar to an ombudsman.[79] Second, the laws that in the past decade created the independent regulators introduced alternative dispute resolution systems, such as arbitration and conciliation, to solve most conflicts between citizens and public service providers in specific sectors (Rangone, 2000). However, the rules have been considered too unclear or too complex, thus inhibiting the use of the mechanism.

3.2. Choice of policy instruments: regulation and alternatives

A core administrative capacity for good regulation is the ability to choose the most efficient and effective policy tool, whether regulatory or non-regulatory. The range of policy tools and their uses is expanding as experimentation occurs, learning is diffused and understanding of the potential role of markets increases. At the same time, administrators often face risks in using relatively untried tools, bureaucracies are highly conservative, and there are typically strong disincentives for public servants to be innovative. A clear leading role – supportive of innovation and policy learning – must be taken by reform authorities if alternatives to traditional regulation are to make serious headway into the policy system.

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Use of alternatives to regulation is still limited in Italy. Factors, such as a legalistic culture and a regulatory tradition based on administrative procedures and 'command and control' rather than incentive-based instruments, retard their adoption. Risk aversion and mistrust of innovations are characteristic of regulators. For instance, one region appealed to the Constitutional Court when the legally mandated classification of hotels and restaurants was transformed into a self-regulatory system managed by industry representatives. As in many countries, such as the United States, Denmark, and the Netherlands, Italy has used with some success alternatives to traditional regulation in the field of environmental protection. Some of these environmental initiatives may be models for use in other regulatory fields where command and control styles still predominate.

A modest, but growing, use of tax-based measures has been introduced. For instance, the government introduced CO_2 and NO_x taxes to control environmental externalities. A few years later, it also implemented a landfill tax to create incentives for lower production of wastes at the source and the recovery of energy and raw materials from wastes. However, the complexity of some new instruments and the low quality of the administration have hampered the implementation of more effective regulatory instruments such as markets for pollution permits.[80] In terms of covenants between the government and firms, no systematic approach exists, but case-by-case agreements have been signed, such as one with FIAT for the production of low pollution cars, and with ENI on greener fuels.

The 1997 regulatory quality policy should help develop regulatory alternatives in the next few years. In particular, it is specifically required that RIAs for all proposed regulations should assess "alternatives to the regulation" including the "do nothing option". A short enumeration of possible options lists self-regulation, economic instruments, and information mechanisms.[81] Its two step-approach should also help drafters consider alternatives from the early planning of the regulation. It will be important to include sufficient information and guidance to help administrators comply effectively with the requirement.

Furthermore, more beneficial innovations are being encouraged within the Italian administration. The use of an experimental period when launching and implementing a new initiative (as was the case for RIA and the one-stop shop programme) may encourage administrators and enforcers to propose alternative mechanisms during the experimental phase. The capacity to experiment should increase a sense of ownership by responsible personnel.

3.3. Understanding regulatory impacts: the use of Regulatory Impact Analysis (RIA)

The 1995 *Recommendation of the Council of the OECD on Improving the Quality of Government Regulation* emphasised the role of RIA in systematically ensuring that the most efficient and effective policy options were chosen. The 1997 *OECD Report on Regulatory Reform* recommended that governments "integrate regulatory impact analysis into the development review and reform of regulations". A list of best practices is discussed in detail in *Regulatory Impact Analysis: Best Practices in OECD Countries* (OECD, 1997) and provides a framework for the following description and assessment of RIA practice in Italy.

Until very recently, the Italian government carried out little justification of its proposed laws and regulations. The only *ex ante* control, in addition to the requirement of legality, consisted of a budgetary impact assessment imposed by the Constitution (Article 81). Even this requirement was not rigorously enforced until the political will, related to the Maastricht criteria, provided the disciplines and procedures to do so.[82]

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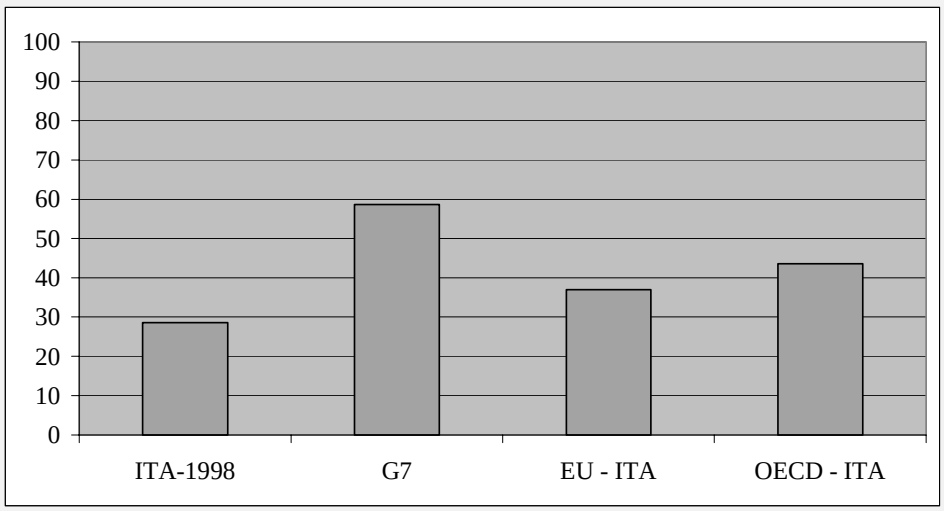
In 1999, Article 5 of the Law 50/99 created mandatory reports on legal drafting (ATN) and on the regulatory impacts of new measures prepared by the government.[83] In March 2000, a detailed directive (in the form of a Prime Minister Decree) implemented the requirements and detailed the administrative procedures and formats to be applied.

The 'teeth' of the new mechanism is that proponent ministries must submit, to the DAGL, two reports to include their draft text in the agenda of the pre-Council of Ministers (the Council of Ministers cannot discuss a document not examined by the Pre-Council.)[84] They also must send the reports to the Nucleo. For regulations not submitted to the Council of Ministers, such as ministerial decrees and lower level regulations, the Decree requires that a proponent minister attach the two reports when notifying the new regulation to the DAGL. The Decree also defines the content of the two-step RIA submissions, the associated technical support, and exemptions. It announces the preparation of a report to the Prime Minister on the results of the experimental phase. A practical guide to illustrate RIA methods was prepared, based on international experience. The Guide describes the analytical tools to be used to determine the impact on citizens and enterprises, and the tools to measure the effect of the proposed regulation on the organisation of the public administration. The guide was presented to the Council of Ministers in December 2000 and is available on the Website of the Ministry for Public Administration (www.funzionepubblica.it). The guide is supported by a training programme for personnel preparing RIAs and dissemination of RIA methods, assisted by an *ad hoc* team of experts from DAGL, Nucleo, Ministry for Public Administration, and the Prime Minister's Office Economic Department. The help-desk will support the administrations in preparing their RIAs during the experimental phase.

Box 7. **The quality of Regulatory Impact Analysis in Italy**

This synthetic indicator (based on self-assessments) of the application and methodology of regulatory impact analysis looks at several aspects of the use of RIA and ranks more highly those programmes where RIA is applied both to legislation and lower-level regulations, where independent controls on the quality of analysis are in place and where competition and trade impacts are identified, as well as the distribution of effects across society. It also ranks more highly the use of RIA documents for consultation purposes, RIA programmes where benefits and costs are quantified and where a benefit-cost test is used in decision-making. Italy had a lower score on this indicator, trailing both the OECD average and the average of the newer OECD countries. This outcome was explained by the lack of use of quantified, benefit/cost analysis, application of RIA to some policy areas, is use only for some laws, and not for subordinated regulations, and the fact that no external body, inside or outside the government, reviews the quality of RIA. Significant evolution has occurred since then as Figure 1 in Section 5 shows with data from 2000.



Source: Public Management Service, OECD, 1999.

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Italian RIA is based on a two-stage submission: a preliminary assessment to be prepared in the initial stage, and a full-fledged RIA to accompany the final draft when submitted to the Council of Ministers, or before adoption for subordinate regulation not reviewed by the Council. The procedure does not include time limits. The preliminary RIA must follow a standardised format identifying:

- Affected or involved parties;
- Social, economic and legal elements justifying the regulation;
- Immediate and long-term objectives of the regulation;
- Budgetary, economic and social constraints (including impacts) when implementing the regulation;
- Critical constraints that may induce the regulation to fail;
- General assessment of alternatives (including "doing nothing"), and
- Appropriate level of the regulations (i.e. law, decree, etc.).

The final RIA must validate the elements submitted in the preliminary RIA and provide:

- Objectives and expected results;
- Description of the analytical tools chosen to evaluate the scope, objectives and results
- Direct and indirect impacts on the public administration
- Direct and indirect impacts on affected parties, based on a cost benefit analysis.

During the experimental period, the DAGL may, *de officio* or on the proposition of the Nucleo, identify categories of regulations to be exempted from RIA due to their limited impacts. Proposing ministers must send to the DAGL a quarterly list with the regulations that they will be presenting, justifying requests for exemption from RIA and/or ATN.

The Italian system of RIA, with the ATN, seems well-designed to function within the institutions and procedures of the Italian government. The experimental period will permit the DAGL and the Nucleo to fine-tune it appropriately. The practical guide on RIA, published in December 2000, has gained from the experience of other OECD countries and from direct co-operation with the UK's Regulatory Impact Unit. However, as RIA has not been put into place, the following analysis of RIA will be based largely on the formal features of the system. It is too soon to draw conclusions about the practice of these requirements, though obviously any results will depend on careful and sustained implementation.

Maximise political commitment to RIA. Use of RIA to support reform should be supported at the highest levels of government. The Italian system rates highly on this criterion. RIA is required by law and implemented by a Prime Minister Decree. It is managed by the DAGL and the Nucleo at the centre of the government and it is required for all of the government's drafts that are discussed and approved in the Council of Ministers, as well as subordinate regulations. Although the Decree does not specify it, in practice, proponent ministers will need to take responsibility for its completion and quality. Moreover, the Chamber of Deputies has indicated that it will also require and verify RIAs for proposed bills.

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Allocate responsibility for RIA programme elements carefully. To ensure "ownership" by the regulators, while at the same time establishing quality control and consistency, responsibilities should be shared between regulators and a central quality control unit. As in most countries, RIA in Italy is prepared by the regulating minister and agency – in practice the legal departments. The DAGL will determine, directly or through the Nucleo, if the RIA is complete or incomplete (and thus requires further work). Although the DAGL cannot block an individual measure, it has the authority to delay it, if it considers it of poor quality, and can, with the Nucleo, send a report directly to the Prime Minister on the incompleteness of ATN and RIA reports. The DAGL, with the assistance of the Nucleo, is a credible reviewer, as the gatekeeper to the Council of Ministers, though it may have difficulties enforcing the two-step discipline on regulations not discussed in the Council.

Train the regulators. Regulators must have the skills to do high quality RIA. As many countries have found, introducing RIA can be difficult and slow because of the lack of expertise in ministries. In Italy, due to low (and often non-existent) economic skills in the legal departments, the preparation of adequate RIAs will not be easy. However, the Italian system has taken steps to avoid the skills bottleneck. An experimental phase tested and adjusted the system, and, from the beginning, the Decree included technical support from the DAGL and the Nucleo. The practical guide to RIA provides concrete examples of the analysis required and the detailed format to be completed. The guide follows a practical and pedagogic approach, providing methodologies for the assessment of impacts, including benefit-cost analysis, cost-effectiveness analysis, and risk assessment. The guide also emphasises the need for consultation as a data-gathering strategy (see below). UPIA has been asked to assess the skills needs of ministries to prepare RIAs, and implications for recruitment and training policies. The government has started training courses.

Use a consistent, but flexible, analytical method. The Decree emphasises the need to evaluate impacts, specifying that the RIA should include an "assessment of the costs and benefits deriving from the regulation". Following the UK approach, the draft manual focuses primarily on compliance costs, and gives emphasis to quantitative data-gathering methods. At least six categories of costs have been identified: compliance costs (in terms of capital, human resources, administration, research and development, etc.); structural costs related to production and process methods, short term vs long-term cost; certain, probable or uncertain costs; avoidable and unavoidable costs and enforcement costs (sanctions). The Decree and the draft manual also require that alternatives to regulation be identified and assessed. More problematic, because of the strong categorisation of distinct concepts of costs, the draft manual may inadvertently reduce the possibility to calculate an overarching cost figure which could be compared with other alternatives or through time. The lack of adequate skills base among legal departments' officials, means that this section of the RIA will need a high priority attention. In that respect, the DAGL and/or Nucleo could develop a grading system evaluating the quality of the analysis for each submission, as has been done by the Mexican Economic Deregulation Unit. Such grading mechanisms provide clear feedback to ministries about their efforts and improvements (or regressions) and help the DAGL and the Nucleo to monitor progress in the legal departments and target their training and support.[85]

Develop and implement data collection strategies. The conduct of high quality RIA necessarily imposes significant data requirements and data availability is one of the key determinants of RIA quality. Ensuring that relevant data can be generated at lowest cost is important for successful RIA strategies and a number of OECD countries have begun to develop strategies to ensure that essential data is available for RIA. The Italian draft manual proposes some possible data mechanisms, including opinion surveys, direct interviews, and the use of focus groups. The draft manual encourages drafters to use the latter. Such practices could be developed similarly to the one Denmark has adopted, known as Business Test Panels. As for other parts of the Italian RIA, it will be important to monitor the implementation of such strategies. Data collection strategies are often expensive. The RIA programme should evaluate clearly the budgetary costs on ministries to respond to these requirement and advocate a proper allocation of funds.

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Target RIA efforts. RIA resources should be targeted to those regulations where impacts are the most significant and where the prospects are best for altering outcomes. Italy has not automatically targeted some type of regulations as some countries have done. However, as an explicit objective of the experimental year, the Decree requires analysing which categories of regulations could be exempted in block (*i.e.* changes in the organisation of the government) or individually (based on a quarterly list of requested exemption). In the latter case, the proponent ministry needs to justify the exemption. Although this mechanism seems sensible during the experimental and learning phase, the excessive discretion permitted to the DAGL and Nucleo may compromise the credibility of the system in the long term. In addition, practical reasons may demand a straight forward targeting mechanism. First, because two RIAs (one preliminary another final) and one ATN are required for all draft laws and regulations, the DAGL and Nucleo will be flooded under a shower of reports. This will put extreme work pressures of relative scare capacities of the reviewing units. (The Nucleo is also responsible for time-consuming tasks such as the preparation of consolidated texts, and Delegislation and Delegated Legislative Decrees). More importantly, the possibility of accepting case by case exemptions, based on the justification by a single ministry, may open the door to politicisation of the process and to strategic behaviour abusing the exemptions. Italy should consider adopting clear and simple criteria defining a threshold for anticipated costs or other impacts, and providing guidance to proponent ministries to help them to easily assess if regulatory impacts are below or above the threshold. For instance, the Korean RIA requires a rough estimate of costs for all regulations, and defines as "significant" regulation those that have an annual impact exceeding 10 billion Won (US$ 0.9 million), an impact on more than 1 million people, a clear restriction on market competition, or a clear departure from international standards. Significant regulations, as defined, are subject to the full RIA requirements. The Nucleo should also be able to decide if a full-fledged RIA is required.

Integrate RIA with the policy development process, beginning as early as possible. If RIA is to improve regulatory quality, its insights must be used effectively by policy makers. This necessarily implies that it be considered an integral part of the policy development process from an early stage. A basic strength of the Italian system consist in its two-step approach, where a preliminary RIA focusing mainly on justification and alternatives (including the "do-nothing option") is prepared before the text is written. Before approval, the preliminary RIA needs to be "validated" with more in-depth analysis of compliance costs. Attention will be needed to evaluate the "validating process" in order to make sure that proposing bodies do not prepare a last minute RIA that is a paperwork exercise rather than a genuine attempt to make the right choices.

Involve the public extensively. RIA should be closely linked with consultation processes if its value is to be maximised. As discuss above, the consultation process should be clearly seen as a key tool to gather data. Extensive and detailed consultation in some countries such as the Netherlands and Denmark have led to faster implementation and higher compliance rates. In sum, regulatory consultation is essential to increase performance of the laws and regulations. On this criterion, the Italian RIA shows mixed results. The RIA guide stresses that consulting with the public and future regulated parties improves the data needed for preparing a good RIA. Of course, nothing should impede, for example, the publication of RIAs by DAGL or the Nucleo. The government (through the Observatory) and the Parliament have indicated also they are planning to use the RIA in their deliberations. Nevertheless, Italy should consider mandating the publication of the RIAs (in preliminary as well as final forms). Publication is one of the most effective ways to improve the quality of RIAs in the short run, and the added transparency will accelerate improvements in the technical capacities of regulators.

Overall, Italy has created a well-designed RIA system that needs to be put into practice and refined on the basis of evolving experience. The system takes into consideration OECD recommendations and international best practices, and contains interesting innovations (such as the two RIA reports and the ATN report). The full year of experimentation will enable Italy to further adapt the tool to the conditions and needs of the administration.

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Several elements need, however, to be monitored with care. Complementing the RIA guide with sufficient training and technical assistance will help to rapidly increase the skills of regulators and the awareness of the public, and to reduce the opposition of ministries and agencies. The applicability of RIA to laws and subordinate rules is a key strength, although poorly-controlled exemptions may be a loophole that will need to be closed by a firmer targeting mechanism. The mechanism to enforce the two-step reporting on regulation not analysed by the Council also seems fragile. Moreover, at least a monetized priority-setting mechanism should be put into place as soon as possible, because the preparation of two RIAs per draft, plus the ATN, implies that thousands of reports could rapidly saturate central review capacities. The commitments to use benefit-cost analysis and the identification and analysis of alternatives to regulatory proposals are important precedents that need to be enforced among regulators trained in legal fields. An important area for further attention is the integration of RIA with the public consultation process, internal and external to the Observatory. Together with data-gathering techniques, these two components are costly in time and resources. The government should evaluate the impacts of these requirements on budgets, and advocate for appropriate funding.[86] The fact that independent regulators are not yet covered by the RIA discipline raises important concerns, as these institutions will increasingly become important sources of new regulations. Plans are underway in early 2001 to apply RIA to these institutions.

Last, achieving concrete results from a RIA programme can take years (if not decades) as the flow of new and improved regulations slowly replaces the old stock. A RIA programme, with its evaluation and accountability foundations, means that a cultural change is required among regulators. Thus, a danger exists that frustration and disappointment, and thus a dwindling of political support, will follow too-high expectations of a “miracle tool”. The Italian government should clarify from the beginning that RIA is an essential but long term investment that will pay-off handsomely only if effectively sustained through time.

3.4. Building regulatory agencies

Italy has created a number of independent regulatory bodies. The independent authorities (IAs) are bodies autonomous from the executive branch and reporting directly to the Parliament.[87] They were created as part of the liberalisation and privatisation process and they respond to the need to separate the political decision-making process from the expert enforcement of regulations. Except for CONSOB established in 1974 to regulate the stock exchange, all IAs were created during the 1990s in areas such as competition, public utilities strikes, energy, privacy, communications, public procurements, “pension funds”, non-profit activities (see Table 1). Some of the most important IAs were established as mandated by EU requirements.

Independence is assured by criteria for selection and tenure of the executive board (*e.g.* the appointment process, qualifications of the commissioners, incompatibility with other functions, fixed terms, dismissal only for cause). Independence from the government is also provided by the possibility for some of the IAs to determine their own internal organisation and administrative procedures (different from Law 241/90), and have an autonomous budgetary and human resources policy.

Based originally on the American model, the IAs can possess several kinds of powers to intervene (administrative, quasi-legislative, quasi-judicial). For instance, some of them have introduced novel mechanisms and procedures to ensure procedural fairness and openness (right to be heard and cross-examination in the adjudication’s proceedings and participation to rule-making procedures).

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The existing IAs differ in terms of competencies and procedures guaranteeing independence and accountability towards the Parliament and the Government, and the administrative procedures guarantee individual rights. Based on those two fundamental characteristics, the IAs can then be broadly classified into "Guarantee Authorities", "Regulation Authorities" and a third intermediary category (Griffi, 1996).[88]

"Guarantee Authorities" are primarily quasi-judicial bodies whose competencies enable them to apply special fairness and openness procedures (*e.g.* the competition authority). Independence is strongly guaranteed through the nomination by the Parliament of its governance board and by being able to apply specific administrative procedures. For this type of IAs, the unique accountability mechanism is the annual report to the Parliament.

"Regulation Authorities" have administrative and quasi-legislative competencies concerning prices and quality in a policy area. The Administrative Procedure Law (Law 241/90) applies to their interactions, although they can have more elaborated public consultation mechanisms. The government participates to the nomination of their governance board. Overall, they are considered to be "semi-independent" from the government. The typical IAs in this category are the Authorities for Electricity and Gas, and for Communications.

Between the two models, some bodies are "semi-independent" from the government, although they have adjudication and rule-making powers (such as the Bank of Italy[89] and CONSOB). Other bodies are defined as "independent authorities" but have substantial characteristics of ordinary government departments (such as the Authority for Information Technology in the Public Administration (AIPA) and the Committee controlling strike on public services).

The accountability of the IAs is mainly ensured through annual reports to the Parliament. In addition, the Court of Accounts controls their management. IAs are also subject to judicial review.[90] In fact, IAs have experienced difficulties when their decisions are appealed to the Courts, as in the case of recent competition authority decisions (see background report to Chapter 3).

Co-ordination between the competition authority and other IAs is required in some sectors. The Authority must request a non-binding opinion from the relevant sectoral regulator before taking action involving telecommunications, broadcasting and publishing, and insurance. It must also provide such an opinion to the Bank of Italy concerning enforcement actions in banking; in that sector, the Bank of Italy is responsible for applying the Competition Act. Although these opinions are non-binding, they are public; the Authority publishes its opinions to the Bank of Italy along with its other actions. Thus disagreement does not give the other regulator a veto over action, but it may compel a more complete explanation of the decision.

It is still too early to evaluate the performance of IAs, but some problems are emerging. In some sectors, the IAs activities represent the most important source of general regulation, but there is no obligation to prepare a Regulatory Impact Analysis. Public consultation with interested parties varies amongst the IAs and rule-making procedures and public consultation requirements are not clear or sufficient (and, in some cases, they are non-existent). Some economic sectors are covered simultaneously by different regulators and the relationships between authorities are not always clear (*e.g.*, in the energy sector the Authority for electricity and gas, the Ministry of Industry, the Inter-Ministerial Committee for Economic Planning, the Ministry of Environment and the regional and local authorities, have regulatory responsibilities). Critics have also signalled the tendency to create IAs in areas that could be covered by ministries (*e.g.* in the information technology sector).[91] On the other hand, some sectors, such as the transport sector, may need an appropriate regulator.

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Table 1. **Italy's major regulatory institutions**

Board	Laws	Sector	Task	Powers	Selection of the executive board
Autorità garante della concorrenza e del mercato	Law 287/90.	All except banking.	General competence on competition law enforcement (restrictive agreements, abuse of dominant position and mergers), separate analysis for banking; and competition advocacy through recommendation to Parliament, government and regulation authorities.	Adjudication powers.	Parliament selection.
Autorità per le garanzie nelle comunicazioni	Law 249/97.	Telecom-munications, television and publishing.	Issuance of satellite and cable broadcasting licences; proposal on the clauses of broadcasting concessions; provision of directives on service quality, definition of plans for the issuance of frequencies; definition of health and security standards regarding communications control of dominant and relevant positions in order to guarantee pluralism.	Administrative and rule-making powers.	Governmental selection for the President; Parliament selection for the commissioners.
CONSOB	216/74; Presiden-tial Decree 252/79; Law 281/85.	Stock exchange.	Supervision of stock exchange transparency, insider trading.	Supervision powers.	Governmental selection.
ISVAP	Law 576/82.	Insurance.	Supervision of the insurance market to guarantee stability and transparency.	Supervision powers.	Governmental selection
Garante per la protezione dei dati personali	Law 675/96.	Privacy.	Control the processing (for example, collecting, processing) of personal data (all information concerning people and undertakings).		Parliament selection.
Commissione per l'attuazione della legge sullo scipero nei servizi pubblici essenziali	Law 146/90, amended by Law 83/2000.	Strike on public services.	Balance between the right of strike and constitutional human rights. (There is a draft law extending competence).	Administrative powers.	Parliament selection and nomination by Presidential Decree.
Autorità per l'energia elettrica ed il gas	Law 481/95.	Electricity and gas.	Definition of tariffs with the price cap method; provision of directives on service quality; definition of health and security standards; recommendations on "concessions" to the Parliament and Government; definition of transmission tariffs; resolution of disputes between undertakings and consumers; indicate to the competition Authority problems related to sectors under regulation.	Administrative and rule-making powers.	Governmental selection, Parliament advise.
Banca d'Italia (considered an independent authority only for its competition competencies)	Law 287/90.	Banking.	General competence on enforcement of antitrust law in the banking sector under the advise of the Antitrust Authority.	Adjudication powers.	Governmental selection.
Autorità per la vigilanza sui lavori pubblici	Law 109/94; Law 415/98.	Public procurement.	Regularity of public procurement procedures and execution; advises Ministry about contracts and concessions; reports the dysfunction to competent authority control.	Administrative powers.	Parliament selection.

Source: OECD Secretariat, June 2000.

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4. DYNAMIC CHANGE: KEEPING REGULATIONS UP TO DATE

The OECD Report on Regulatory Reform recommends that governments "review regulations systematically to ensure that they continue to meet their intended objectives efficiently and effectively". As part of the reforms of the State Italy has extensively reformed the regulatory framework of many sectors and policy areas, such as social security, labour, taxation, banking, the public administration and civil service. Many of the sectoral reforms are full-fledged deregulation (see Chapter 1 and Section 1.2). However, these reforms have been done one at a time, focusing on specific sectoral policies and with different objectives in view. In some cases, this has resulted in fragmentation and overlapping between the new and old system. Furthermore, Italy confronts what has been called the a "legal hypertrophy" where a huge stock of thousands of laws and subordinated regulations (together with articles), many of which are decades old, can still be enforced. Two recent schemes are currently in place to attempt to deal with the problem: the consolidation of texts and the "delegislification" of laws to eliminate and improve administrative procedures and organisations.

As most countries, Italy has traditionally used the codification of laws as the main mechanism to clarify and reunite in a single code or framework law all rules and matters concerning specific policy area. In fact, Italy has a long tradition of well-made *testi unici*. Very recently, the government has strengthened the mechanisms. With the launching of a fast-track "consolidation of texts" initiatives in 1999, Parliament and government accelerated the process in an attempt to re-organise and reduce the stock of existing laws.[92] The procedure is not a typical codification exercise, as the new texts are not codes in the Italian tradition, and because the government, under Parliament's criteria and priorities, can use delegated and delegislating powers to achieve a more rapid outcome. Schematically, the new procedure works as follows: after receiving a parliamentary mandate and agreeing on the policy areas to be "consolidated", the Nucleo prepares a new text. After approval by the Council of Ministers, the new text is sent to the Council of State for an opinion (with a 30 days time limit), and then to the Parliament's committees which have 30 days to provide non-mandatory but "nearly binding" advice.[93] Finally, the government enacts the text. The resulting code has a mixed legal nature, joining in a single text statutory law provisions with regulatory provisions. To prevent confusion about the juridical nature of the text, three drafts are published in the Official Gazette: one containing primary law, one containing secondary law, and one with the consolidated text (only the first two are "sources of law", while the third is only for communication).

In October 1999, the government and Parliament agreed to prepare 11 "consolidated texts" by December 2001. Two consolidated texts have been enacted, one on local authorities and one on administration documentation. Four consolidated texts had been prepared by early 2001: civil service; expropriation; building; and universities and research. Texts on environment and territory, city planning;; social insurance; finance and taxes;; incentives to employment; and professional training have not been prepared yet. To prepare the consolidated texts, the Nucleo has set up task forces working with competent ministries. The new annual simplification bill improves the codification activity by giving the Nucleo more resources and identifying ten new "sectors" to be codified, repealing more than 350 old laws.

As this new instrument has just been established, it is impossible to evaluate its final impact on the stock of laws. However, the novelty of the instrument can in many ways be compared to the powerful deregulation laws established in the early 1990s in the United Kingdom.

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Delegislation and simplification of the administration. As noted, the procedural and formalistic approach permeates the working of the Italian administration.[94] In addition to the sheer number of procedures, their interrelations have created through the years a complex maze of bureaucracy. The prolific nature of administrative procedures in Italy may be also the result of the recurrent use of procedures as a government instrument. For instance, concessions of public services were traditionally used (often by local governments) to plan and direct economic activities or achieve distributive social purposes (*e.g.*, investments and tariffs) [Rangone, 1999]. Often, procedures were used as anti-competitive measures giving 'insiders' protection in some markets.[95]

Reducing and improving the stock of administrative procedures became the major goal of the simplification policies launched since the end 1980s.[96] A series of tools were used to implement the policies and evolved through the years, such as focusing on the 'silence is consent' rule or elimination of authorisation. In terms of legal instruments used to implement the measures, the government opted very often for the delegislation mechanism created in 1990. In the three main phases of the administrative simplification policy, however the focus evolved (see Section 1.2). In general terms, Law 241/90 targeted the improvement in each individual procedure. Law 537/93, added organisation simplification and de-legislation.[97] Finally, Law 59/97 integrated the two previous approaches into a more comprehensive one. The Law 59/97 (as modified in 1998) created an instrument to suppress the "non justified" concessions[98]: the government decrees approved in application of the annual law of de-legislation substitute the concession system in contrast with the EC principles by an authorisation system. The Competition authority normally contributes to this process of liberalisation by listing the sectors where concessions are not justified and proposing alternative instruments.[99]

Significant results have been achieved (see Table 1 and Box 8). For instance, the 'silence is consent' rule together with the establishment of a conference of services has permitted a dramatic reduction in time for business start-ups.[100] Noteworthy, successive legal reforms to the Law 241/90 have permitted the establishment of the general mechanism, called '*denuncia di inizio di attività*', which permits to initiate activity through a notification (that is, without any explicit or implicit authorisation). Only a government decree can introduce an authorisation system.[101] Other notable simplification are the liberalisation of shopping hours, changes in urban planning, labour market, provision of subsidies to firms (helped with EU funds) procedures. The onerous "Mafia certificate" has also been transformed into self-certification in the case of procurement contracts, falling under the European legislation. Successive improvements are transforming the 'conference of services' into a potent weapon against delay and fragmentation.[102] Since 1997, the government has eliminated and simplified more than 300 procedures.[103] Through the successive reforms of the 1990s, 194 procedures now apply the 'silence is consent' rule. According to surveys prepared for the government, the simplification programme is showing concrete results.

The current government has announced that the simplification of the administrative procedures is now a permanent function and should be accelerated. In particular, Law 59/97 mandates the government to prepare an annual simplification law. In preparing the law, the Minister for Public Administration sends a letter asking ministers to provide a list of administrative procedures to be simplified in the next year.[104] The DAGL and the Nucleo are then responsible for preparing the law and monitoring its implementation.

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Table 2. **Simplification activity in 1998 - 2001**

• **Stage of simplification**	• **Number of procedures affected**
• Procedures to be streamlined (Laws 59/1997, 191/98 and 50/1999)	• 184
Procedures streamlined (published in the Official Journal or approved by the Council of Ministers)	93
• Procedures to be submitted to the Council of Ministers by March 2001	• 16
• Procedures not needing a simplification decree (because the sectors have been streamlined by repealing the substantial provisions or they have been replaced by alternatives to regulations)	• 54

Box 8. **Two best practices: Italian one-stop shops and self-certification**

Since 1997, Italian simplification efforts have concentrated on two high-profile projects aimed at easing the lives of citizens and businesses: self-certification and the one-stop shop.

Self-certification programme.[105] Except in the case of European certification, medical data and particular records, Law 127/97 provides that all written documents concerning personal status, facts or quality can be "self-certified" by the possessor. In other word, the state trusts the citizen, and performs *ex post* checks to verify the information. For instance, in the case of a building licence, the administration needs to ensure that the self-certification provided by the builder is true. If the information provided is false, the administration can demolish the building. In less than two years, this change of the onus of trust generated a dramatic change, reducing delays to hours for procedures that used to take months. From 1996 to 2000, the number of certified signatures required by all administrations dropped from 38.2 to 5.9 million per year. Today, getting a passport or driving licence can be done through the mail. In Bologna, for instance, citizens can request a certificate through commercial bank cash dispenser and receive it by mail 24 hours later. Electronic signature should accelerate the use of this mechanism. To support implementation of the new self-certification procedure, the Ministry of Public Administration set up a central monitoring unit with a network of local observatories to monitor, provide local governments with guidance, and periodically report advances.

Furthermore, the self-certification mechanism has opened the possibility of using private certifications (*dichiarazioni sostitutive*) in technical assessment cases, that is citizen can substitute the administrative certification with a statement of a private professional.[106] To provide coherent law in this area, a consolidated text on administrative documentation has been approved. This text includes all rules on administrative documents (certificates, electronic documents, digital signatures, electronic identity cards, electronic exchange of data), and prepares for new measures to simplify submissions of requests and certifications to the public administration, for example, electronic submissions.

One-stop shops. The '*sportello unico*' programme started in 1999. In early 2000, it received a formidable boost.[107] The programme concentrates in helping businesses to get information and delivering all necessary authorisation on localisation, expansion, upgrading, restructuring, are co-ordinated. Municipalities are in charge of implementing the programme. The smallest local authorities can pool together. Three elements are particularly interesting. First, the programme goes beyond the simple establishment of a facility to promote a systematic use of simplification tools for the set of main business administrative procedures. Municipalities are encouraged to use notification, self-certification and the 'silence is consent' mechanisms, as well as setting up conferences of services for complex authorisations (*e.g.* in the case of environmental impact assessment). Second, the backbone of the programme is the reliance on information technology. Lastly, to hasten the adoption and full operation of the programme, the government created financial incentives (positive and negative) to accelerate the spread and the scope of one-stop-shops.

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Municipalities have been eager to implement the programme. Five months after the Decree came into force, a survey organised by the Ministry of Interior showed that 25% of Italian municipalities had an operational one stop shop, serving nearly the 50% of whole population, while another 25% of municipalities were still in the process of setting them up. In total, a third of the Italian cities were covered, and only 10% of the cities had not started the programme. By end 2000, 40% of municipalities had operational one-stop shops, serving 60% of the population. The total investments were around 64 million euros. Positive spin-offs are appearing, such as in Bologna, where the municipalities established an inventory of formalities to proceed with the reorganisation and simplification of procedures.[108] Businesses have indicated their satisfaction. The European Commission considers the Italian one stop shop programme as a best practise. The success of the programme, has prompted the government to plan a "one stop shop for house building" focusing on citizens and businesses and a "one stop shop for car drivers". Municipalities will be also encouraged to merge these new programmes with the existing "one stop shop for business".

However, business representatives continue to complain that results are not visible.[109] Quarterly reports on the regulatory system prepared since the early 1990s by a prominent research team at the University of Rome indicate that the introduction of new procedures, new notifications and authorisations, new mandatory consultation between authorities, or the elimination of existing 'silence is consent' rules has in the past decade undermined the positive effects of the simplification measures of the government.[110] The handling of some administrative procedures is still uncoordinated despite the 'conference of services' mechanism and the Law 241/90 which indicates that a single *responsabile del procedimento* should be in charge. Some of the other reasons include the slowness and complexity of implementing results, due in part to excessive legalistic controls or resistance of administrations.[111] Moreover, preparation of the annual simplification law may have the typical defects related to a self-assessment selection. That is, despite strong political will at the centre of the government, ministries will tend to select "contributions" according to their own criteria, and propose trivial or unused procedures rather than offer truly burdensome procedures. To address these problems, the role of the Observatory and the Nucleo will need to grow.

The simplification policy(ies) have nonetheless already produced an important outcome in terms of lessons and experience. Simplification works better when integrated to other policies such as budget cuts and controls, or the decentralisation of activities to local governments. Reducing procedures and improving organisation designed are important as far as the flow of new measures impedes the efforts achieved.

5. CONCLUSIONS AND POLICY OPTIONS FOR REFORM

5.1. General assessment of current strengths and weaknesses

In the last decade, and particularly since 1997, Italy has been a strong reformer of its regulatory practices and institutions. Step by step, the interventionist and centralist state of post-war years is transforming itself into a market-oriented and decentralised state through a continuing programme of privatisation, market liberalisation and opening, deregulation followed by re-regulation, institution-building, and regulatory quality initiatives. Simplification and reorganisation of the public administration has occurred through modernisation of public finance, decentralisation, and streamlining of the bureaucratic apparatus.[112] In terms of market liberalisation, Italy has moved more rapidly than some EU countries. A wide range of deregulatory and liberalisation initiatives has been taken in labour, financial and product markets. As Chapter 1 explains, Italy has entered a virtuous circle, where one reform encourages more reforms, creating a chain reaction across the economy, society and institutions.

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Considering the starting point and the difficulties of reforming when governments are short-lived, the progress made is impressive. Challenges lie ahead, but Italy is moving quickly in the right direction to create a durable foundation for economic, administrative and social regulations more supportive of competitive markets and more effective at meeting public policies. If effectively implemented over the next several years, these reforms can improve the quality of life for citizens, facilitate business activity, and help establish conditions for more rapid economic and social progress throughout northern and southern Italy.

Several factors responsible for poor regulatory practices in Italy have been substantially addressed. Fragmentation and duplication within the public administration should be improved by the Laws 537/93, 300/99 and 303/99, which will reorganise inter-ministerial committees, ministries and the prime minister's office. Excessive internal regulation has been reduced by decentralisation and the conference on services and *denuncia di inizio dell'attività* mechanism. Inefficient use of resources together with the absence of adequate controls will be mitigated with the move to performance management in the public sector. Delays due to multiple officials responsible for various parts of procedures will be reduced by simplification, enforcing the 'conference of services' mechanisms and the role of 'responsible of procedures' and deconcentration. The Constitutional Court has reduced the extent to which the government can recycle legal decrees supposed to address exceptional and urgent situations. Control failures in the rule making process are being remedied with new oversight institutions and the move from legalistic to economic principles of decision-making.

Other factors responsible for poor regulatory practices in Italy seem, on the other hand, to pose continuing problems. Little progress has been made in improving the low qualifications, inadequate training and low productivity of civil servants. Italian law was sometimes used to make political statements setting out principles and social objectives rather than concretely resolving identified problems, and little change is seen here. There is still a common practice of not eliminating previous laws and articles and the misuse of cross-references to other laws makes it difficult to understand the legal system. Here, the current codification process holds promise if it is speeded up and expanded.

Other factors are structural, embedded in the constitutional organisation of powers, and hence unchangeable in the short term. Italy's elaborated checks and balances between branches of the state and constitutional bodies have sometimes resulted in difficulties in implementing and sustaining policies. Other structural factors include the recurrent instability of fragile governments based on proportional electoral laws; constitutional provisions requiring that only laws can regulate certain areas (*riserva di legge*); and a constitutional provision permitting the approval of laws by parliamentary commissions without discussion in the plenary.

Since the early 1990s, the government has attempted to simplify administrative regulations. The 1990 Administrative Procedure Law and its developments have erected transparency and accountability safeguards against abuse in adjudication procedures. Tools and institutions have been put into place, particularly under the Bassanini programmes, such as the self-certification process, the one-stop shop, and the conference of services. A recent survey evaluating the effectiveness of "self-certification" programmes showed a reduction of more than 50% in the number of certifications issued by the public administration between 1996 and 2000. This corresponds to an estimated savings of 2 200 billion liras (US$1 100 million) for citizens and enterprises.[113] A survey among Italian enterprises showed that 61% of companies judged that timeliness in carrying out administrative tasks by public agencies (with the exception of regional sanitary agencies) has improved.[114] By December 2000, the number of procedures needed to create a new corporation or an individual business had been reduced from 25 to 5 and maximum time needed for the whole process dropped from 22 to 10 weeks. Costs were reduced from 7 700 to 3 500 euros for corporations, and from 1 150 to 500 euros for individual businesses.

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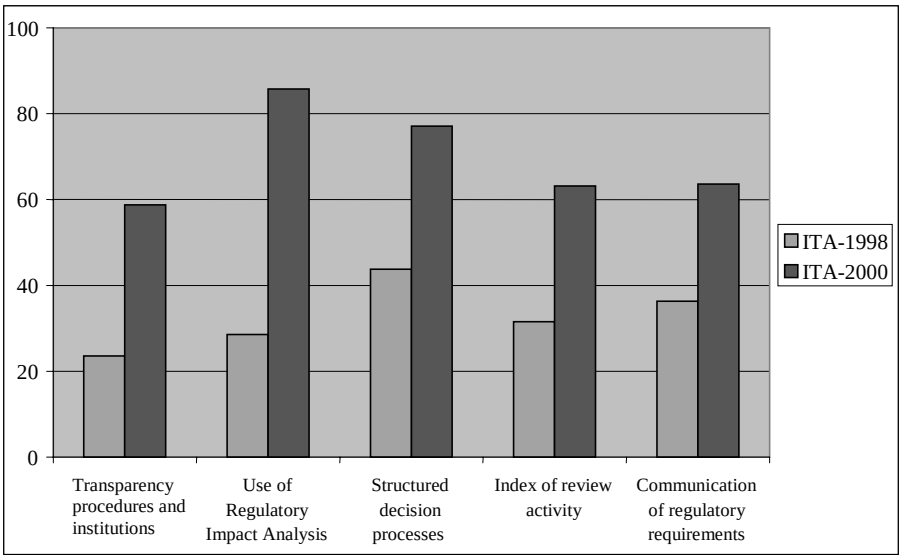
From year 2000, 100% of tax returns and most of social security communications are filed, submitted and processed electronically. Italy is currently experimenting with an electronic multi-service ID card (1 million cards will be delivered in 2001). Since 1997, juridical value has been recognised for digital signatures, which have been operational since 2000. The explosion of e-government initiatives such as *governo in rete* and other technological innovations could permit Italy to leapfrog other countries in terms of regulatory communications.

The emergence in the late 1990s of a policy to improve the quality of regulation will have a beneficial impact in the quality of social and environmental regulations, which until today was seldom addressed. With Law 50/99, Italy dramatically improved its capacities to manage and reform regulations, and to implement the 1995 OECD Recommendations (Figure 1). Institutions such as the Nucleo and the Observatory on Simplification are advocating, enforcing regulatory quality and providing a forum for public consultation. The well-designed RIA should become a major decision-making device and a filter inhibiting adoption of poor regulations. The codification process has been re-invented under a fast-track scheme to consolidate laws and regulations in years rather than decades.

Figure 1. **Progress in regulatory capacity indicators, 1998-2000**



Source: OECD, Public Management Directorate, 2000.

An important strength of the Italian experience in regulatory reform is the active role of Parliament. Although imbalances between laws and subordinate regulations are partly responsible for the low quality and huge stock of regulations (see below), the Parliament has made efforts to delegate regulatory powers to the government and independent authorities and to reduce rigidities by delegislating to lower level rules. This is helping the Parliament to re-invent itself as a relevant institution and major policy-maker on fundamental issues.

A massive task lies ahead, though, for the Italian economy is still over-regulated and badly-regulated. A paramount challenge for all central institutions is the need to drastically reduce the accumulated stock of laws, articles in dormant measures, subordinate regulations and administrative procedures and formalities, and to improve the efficiency of those that are left. Related to this, enforcement and compliance dimensions have received little attention, requiring government-wide attention.

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Despite recent crucial reforms, a second weakness is the complex, costly and opaque Italian rule-making procedures. Duplicative controls, predominantly focussed on legal quality, are carried out by the DAGL, the Nucleo, the Council of State, the Court of Accounts, and finally both Houses' committees and offices. These quality controls add bureaucratic and red tape costs without increasing the quality of final laws and regulations. For instance, the final control by Parliament on delegislation instruments concerning governmental administrative procedures and organisations may blur the need to differentiate levels of accountability and add time and resources to an expedite reform tool. A similar attitude still prevails when implementing and enforcing laws and regulations. The tendency of the government to micro-management through command and control procedures impedes administrators taking responsibility over results.

From another perspective, a third challenge involves the need to maintain, execute and enforce the policy and the mechanisms recently established. Coherence through time will be a crucial test for the new institutions. Only slowly, RIA will be able to replace the old stock of laws and regulations with improved ones. Only gradually public consultation will deliver the information needed by regulators to assess the impacts and rate of compliance of future regulations. Efforts of other countries show that reviewing existing regulations takes years to produce results. The challenge will be complicated by the need to steer a clear course in the years ahead between, on one hand, implementing the reforms and providing enough time for the new instruments to produce results, and on the other hand, the increasing exasperation of important sectors of society that reforms are not going fast enough and costs are piling up.

Lastly, decentralisation has the potential of speeding reforms, bringing results and fostering regulatory innovations. Already, regions and communes are at the vanguard of a new and more responsive regulatory environment. On the other hand, local governments may hamper national policies, as they can be too responsive to particular interests and short run electoral cycles.

Powerful interests can block and delay action through alliances and compromises, reducing the comprehensiveness of reforms and the materialisation of results. Although resisting forces have not been vocal against the general thrust of reforms, they have shown their willingness to support each other on particular themes, filibustering them on Parliament. Example of such situation are the opposition of the liberalisation of the gas sector by companies management and local governments, the railways reforms by trade unions and the ministry; motorways by the monopolistic incumbent and local governments, or by the enactment of new complex measures that counterbalance simplification measures. Local unions have also resisted reforms of the public administration and civil service, strongly departmentalised ministries have pursued a resilient rear guard fight against simplification of administrative procedures.

However, blocking and delaying are quite different from reversing reforms. The pace and direction of reforms seem solid. Despite the succession of six different governments, reforms have not only proceeded but accelerated. The new Simplification Bill to be proposed in February 2001 endorses the main OECD recommendations in this review (see Box 9). The Italian society is strongly in favour of further modernisation. Tellingly, the first annual simplification law (50/99) was adopted by near unanimity in both Chambers of Parliament. The unions at the national level continue to support the reforms and have overruled local unions' oppositions, even at a cost of membership. The Chamber of Deputies has raised the issue of quality of law and regulation amongst most institutional actors involved in rulemaking.

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Box 9. **Italy's 2001 Simplification Bill**

The Simplification Bill to be submitted to the Parliament in February 2001 endorses the main OECD recommendations in this report, and introduces important innovations. The OECD recommendations, which are to be implemented by the new Simplification Act, are the following:

Strengthening the policy on regulatory quality so that it is binding on sectoral ministries. In each ministry, it is foreseen that there will be a dedicated official with responsibility for simplification and better regulation. In addition, the "Nucleo", as the central unit of government responsible for simplification, has the power to submit directly to the Council of Ministers drafts of government (secondary) legislation and consolidated texts, without formal approval by those administrations involved. The simplification bill also foresees a special programme on hiring of specialised officials and a programme of training for personnel in legislative offices.

Strengthening competition principles in the simplification process. The "competition principle", foreseen in Italian law (n° 287/90), becomes with the new bill a guiding criterion for codification and simplification. The elimination of the *concessioni amministrative* (administrative concessions) is foreseen and their replacement by *autorizzazioni amministrative* (administrative authorisations).

Regulatory codification with the "guillotine system". To improve the efficiency of regulatory codification, a new mechanism recommended by the OECD will be used – the "guillotine system". In its application in the Italian law, this mechanism will identify, in the Simplification Bill, strategic sectors in need of consolidation. The Simplification Bill will list all the rules which govern a specified sector, and establish that, from the entry into force of the consolidated text or from a given date, all of the other rules in the sector are annulled. This mechanism has three benefits: the systematic reorganisation of an entire legislative sector; the solution of the problem of "hyper-legislation" by reducing the quantity of existing regulation; and the demonstration by ministries that regulations are still needed in order to avoid repeal.

Creating a Registro elettronico delle formalità burocratiche (centralised, electronic register of all administrative procedures and formats for business). Today, in Italy, enterprises are often obliged to physically go to public offices to identify the formalities needed to exercise an activity. The problem has been successfully solved in some countries by creating a website with a complete list of all bureaucratic formalities required for an enterprise. The *registro informatico* (electronic register) is structured in such a way that administrations cannot require from private subjects any formality not on the web site. The construction of the registry will take place at the same time as the reorganisation of different sectors.
Exploiting the Conferenza Stato-regioni role to establish common parameters on the quality of regulation at central and local level. In the ambit of the *Conferenza Stato Regioni*, the methods and common instruments for regulatory quality are defined, and common ways and methods of analysis are agreed to evaluate the impact of regional legislative rules.

Introducing the use of RIA in regions and independent authorities. Fine-tuning the criteria to exclude RIA for "non significant" regulations, following OECD criteria.

Introducing "on-line consultation" on the notice and comment model. Along with the *registro delle formalità*, the introduction of the "on line consultation" responds to the OECD recommendation. The "on line consultation" is a e-democracy measure which consists of publication, on an interactive website, of new regulations. These schemes, on the "notice and comment" model, will be open to comments by social partners (and, in some cases, access by a wider public too).

The role of the Osservatorio sulle semplificazioni. The Simplification Observatory is headquarters for consultations between administrations (state and local) and the social partners on simplification. In the new Simplification Act, the responsible administrations are responsible for progress on reform, while the Observatory must carry out a decisive role in pointing out problems and working to identify possible solutions.

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5.2. Policy options for consideration

The options presented below are based on international consensus on good regulatory practices and on concrete experiences in OECD countries. They are derived from the policy framework in the 1997 OECD Report on Regulatory Reform. Some of the options are short-term in nature; others will require years to implement. The policy options fall into four categories: improving the institutional and policy framework, creating the institutions and tools for controlling the flow of new regulations, rationalising the stock of existing regulations, and improving regulatory coherence between the national and local level governments.

- *Improve the transparency of, and commitment to, regulatory reform by adopting, at the highest political levels, an explicit policy on regulatory quality that is obligatory for all ministries, with measurable targets for reducing regulatory and administrative burdens. Adopt in the policy the principle that costs should be justified by benefits. Agreement by the Parliament and the regions with the policy would boost its benefits for Italy.*

Currently, the aims and principles of regulatory reform are scattered through many legal documents, policy statements, and institutional mandates. Production of a single integrated policy on regulatory reform (that is, on the appropriate use of state regulatory powers) will provide clearer statement of political intent, gain more public support, produce better results at lower cost, better target real problems, improve consistency of treatment, and avoid duplication and inconsistency of effort.

The renovation of the regulatory policy would imply overhauling Law 400/88 with modern regulatory principles. Important issues may involve reducing and clarifying the number of regulatory instruments and re-directing control mechanisms from a legalistic to a results-based system. Regulatory quality principles should be introduced, including a social benefit-cost principle. It would be particularly useful, and path-breaking in OECD countries, if the executive and the Parliament could agree on a common set of quality principles for laws and other regulations. It would be another breakthrough if the regions could also agree to comply with such a policy.

Targets, such as a reduction in the number of licenses or percentage reductions in burdens, increase accountability and energy in the ministries. The scope of the new regulatory policy could be broadened from the public administration and Chamber of Deputies to all originators of regulations (independent authorities, the Senate, independent parliamentarians, regions). To underpin the sustainability of the policy, it will be important to develop the regulatory policy through consultations with major stakeholders in the market and civil society.

- *Improve the efficiency of rulemaking by clarifying the responsibilities in the rule making procedure of each major institution, and better integrating numerous regulatory quality procedures.*

The current system of regulatory quality control in Italy is the sum of various piecemeal procedures that have accumulated over years. The system is complex and inflexible, focusing on formal legal controls, and depending on coherence among many institutions. As was also the case in the United States, the whole is less than the sum of its parts, because scarce resources are scattered through many steps rather than targeted on the most important issues.

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Distinct institutions spend impressive amounts of energy to control sequentially the rulemaking process, with unsatisfactory effects. Delegation and delegislation mechanisms have increasingly been introduced to solve rigidities and foster reforms, but they blur responsibilities between each of the branches of the state. In certain cases, they have raised constitutional concerns. It would be thus important that Italy review the foundations of its rulemaking procedures and clarify it in a single and clear text the rights and obligation of each participant.

Explicit roles in terms of tasks, obligations and responsibilities should be re-defined for the preparation of draft laws and subordinated regulations. In particular the sequential inputs by the DAGL, the Nucleo, the Council of State and the Court of Accounts as reviewers external to the line ministries should be re-revisited. In particular, the role of the Court of Accounts seems to add little to regulatory quality, given the quality checks already performed by the other institutions. Taking this into account, efforts should be made to reduce overlaps and maximise the speciality of each body without adding unneeded delays.

- *Strengthen attention to policy results by initiating an assessment of regulatory compliance and enforcement procedures, by integrating an assessment of feasible compliance strategies into the RIA process, and particularly by assessing compliance difficulties for businesses or citizens when reviewing or revising existing regulations.*

During the 1990s, Italy realised a major reform in terms of adjudicative administrative procedures. Citizens and business have today an array of instruments to defend themselves against discretionary abuses from authorities. Nonetheless, critical compliance issues remain to be addressed. Citizens and businesses still endure unnecessary burdens caused by the accumulation of regulations and lack of co-ordination between central ministries and agencies and between central and local governments. In addition to increasing the risk of arbitrary action, the main result is a waste of time and resources by the public and private sector. This reduces the level of compliance with regulations, and hence the effectiveness of the state in achieving its objectives.

Improvements on enforcement and compliance dimensions are interlinked. Solutions will be time consuming and difficult as they involve administrative practices as well as cultural habits. Strengthening the *ex ante* assessment of administration-wide enforcement impacts and expected compliance in the RIA should be a place to start, as Canada has done. Italy could direct the expertise and resources of the Nucleo into the evaluation and monitoring of *ex post* regulatory performance focusing on the quality of enforcement and compliance. An interesting experience from which to draw inspiration is the major effort of the Netherlands Ministry of Justice in this area (OECD, 1999*c*).

- *Assure an accountable, transparent and coherent approach to the use of regulations by independent authorities by assuring that they comply with the quality control procedures and government-wide regulatory policy. A first step should be the launching of a comprehensive, high-level and independent review of the performance, working methods and inter-institutional relationships of the sectoral regulatory authorities.*

As part of the privatisation programme, Italy established several sectoral regulators. With clear mandates and large amounts of independence, they are also a response to the lack of confidence with the traditional ministerial apparatus as well as a search for more result-oriented institutions. Most of the authorities are too recent to evaluate their performance individually or collectively. Nevertheless, Italy should monitor their development. The proliferation of these institutions can result in problems of

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With the ending of recycling of decree-laws in 1996 and RIA in place, the flow of new regulation is starting to be controlled. Improved co-ordination and co-operation between Parliament and government on regulatory affairs and on budgetary procedures is producing better and more effective laws and regulations. However, Italy still needs to confront the massive accumulation of legal measures still on the books.

The commitment to reorganise the legal framework through consolidated texts and under three-year period is an important step to deal with this major problem. The fact that the Nucleo has been charged with this task assures that the review will indirectly incorporate quality of regulation concepts. However, the consolidation of 11 policy areas may already be over-stretching the Nucleo's resources in charge of resource intensive tasks such as implementing RIA, and may not be enough to curtail, simplify and restructure the existing thousands of laws. The Parliament and government should thus give a higher priority and larger resources to reorganise in the next half decade the legal system.

Structuring of an effective review process will be key to produce results in time. The rolling review process should be based on strict prioritisation of manageable policy areas, set by independent experts to avoid dubious self-assessment selection mechanisms. Policy areas where regulatory failure is most costly should have highest priority. Two approaches could be considered.

First, Italy could try a selective system similar to efforts in other OECD countries that have started the review of their stock through transparent and measurable set of principles. In practice, the programme run by a powerful and independent agency with clear accountability of results requirements would prepare a specific list of existing legislation that would need to be reformed. The outstanding Australian regulatory review against competition principles of whole area of the legal framework could be a model for such a programme.

Another possible model for Italy is the innovative Swedish approach (Jacobs, Scott *et al*., 1997). In the 1980s, Sweden enacted its well-known "guillotine" rule nullifying hundreds of regulations that were not centrally registered. In 1984, the government found that it was unable to compile a list of regulations in force. The accumulation of laws and rules from a large and poorly-monitored network of regulators meant that the government could not itself determine what it required of private citizens. To establish a clear and accountable legal structure, it was decided to compile a comprehensive list of all agency rules in effect. The approach proposed by the Government and adopted by the Riksdag was simple. The Government instructed all government agencies to establish registries of their ordinances by July 1, 1986. As these agencies prepared their lists (over the course of a year), they culled out unnecessary rules. Ministry officials also commented on rules that they thought were unnecessary or outdated, in effect reversing the burden of proof for maintaining old regulations. When the "guillotine rule" went into effect, "hundreds of regulations not registered ... were automatically cancelled," without further legal action. All new regulations and changes to existing ones were henceforth to be entered in the registry within one day of adoption.

- *Establish a centralised registry of all administrative procedures with positive security*

The review and improvement of the legal stock is a priority, but the difficulties of the task means that years would be needed to show results. To produce early results for citizens and businesses, Italy could adapt the Mexican experience in creating a single authoritative source for administrative procedures, which often are the more irritating ones for SMEs (OECD, 1999*b*). Alternatively, the government could implement all official formats used in administrative procedures. Such a process could be inspired on the French CERFA (Centre d'Enregistrement et de Révision des Formulaires Administratifs) model. The official registry of procedures and/or formats will significantly enhance transparency for users in terms of the content and form of permissible regulatory actions, and force a rationalisation of ministry rules. The registry should be made available through the Internet.

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The building of the registry could be assimilated to a certification process when at completion of a review against quality standards of each procedure a logo would be delivered. A re-registration would be needed every five years. Some countries have found that "positive security" further increases confidence in the market and reduces search costs for businesses and citizens ("positive security" means that regulations must be included in the registry to have legal effect, which ensures against non-compliance by ministries).

Over time, registries should be established, too, at regional levels, and linked to the national registry to reduce user costs.

- *Encourage regulatory reform by co-ordinating initiatives with the regions and municipalities, and by assisting them to develop management capacities for quality regulation.*

Progress has been remarkable in decentralising regulatory powers to bring them closer to citizens and business. However, managing regulations at different levels creates potential concerns for the future coherence and efficiency of the national regulatory system. Safeguarding the gains made at the national level through regulatory reform will require intensive efforts to promote regulatory quality at sub-national levels. Adoption by regions and municipals of programmes of reform based on consistent principles should form the basis for more formal co-operation measures. Consideration should be given to exploiting the mandates and capacities of the Conferences State–Regions or the Unified Conference to discuss and monitor these issues. The forums should as well have instruments to resolve issues arising from regulatory conflicts. Complementary strategies could be to help regions and local government to launch regulatory reform programmes, establish and enforce good regulation tools, such as RIA and 'notice and comments' procedures, use benchmarking exercises or organise integral reviews of region capacities that could be peer reviewed at the Conference level. Lastly, the centre should also continue to use incentives on good practices of local governments through specific funds and programmes.

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ANNEX 1: MAIN LEGAL REFORMS IN ITALY (1988 – 2000)

Redefining the economy of the state

1990, Law 287: The Competition Law establishes modern antitrust regulation and creates an independent Competition Authority.

1992, Law 359: Public holdings are converted into joint stock companies (controlled by the Treasury) acting under the concession system.

1993, Law 537: Unification of Ministries, re-organisation and privatisation of public bodies, simplification procedures, sale of public property, creation of regulatory bodies.

1994, Law 474: Public companies are privatised. For public services, the privatisation is subordinated to the creation of a regulatory authority, and a golden share system has to be introduced (in 1999, the golden share was limited to security, safety, defence issues, respecting the "non discrimination" principle).

1995, Law 481: Creation of an Energy Authority.

1997, Law 249: Creation of a Communications Authority.

1998, Law 191: Adaptation of the national procedures to the EC principles, even by transforming concessions on authorisations.

Budget and civil service reforms

1993, Delegated Legislative Decree 29: modernisation of the public management, "civil law for civil servants"; general managers are excluded (private contract and jurisdiction of civil judge); Training at the School of Public Administration, followed by an examination to access the management. Internal Control Committee. Separation of responsibilities between politicians and managers; private contracts negotiated between the most representative trade unions and the agencies representing the public administration.

1997, Law 94: Unification of the Ministry of Treasury and the Ministry of Budget (first application of the department model); organisation in "politics and objectives" of the budget to be approved by the Parliament.

1998, Delegated Legislative Decree 80: "privatisation" of public management is completed (extended to general managers); limited spoil system to the head department (to be confirmed by the new government); reform of access system to the management and more flexibility recognised to local governments. Jurisdiction of civil judge (since 1998).

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Relation between centre and sub-national governments

1988, Law 400: institution of the "Conference State-Regions";

1990, Law 142 on local government (Province and Town Council): regional controls are limited to the Council's acts; separation between policy makers and managers; statutory autonomy.

1993, Law 81 (amended by Law 1999, 120): direct election of the major and the province's President.

1997, Law 59: made a real reversal of the original equilibrium on administrative competencies: the law fixes the State's competencies and all others are appointed to the local authorities (Regions, Province and Town Councils by application of the subsidiary principle). The law gave to the regions the power to transfer (not only to delegate) to local governments the administrative functions that must not necessarily be carried out on a regional level. A number of legislative decrees have completed this reform: 1998, Legislative Decree 112 (on administrative attribution to regions and local governments); 1997, Delegated Legislation 422 (competencies attribution on local public transport); 1997, Delegated legislation 469 (competencies of labour market are appointed to the Regions and local government).

1997, Law 127: legal controls on a region's administrative acts are limited to the general regulations and acts implementing EC obligations. Regional Ombudsman.

1997, Delegated Legislative Decree 281: Specifies and increases the competencies of the "Permanent Conference for the relationship between the State, the Regions and the autonomous province" and the "Conference State, city and the local government".

1999, Constitutional Law 1: direct election of the region's president.

2000, Delegated Legislative Decree 56: the fiscal federalism.

Simplification of the administration, procedures and controls

1988, Law 400: De-regulation by delegislation: possibility to regulate by governmental decree with an authorisation by law that indicates the principles of the rules to be abrogated (exempted subject that the Constitution stated has to be regulated by laws, "*riserva assoluta di legge*").

1990, Law 241: The "Administrative Procedure Law" rules the adjudication procedures on the basis of principles of effectiveness, transparency and efficiency. They were be pursuit by means of the following tools: timing of procedures, accountability, act's motivation duty, participation, transparency and right of access.

1992, Government decree of 26 April, No.°300: lists activities based on the enunciation of the economic activity" or "silence-consent".

1992, Government decree of 27 June, No.°352: Regulation of access rights to administrative documents.

1993, Law 537: reduction of Ministries and suppression of lot of inter-ministerial committees, creation of independent authorities for public services, separation between politics and administrators, introduction of internal controls and checks of results, limitation of public expense.

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1994, Law 20: the preliminary controls of consistency with laws (which, under Article 100 of the Constitution, focus on all the Government's acts) are limited to the most important Government's Acts.

1997, Law No.°59-1997 Law No.°127-1997, Law No.°191/1998: simplification of administrative provisions (for example, the magnetic identity card). Annual de-legislation Law (criteria: suppression of procedures which created higher costs rather than benefits, promoting self regulation; elimination of concessions); R.I.A

1999, Delegated legislative decree No. 300: Ministry reforms.

1999, Delegated legislative decree 303: Presidency of Ministry Council reform.

Reorganisation of the legal and regulatory framework

1988, Law 400, Article 17 created the "de-legislation" mechanism, whereby a primary law empowers a Government Decree to discipline matters which are not covered by laws (exempted subject that the Constitution stated has to be regulated by laws, "*riserva assoluta di legge*") and to repeal Parliamentary statute law (on the ground of broader principles)

1993, Law 537: reduction of Ministries and suppression of lot of inter-ministerial committees, creation of independent authorities for public services, separation between politics and administrators, introduction of internal controls and checks of results, limitation of public expense.

1994, Law 19 and Law 20: reduction of previous legitimacy controls by the Court of Account, and decentralisation at regional level.

1997, Law 59: decentralisation, simplification, liberalisation, and State's reform.

1997, Law No.°127-1998, Law No.°191: Simplification of administrative provisions (for example, the magnetic identity card). Annual de-legislation Law (criteria: suppression of procedures which created higher costs than benefits, promoting self regulation; elimination of concessions).

1999, Law 50: Nucleo, R.I.A., codification, Prime Minister's Decree of 6 April 1999 on the Observatory on Simplification Affairs and Prime Minister's Decree 27 March 2000 on AIR-ATN.

2000, Law 340: Second annual simplification law.

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NOTES

1. Presentation of the Minister of Public Administration, 4 May 2000 and discussion with Mr. Cerrulli Irelli President of the Bicameral Commission on the Reform of the State, 5 May 2000. For further studies on the "excess of regulations" see Casssese, S. and B. Mattarella (1998) in Cassese, S. and Galli, G. (eds) (1998); and Sandulli, A. (1998), Vesperini G. (ed) (1998), p. 32.

2. For instance, some estimated that the corruption linked to the public administration cost society in the early 1990s approximated 10 000 billion liras per year. S. Cassese (1995), p. 380.

3. S. Cassese and G. Galli (1998), p. 14. G. Vesperini (1998), pp. 8-13.

4. Together with many other characteristics, such as lower salaries compare to those of the private sector and rigidity in retributions and careers. Some interesting articles are S. Cassese (1993), p. 335 ss; C. D'Orta (1993), pp. 347 ss., or Y. Meny (1993), p. 349 or G. Melis (1998), p. 74.

5. From nine ministries in 1861 became 12 in 1900, then 22 in 1989. The number was reduced to 19 after Law 537/93, to 18 with Law 94/97 and should be brought down to 12 in 2001, according to Delegated Legislative Decree 300/99. About the weakness of the Council of Ministries and Prime Minister Office, see S. Cassese (1997), pp. 459-465. The reforms made by the Legislative Decree 303/99 are analysed by Carlo D'Orta (2000), p. 5.

6. An interesting case of the effects of the central organisation can be read in the study of a the transposition of EU directives and their through administrative procedures can be seen in Caddy, and Marieva F. (1997).

7. Presentation of Franco Bassanini, Minister of Public Administration, to the OECD, 4 May 2000.

8. The number of administrative procedures is based on an inventory realised in 1991 by the Ministry of Public Administration. It does not take into account regional and local level administrative procedures. See footnote 4 in Lacava, C. "I cittadine e le pubbliche amministrazioni" in Cassese, S. and G. Galli (eds), (1998), vol. 1, p. 38. On the number of concessions, see Cassese S. and G. Galli (1998), p. 22.

9. See Article 20 of Law 59/97 and Article 7 of Law 50/99. This obligation has been confirmed, for all government regulations, by the Prime Minister Decree of March 2000, introducing the "Legal Technical Analysis – ATN" (see below).

10. It is interesting to note that the crisis fostered in particular the renewal of the political and administrative class, where a new influx of modernisers, technicians, professors entered the government and the policy-making spheres.

11. According to the CNEL (*Rapporto sulla condizione della Publica Amministrazione*, 1993), Italy had 100-150 000 laws, compared to: France 7 000; Germany 5 000; and UK 3 000 (Lacava, C., 1998, p. 65). However, the Chamber of Deputies recently prepared a new inventory reducing the estimated number to 35 000 laws (Chamber of Deputies, 1999, *Rapporto sulla legislazione*).

12. For instance, during the XIth Legislature 3 992 laws were proposed by individual parliamentarians, 4 089 during the XIIth and 3 675 in the first year of the XIIIth. Cassesse, S and B. Mattarella (1998), p. 35.

13. F. Capelli (1998), "Legal Drafting in Italy" in A.A. Kellerma; Jacobs, Scott H. et al, *Improving the Quality of Legislation in Europe*, Kluwer Law International, The Hague, p. 132. F. Patronia Griffi, "La fabbrica delle leggi," e la qualità della normazione, in *Dir. Amm.*, 2000, pp. 97-130.

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14. Except in the "reserved" policy areas that need to be passed by the whole Chamber and Senate, such as the budget, Delegated Legislative Decrees, etc.

15. The defunct Parliamentary Commission for Constitutional Reform, of the so-called "Bicamerale", which worked form 1997 to 1999 on a new Constitution also proposed the creation of a performance-based administration to replace the procedure-base current one.

16. Amato, Ciampi, Berlusconi, Dini, Prodi, d'Alema.

17 The budgetary impact assessement is rooted in article 81 of the 1948 Constitution.

18. Legislative decree No.°29/93; Legislative Decree No.°80/98.

19. The old system where pay and promotion was based on laws, procedures and little regard to quality and results were replaced by performance controls, and in particular monetary incentives for manages depending position and performance. In addition, a fix terms of seven years has been set for all the managers appointed, which can be removed by poor performance. Lastly, 5% of the state managers can now be selected outside the civil service.

20. In 1995 the government issued a code of ethics for the civil servants ("Codice di comportamento dei pubbliche dipendenti").

21. The program is based on the decree of President of Ministry Council, directive "Principles concerning the supply of public services", 27 January 1994.

22. The Commission Barettoni Arleri.

23. Until the introduction of the RIA and ATN, the "lettera circolare", also called the "Manuale Vozzi-Bertolini" was the main instrument for rule makers in the government and parliamentarian offices. In terms of institutions the Senate created in 1986 an *ad hoc* Office for Drafting and Reviewing of Bills and Documents, and in 1991 the Chamber of Deputies a special Office for Technical Drafting of Regulatory Instruments.

24. Lacava. C. (1998), p. 100 and Fonderico, F. (1998), pp. 369 – 417.

25. Law 537/93 was also very important as it reformed the framework for sectoral regulators and independent authorities.

26. Since 1996, Mr. Franco Bassanini has been the minister responsible of public administration and State reform in the past four governments.

27. Prime Minister Decrees of 20 March and 6 April of 2000 respectively.

28. Article 70 of Constitution. For the CNEL see Section 3.1.

29. The Korean programme set and met a 50% reduction in the number of regulations. The Netherlands set clear targets for the reduction of administrative burdens, as did the United States. See OECD (2000), Regulatory Reform in Korea (2000) and in the Netherlands (1999*c*) and in the United States (1999*d*).

30. The directive also included a checklist on the need for i) clear and coherent definitions; ii) control of cross-references with other legal measures; iii) establishing explicit repeals of articles and laws, instead of implicit ones.

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31. The Legislative Office of each ministry in charge of draft regulations also plays an important role in the regulatory management system.

32. Law 400/88.

33. Article 3.1, Law 50/99.

34. Article 76, Constitution and Article 14 of Law 400/88.

35. Article 7 of Law 50/99.

36. In addition to the DAGL, the Nucleo and the Osservatorio, two other bodies of the Prime Minister Office participate in the regulatory management system of Italy: the Office for Procedures and Administrative Efficiency (UPEA) co-ordinates the one stop shop system and is currently developing the RIA guidelines, and the Department of Regional Affaires is in charge of the legal review of all regional laws (see 2.3).

37. The Council of State, created in 1805 is based on the French model. It is also the supreme administrative tribunal and a controller of legality.

38. The "Sezione consultiva per gli affari normativi", Law 127/97.

39. In fact every year it controls millions of acts, *e.g.* 5 millions in 1992, D'Auria, Gaetano (1993), p. 364.

40. For instance the court has repeatedly opposed the possibility to hire external consultants. See also analysis in D'Auria, Gaetano (1993), pp. 364-366.

41. Only 20 officials out of 600 are dedicated to this tasks.

42. Constitutional Court (No. 360 of end 1996). Since then the number of "decree-laws" decreased from an average of 34 per month, before the Constitutional Court decision, to around four per month afterwards.

43. A general report on regulatory reform will be presented to the Parliament in December 2000.

44. See presentation of the annual report for 1999 to the Parliament (30 May 2000).

45. This centrifugal force is in many way the reaction of a centripetal force experienced by the Italian State since its foundation until the Second World War. Unified only in 1861, Italy embarked in a strategy of centralisation as part of its nation-building process and in particular through a continuos effort towards convergence and harmonisation from North to South.

46. Regions ("Regioni") are relatively young institutions, having been set up by the 1948 Constitution, which provided for five regions "with special-statute" (Article 116) and another fifteen regions "with ordinary-statute" (listed along with the special two special provinces (Article 131). Provinces ("Province") are the result of a long institutional evolution which culminated in their union with the old administrative districts. The latter incorporated, within the same territory, the duties of a number of State offices as Prefectures, Finance Offices and provincial Education Offices. The municipalities ("Comuni") were considered as "original" and "necessary" local authorities even before the birth of the unified state, and modelled on the pattern of local authority dating back to the French Revolution. Italian citizens feel a strong sense of belonging to their municipalities.

47. However, some local authorities have started pre-empting this law issuing 99 years concessions.

48. An *ad hoc* Department within Prime Minister Office provides the Secretariat for the Conferences.

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49. Powers and functioning are set in Law 400/88, reformed by Law 50/99 and Decree 281/97.

50. Some regions, such as Emilia Romagna, have replicated the central scheme creating conferences between the regions and the communes or provinces.

51. In recent years the Conference agreements are replacing regional contracts, called "Activita Statale de Indirzio e Cordinamento", which the Centre negotiated with the regions for the administration under certain quality parameters of important services (for instance, in the health sector).

52. Some commentators have even talked of its transformation into the Pre-Chamber of the Regions.

53. In 1996, the Corti de Conti established in each region an office.

54. Respectively, Tuscany and Emilia Romagnia have reduced the number of laws by 57% and 50%.

55. The polls were conducted in 2000 for the Ministry of Public Administration by ISPO (Istituto per gli Studi Pubblica Opinione), a research institute directed by Prof. Renato Mannheimer.

56. The current reviews performed by the national government of regional laws are exclusively on constitutional aspects. In addition, as regions increasingly resent these controls, discrepancies between levels of government tend to edge towards a political debate.

57. Law 183/87 provides the mandate to co-ordinate with the regions on EU projects and regulations. Law 86/89 also mandates the organisation every six months of a European Union Session as part of the Conference State-Region. However, in broad terms the participation of regions and local authorities to the process has been very limited.

58. Although the main Legislative Decree 303/99 has been approved enacting regulation have not yet been published

59. The consumer affairs consultation body was created by article 4 of Law 59/97 and on the environment by article 13 of Law 346/ 86.

60. A National Council of Economy and Labour (CNEL – *Consiglio Nazionale dell'Economia e del Lavoro*) exist but this formal forum has been increasingly replaced by convening informal negotiations under an ad hoc agreement or *Patto*.

61. Document prepared by Confartigianato, *Incontro Confartigianato – OCSE*, May 2000.

62. The same representatives that signed the "Christmas Agreement".

63. Article 2.2 of Law 50/99 and Prime Minister Decree of April 1999. An informal note prepared by the Nucleo regulates its rules and procedures.

64. At the commune level, interesting initiative have been tried. Some are even considered European best practice, such as the Bologna experiment with its electronic consultation.

65. Although, it is true that in as strict sense, when delegating powers to government to delegislate or to issue Delegated Legislation, Parliament includes in the law the terms for their implementation.

66. The Ciampi/Cassesse reforms were based and accompanied by extensive studies and critical studies on the administration, for example the 1993-1994 diagnosis in three volumes were prepared by 500 experts.

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67. The Italian Constitution imposes the publication of Statute laws (Article 73, par. 3 Cost.), decrees-law ("*decreti-legge*") (Article 77, Cost.), primary and secondary regional laws (Article 123 Cost.), Constitutional Statute laws (Article 138), Law 839/84.

68. This complexity has fostered a cottage industry, dedicated to publish and republish laws. These are the texts used by professionals, including rule-makers, see *Italia per Simplificare*, p. 42.

69. Respectively http://www.cerfa.com.fr, http://www.igsap.map.es/BASISCGI/BASIS/proce/all/ relapro/SF, http://www.cde.gob.mx.

70. Article 11 of the Presidential Decree 1092/85.

71. http://www.aipa.it/.

72. A special administrative legal procedure for the "right of access rule" permits to accelerate the ruling in the Regional Administrative Courts and, on appeal, the Council of State. These provisions were further strengthened in 1996 with the setting up of a specific agency to enforce them (Law 675/1996). Recently, the Council of State ruled that private corporations that operate on essential facilities need to comply to this transparency rule too.

73. The law 537/93 strengthened the 'silence is consent' rule and the notification procedures. The Law 127/97 also reinforced the controls on the administration, modified the certification process, and changed the governance of the conference of services and boosted the use of the self-certification process.

74. OECD (1994), *Environmental Performance Review of Italy*, and more actualised information on Document prepared by Confartigianato, *Incontro Confartigianato – OCSE*, May 2000. For the results of the business survey, see De Luca, p. 35.

75. OECD (1999*e*).

76. Kostoris, Fiorella (1996).

77. Decision 500 of 22 July 1999 of the Supreme Court ("Corte di Cassazione").

78. Law No. 205/2000.

79. However, this institution has been created in all regions except in Umbria, Molise, Puglia and Sicilia.

80. The scientific community has also been unable to reach a consensus on the "right level of pollution".

81. Prime Minister Decree of 27 March 2000, Annex B.

82. The mechanism has reached a high degree of sophistication attributable to the collaboration between the Treasury (and in particular the specialised Department of "Ragioneria dello Stato") and the Parliament (and in particular the Budget standing Commission and the budget Offices – "Servizi del bilancio" – created in both Chambers). Camera dei Diputati, Servizio Studi, Note for the *OECD Reviews of Regulatory Reform*, May 2000.

83. Although as indicated in section 2, Article 56 of the Rules and Procedures of the Chamber of Deputies, mentioned the need to assess impacts when discussing bills for their approval.

84. Article 10 of the rules of Procedure of the Council of Ministers, 10 November 1993.

85. OECD (1999*b*), "Background report on Government Capacity to Produce High Quality Regulation".

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86. In the cost benefit evaluation of a RIA programme, the ‘costs’ for regulators may amount as much as several hundreds Euros in cases of complex regulations, such a an environmental law. The ‘benefits’ however are deemed very time superior (although diffuse in the whole economy) in terms of savings of compliance costs by citizens and firm. See Hopkins, T. (1996).

87. The constitutionality of the IAs has in particular been hotly debated by professors and regulators. See the Parliamentary Committee’s Report on Independent Agencies (April 4, 2000).

88. F. Patroni Griffi (1996).

89. Considered an independent authority only for its competition powers in the banking sector.

90. Some agencies (Competition Authority, Communications Authority Regulation and Energy Authority Regulation) are subject to the exclusive jurisdiction of the administrative courts (Regional Administrative Court and Council of State). In the other cases, the normal partition of competencies system is applying (Civil judge, knows conflicts concerning subjective rights and civil illicit of public powers and administrative judge, who knows conflicts concerning “legitimate interest”).

91. Proposed IAs include the Autorità di vigilanza sulel Fondazioni di origine Bancaria, Autorità di vigilanza sulle ONLUS (organizzazioni non lucrative), Agenzia per la proprietà industriale, Agenzia per la cooperazione allo sviluppo.

92. Article 7 of Law 50/99.

93. Law 50/99 also permits the government to delegate to the Council of State the consolidation of a text, but has so far refrained from doing so. In case the Council of State is the author, no opinion is required before the text is presented to Parliament.

94. For a general overview on delegislation and simplification of the administration, see L. Carbone (1999).

95. This is often the case in sectors regulated by concessions granted for a fixed time without open tendering, M. D’Alberti (1998).

96. The Law No.°400/88 created the “de-legislation” system.

97. Fifty instruments of de-legislation were adopted in the first year of the law’s application (see Annuaire européen d’administration publique, XVII, 1994, p. 172).

98. The concessions are discretionary instruments to control market entry and all economic activities. By the concessions system the number operators are limited without an economic reason and the only competition for the market is feasible. The concessions is justified for the sole matters reserved by law to the public powers proved that the “legge di riserva” is not in contrast whit the EC law.

99. Autorità Garante della Concorrenza e del Mercato (1998). The report is the result of an analytic study: M. D’Alberti (1998).

100. The new “concessioni de apertura” permits in a single procedure to open business in 2 to 5 months (unless the activity needs an environmental impact analysis, where a maximum of 11 months is establish), instead of the previous 15 to 43 procedures and 2-5 years that used to be needed.

101. For instance, Government Decree 9 of May 1994, No. 411 lists 124 activities which are excluded from the ‘denuncia di inizio di atttività’.

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102. Created by Law 241/90, Laws 127/97 and 50/99 successively reformed the decision-making procedures of the conference of service. Today, under the second simplification Act No. 340/2000, the individual veto of any participating administration has been eliminated and replaced by a dispute resolution mechanism in the Council of Ministers.

103. 122 procedures with Law 59/97, 62 with Law 50/99, 39 in the current simplification law been discussed; plus 86 procedures which time limits have been reviewed, Government of Italy, answers to questionnaire, 2000.

104. The simplification law may also include other connected items, such as new regulatory tools, criteria and guidelines. For instance, the first simplification law, Law 50/99, introduced the RIA.

105. The self-certification was originally introduced I by Law 15/1968 and strengthened by Law 241/1990.

106. In order to provide a coherent legislation on this subject, the Government has prepared a consolidated text on the administrative documentation.

107. Presidential Decree 447/98, which came into force in May 1999.

108. To open a coffee shop you needed 4 communal controls (sanitary, construction and urban planning, administrative and fire safety). Today only one is required, which can be faxed or sent electronically).

109. CONFARTIGIANATO, document presented on 5 May, 2000.

110. La Sapienza, co-ordinated by G. Vesperini and G. Napolitano. See S. Battini (1998) in G. Vesperini (ed.), (1998), pp. 63-100; *Giornale di diritto amministrativo* (starting on 1995 until 1999) and *Rivista Trimestrale di diritto Pubblico* (starting on 2000).

111. For instance, only 5 out of 112 procedures to be simplified by Law 59/97 had been implemented a year later (Battini, S. p. 89). About the rulemaking complexity in implementing the simplification see Lacava, C. p. 101. Both authors report the resistance of the administrations.

112. Personnel costs as per cent of GDP decreased from 12.8 to 10.6% between 1990 and 1999, OECD.

113. Government of Italy (2000).

114. ISTAT – Unioncamere, March 2000.

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