Regulatory Reform in Spain

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 Spain. 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 Spain* published in 2000. 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 César Cordova-Novion, and Scott H. Jacobs, Regulatory Management and Reform in the Public Management Directorate, OECD. 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 Spain. 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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Executive Summary

Background Report on Government Capacity to Produce High Quality Regulation

Are national administrations able to produce social and economic regulations that are based on the core principles of good regulation? Regulatory reform requires the development of administrative capacities within the public sector to judge when and how to regulate in a highly complex world. Administrative transparency, flexibility, policy co-ordination, understanding of markets, and responsiveness to changing conditions are increasingly important to policy efficiency and effectiveness.

Over 20 years, Spain has experienced a process of social, political, and economic change of a magnitude seen in few other OECD countries. This has brought Spain considerably closer to the mainstream of regulatory practices in the OECD. In some areas, it is moving ahead. Democratisation, devolution to regions, and convergence with the rest of Europe have transformed the Spanish governance system, particularly its administrative and legal environments. The pace of change toward market-oriented policies and government institutions accelerated in recent years through a series of bold economic reforms, many linked to membership in the European Union. Policies of privatisation, market openness, competition enhancement, and regulatory reform substantially reduced the direct role of the state in the economy, strengthened competitive forces, and improved the efficiency of remaining state intervention in some policy areas and sectors.

In recent years, the government has broadened these structural reforms by improving the capacities of the national administration to ensure that regulation is transparent, efficient and necessary. Since 1997, each new law and regulation has had to be accompanied with a mandatory report justifying its necessity, together with a memorandum estimating its foreseen costs. Regulatory transparency has also improved through use of different consultation strategies by regulators. The government has also placed more emphasis on administrative simplification. In January 1999, a new inter-ministerial commission on simplification launched a review of existing formalities to eliminate those deemed unnecessary, and to simplify and reduce the response time of those remaining. The commission is also responsible for preparing and monitoring an annual simplification programme for the administration. The government recently announced that improving the regulatory environment is a major priority to improve the competitiveness of the Spanish business sector, as commitments to the European Monetary Union and the EU Stability Pact constrain monetary, exchange rate, and fiscal policy instruments.

These steps and commitments are necessary, but are not yet comprehensive enough to achieve the desired results in terms of an improved environment for business growth, in particular for small and medium-sized enterprises. For example, the efficiency of achieving social policy objectives such as environmental quality through regulations and administrative formalities has not received enough attention. Reform in these areas would produce large gains. Strengthening regulatory management, such as through a specialised unit, to supervise the use of regulatory powers throughout the administration is needed. Establishing regulatory quality standards will make bad regulatory decisions more transparent, and reduce the ample discretion by strong ministries to regulate as they wish. The interdependence of both elements -- quality standards enforced by an effective oversight body -- could improve regulatory quality and promote a cultural change in the administration. These reforms should also encourage the Spanish regulatory system to move from a control and command and legalistic approach towards a compliance-friendly and performance based approach. To support this move, the existing Evaluation Questionnaire should be turned into full-fledged regulatory impact analysis that is publicly accessible. “Notice and comment” should be required for all new proposals to strengthen consultation. Finally, regional and local governments, which have an increasing role in regulatory matters, need to be more involved to ensure that gains are preserved and extended throughout the Spanish regulatory system.

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Potentially large gains could be realised if the government of Spain would:

- *Adopt at the political level a broad policy on regulatory reform that establishes clear objectives, accountability principles and frameworks for implementation.*
- *Establish an oversight unit with (i) legal authority to make recommendations to the Council of Ministers, (ii) adequate capacities to co-ordinate the programme through the administration, and (iii) a secretariat with enough resources and analytical expertise to provide independent opinions on regulatory matters.*
- *Revise the existing evaluation questionnaire to conform with OECD best practices, make it mandatory for all proposed regulations, including ministerial orders, and make the responses publicly available as part of public consultation procedures. As part of this, implement across the administration a step-by-step programme for improving regulatory impact assessment, based on OECD best practice recommendations, for all new and revised regulations. The analysis should begin with feasible steps such as costing of direct impacts and qualitative assessment of benefits, and move progressively over a multi-year period to more rigorous and quantitative forms of analysis as skills are built in the administration. Implementation will be more rapid and successful if a training programme is established, managed by the regulatory oversight unit discussed above, to instil the necessary skills in the public administration.*
- *Improve transparency by further strengthening the public consultation process, by adopting uniform notice and comment procedures, and by launching a programme of codification to reduce legal uncertainty.*
- *Establish a centralised registry of all regulatory requirements with positive security.*
- *Strengthen the administrative simplification policy by (i) assuring that quality standards and principles are used in the revision of existing formalities, (ii) by assigning to the Simplification Commission a dedicated secretariat with analytical expertise and resources, and (iii) by concentrating as a high priority on reducing and simplifying authorisations, licences and permits.*
- *Encourage regulatory reform by co-ordinating initiatives with the autonomous communities and municipalities, and by assisting them to develop management capacities for quality regulation.*

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1. REGULATORY REFORM IN A NATIONAL CONTEXT

1.1. The administrative and legal environment in Spain

In the past quarter century, Spain has experienced a profound transformation of its governance structures that continues yet today. The Constitution of 1978 accelerated and consolidated a process of social and economic transformation toward market-oriented democracy. This process gained further impetus in 1985 with Spain's accession to the Europe Community.

Within this broad context of governance reform, regulatory regimes and institutions have been extensively reshaped. Three key policies have been particularly important in driving regulatory reform: the process of European convergence, particularly the harmonisation of Spanish legal frameworks with European policies in many areas; the accelerating devolution of regulatory and other governance capacities to the autonomous communities and other sub-national governments; and the modernisation of the national public administration. Spain's participation in the European Monetary Union will place even greater attention on the efficiency of its regulatory institutions, processes, and policies.

European convergence dramatically modified the general regulatory context. Spain has steadily integrated its national regulatory regimes within the European legal framework. Today, the European Commission considers Spain as one of the most advanced EU countries in transposing EU Directives.[1] Today, a large part of the Spanish legal framework is based on European law and judicial decisions. For instance, the *Consejo de Estado* estimates that even before the Maastricht and Amsterdam Treaties, more than 54% of the legal framework was related to EU directives, regulations, and decisions.[2] This has had far-reaching impacts on the regulatory administrative organisations, and legal traditions and doctrines, of Spain. For instance, according to the *Consejo de Estado*, the transposition has brought gradual but deep changes -- from the terminology to the doctrine -- to the Spanish legal system.[3]

A second major force remoulding Spain's legal and administrative framework is related to its remarkable experience in reconciling a highly centralised state with growing regional demands. The devolution has taken place through a long sequence of steps and phases that were begun by the approval of a new Constitution in 1978, and reinforced by crucial decisions of the Constitutional court. The speed and scope of decentralisation is different for the various autonomous communities, but today all 17 autonomous communities have developed a strong sense of regional and political identity. Each has established its institutions, administration, and legal and regulatory frameworks. Devolution has required that major administrative functions of the national government be reinvented, such as replacing service delivery with new policy co-ordination functions to guarantee basic conditions of equality for all Spaniards (Section 2.3).

The third major reform affecting regulation is the modernisation of the public sector. Like other OECD countries, the Spanish public sector grew significantly during the past 50 years. Public intervention multiplied through regulations, subsidies and investments, and as the public administration took on increasing responsibilities in social and environmental areas. Democratisation and devolution had immense impacts on the public sector: the administration was long considered a pillar of the previous regime and had to be recreated, while a constellation of public administrations emerged in the autonomous communities and municipalities. Since the early 1980s, the government has tried to lead and accelerate those changes, as well as to improve the efficiency of its public sector through professionalisation of the civil service, organisational restructuring, legal rationalisation, and privatisation (see Section 2.1).

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Reforming key aspects of public sector organisations and cultures has proven to be an extended, multi-year process. The Spanish administration is compartmentalised into strong ministries. Horizontal oversight bodies and co-ordination mechanisms and institutions are often weak, slowing implementation of administration-wide reforms.[4] The civil service has suffered from rigidity in personnel and staffing, delaying needed reforms.[5] Though changes are noticeable, the civil service has not lost its interventionist habits. Reliance on command and control regulations and controls on market competition are prevalent. Corporatist attitudes and institutions have not disappeared, nor has a rent-seeking approach to regulation. These problems are also seen at regional and local levels.

Other important features of Spanish administrative culture are a highly-developed legalism, reliance on precedent, and formalism in actions and procedures, which has made it difficult to move toward policy practices and tools that are results-oriented and responsive to citizens and businesses. This can be seen, for example, in the lack of economic impact assessments when preparing laws and regulations. The legalistic approach contributes to the practice of using regulations as the preferred instrument to solve problems, instead of alternative policy instruments (see Section 2).

Box 1. **Good practices for improving the capacities of national administrations to assure high quality regulation**

The OECD Report on Regulatory Reform, which was 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 report, 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. Assess regulatory impacts.
2. Consult systematically with affected interests.
3. Use alternatives to regulation.
4. Improve regulatory co-ordination.

C. UPGRADING THE QUALITY OF EXISTING REGULATIONS

(In addition to the strategies listed above)

1. Review and update existing regulations.
2. Reduce red tape and government formalities.

The confluence of these three reforms -- European integration, devolution to regional and local governments, and reform of the administration -- has produced a period of legal activity and reform without precedent in Spain's history.[6] But the new legal framework has not realised its full promise in improving regulatory quality, the general business environment, and the market orientation of the public administration. A recent OECD Economic Survey stated:

> *Despite the strong macroeconomic performance and a number of recent structural reforms, the Spanish economy has not yet fully overcome the strong corporatist philosophy and heavy regulation of economic activity from its past. Even after recent reforms, the overall business environment and the prevailing web of regulations and other institutional factors combine to generate what could be significant impediments to entrepreneurial activity.*[7]

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Indeed, there were suggestions by the Council of State in 1992 that the complexity and quality of Spanish regulation may have worsened at that time. First, the legal transformation generated regulatory inflation. The annual number of pages of the Official Gazette (*Boletín Oficial del Estado*) grew from 2 663 pages in 1970 to 9 498 pages by 1990. The regulatory stock in 1990 was estimated by the *Consejo* to include more than 12 488 norms and regulations in force.[8] More importantly, the Council of State indicated that regulatory inflation had been accompanied by a "degradation of laws", that is, a reduction in the rigour and overall quality of laws and regulations.[9] This could be seen in the use of fragmented legislation and the lack of a systematic and rigorous abrogation of old rules (Section 3.1.3). These developments had consequences for legal security, particularly for a civil law system, which is based on an exhaustive and explicit set of rules.[10]

1.2. Recent regulatory reform initiatives to improve public administration capacities

Spain's approach to regulatory reform has been pragmatic and somewhat reactive, and its speed, scope, and success have differed among policy areas. For example, reforms to economic regulations have been taken much further than reforms to social and administrative regulations. In that sense, no comprehensive regulatory reform policy or strategy have yet been established. On the other hand, the government has separately pursued a number of important reforms that have had direct and indirect impacts on regulatory capacities in the public sector. Three particularly important policies launched in recent years were: structural economic reforms, modernisation of the national public administration, and reforms to the Administrative Procedure Law.

Structural economic reforms date from modernisation strategies launched in the late 1950s when the government began to move away from the autarky economic model. Convergence with Europe since 1985 gave new impetus and direction to structural reforms (see Box 2). As in many other countries, these reforms were a mix of market opening steps, large-scale privatisation, liberalisation of state control activities, sectoral re-regulation, and strengthening of competition policy.

Implementation of the European Single Market Programme from 1989 resulted in major deregulation. Almost all agricultural markets and most branches of industry were more or less opened to European trade and investment. A huge array of regulations and technical standards was eliminated. Spain implemented the single market framework in less than six years, when other countries needed decades.

Market openness was quickly followed by liberalisation of factor markets.[11] In 1992, as the domestic market was opening to international competition under the European Single Market, the government concentrated on reform of service sectors, privately and publicly owned.[12] Stimulated by a comprehensive report on structural reforms released in 1992 by the competition authority, reform of telecommunication, electricity, gas, oil product distribution, and air transport regulations got underway, with initial steps to strengthen competition policy, and improve regulations in land, retail distribution, professional services, postal services, and water. A Convergence Programme approved in 1992 to meet the requirements of the Treaty of Maastricht supplemented the microeconomic reforms with plans to reform macroeconomic policy. ,In 1996 the government approved an ambitious programme of structural reforms that included, among other reforms, the privatisation of almost all the remaining public enterprises. This programme, in just two years, sold practically all of Spain's biggest state-owned companies in a wide range of sectors, keeping a core of companies concentrated in mining, defence, and loss-making strategic companies (*i.e*. railways, shipbuilding, etc.). The programme also drastically reduced aids to state-owned enterprises. The second wave is not yet completely implemented, but the privatisation process is nearly over. By 2000, the only activities left within the public enterprise sector will be mining and certain defence companies.

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Box 2. **Structural regulatory reforms in Spain**

Late 1970s - end of 80s:	Reforms generated by accession to the European Union.
June 1985:	Spain's Accession to the European Community.
1987:	Signature of the Single European Act.
1987:	Price and quantitative restrictions on road haulage phased out (Law 16/1987).
1989:	A new Competition Law replaces the 1963 law.
1989:	Start of the public enterprises privatisation process.
Early 1990s - 1996:	Reforms around the European Single Market Programme.
1983- 1996:	Liberalisation of airport handling operations.
April 1992:	The Council of Ministers publishes the Convergence Plan.
January 1993:	Completion of the Single Market Programme.
October 1994:	Council of Ministers approves the full liberalisation of telephony by 1 January 1998.
1994:	Liberalisation of air transport.
1994:	Labour market reform (flexibility of temporal work contracts).
January 1995:	Bank of Spain becomes autonomous.
March 1995:	Creation of the electricity regulator, National Electricity System Commission.
1996 - 1999:	Reforms around Convergence to EMU.
June 1996:	The government launches the State Enterprise Modernisation Programme.
	First list of "Measures to Liberalise and Reactivate the Economy".
	The Law for the Defence of Competition is partially amended.
July 1996:	Pact of Toledo and new law on pension reforms.
February 1997:	Second list of "Measures to Liberalise and Reactivate the Economy".
April 1997:	Reforms of the labour market through agreement between employers and unions.
	Creation of the telecommunication regulator, *Comisión del Mercado de Telecomunicaciones*.
	Creation of a new public entity to manage the rail infrastructures.
September 1997:	Restructuring of controlling bodies of state-owned enterprises.
November 1997:	New Electricity Law.
April 1998:	New Basic Law on Land Regime and Valuation.
1998 -2002:	Stability Programme.
July 1998:	New Universal Postal Service Law.
October 1998:	New Hydrocarbon Law.
April 1999:	Urgent Measures to Liberalise and Increase Competition.

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With Spain a founding member of the EMU, a new and ambitious medium term policy was articulated in the 1998-2002 Stability Programme recently approved by the government. The programme stated that, to counter the weakening of demand-side instruments such as monetary and fiscal policy, further emphasis will be needed on supply-side policies and structural reforms of factor and product markets. The government will further open competition in protected sectors and take additional steps to improve regulatory quality in relation to both specific sectors and the general business environment. The programme lists sectors (telecommunications, electric utilities, water, retailing, land use, and finance) and other policy areas (privatisation, bankruptcy law, rules of civil law procedures, SMEs, competition policy, tax measures, and research and development policy) for specific reforms.[13]

Public management reforms. Reform of the central administration has been underway since the 1980s. Successive governments have proceeded with cautious and piecemeal changes to bring managerial and technical skills as well as flexibility to the civil service, to change a procedure-based administrative culture into a performance-based one, and to shift the focus on objectives rather than means in the delivery of public services.

Civil service reform, needed to achieve the flexibility and mobility needed for the devolution process, was launched in the early 1980s. In 1984 the traditional civil corps (*cuerpos de estado*) were restructured and many specialised corps were eliminated and replaced by more broad-based ones. However, the results of these reforms were not totally satisfactory and further transformations later stalled.[14] The government recently indicated its intent to enact a new law.

Other reforms focussed on improving the delivery of public services. The most ambitious initiative consisted of a detailed Plan to Modernise the Central Administration by the Ministry of Public Administration (MAP) in 1992. The plan was intended to improve *(i)* communication and information to citizens; *(ii)* service quality; *(iii)* simplicity of formalities; and *(iv)* efficiency of government-wide processes and procedures. The MAP co-ordinated hundreds of proposals prepared by ministries and agencies. Some 204 projects were published in 1992.[15] Commitments ranged from the elaboration of a *Manual of Administrative Language for the User* to the simplification of frequently used formalities, like social securities or passports formats. The results of these reforms were considered to be modest. Few innovations and changes were introduced to the organisation and work methods of the administrations.[16] This was in part due to a lack of political backing. According to commentators, MAP did not have enough power to mobilise other ministries for in-depth reforms, and after a few months the highest levels of the government lost interest.[17]

On the other hand, MAP was more successful in promoting targeted improvements to relationships between the public and the administration. Information technology initiatives have provided better and faster access to public services and products. An ambitious project to create one-stop-shops (*Ventanilla Unica*) was launched, and will soon be supported by citizens' assistance centres (*Centros de Atención al Ciudadano*). These initiatives are closely connected with the administrative simplification policy renovated at the beginning of 1999 (see Section 2.1). Other areas where the government has been active include transparency enhancement projects like creating national inventories of administrative procedures. Finally, the MAP has been working on establishing a performance management programme for civil servants and promoting implementation of total quality management programmes for street level offices.

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Reform of the Administrative Procedure Law. In parallel with those initiatives, Spain reformed through a series of new laws and amendments the 1958 Administrative Procedure Law to increase accountability and transparency across the administration. This multi-year endeavour can be divided into four distinct elements (see Table 1):

- The first reform in 1992 focussed on revamping the legal regime of common administrative procedures, that is, procedures connecting citizens with the administration. The rules include how the procedure begins, when it finishes, the format, and so forth.[18] The reforms set up minimum standards to be followed by all sub-national administrations. A key intent of the reform was to reduce the response time of the authorities by implementing the tacit authorisation rule across the whole administration (central, regional, and local). This rule means that, in case of non-response by the authority, the applicant can assume the request was authorised. In January 1999, the law was further reformed with stricter mechanisms and disciplines, and a new permanent Inter-ministerial Commission on Simplification was established to steer a review process (see Section 2.1 and Section 4).

- A second initiative reformed in 1997 the normative processes for producing laws and subordinate regulations. The new law added more requirements to the process and provided important clarifications, for instance to the consultation process (see Section 2.1 and Section 3).

- Through the same law, the powers of the central government organisation were redefined to separate the political from the administrative levels throughout the administration. The law also regulated the role of co-ordination bodies like the Delegated Commissions and the General Commission of Secretaries and Subsecretaries (CGSYS).

- Another 1997 law reorganised and modified the legal regime of the central administration.[19] First, a major reorganisation of the administrative services representing the central administration in the regions (the "peripheral administration") reduced duplication among levels of government. Second, the law clarified the right and duties of new public agencies and enterprises that had been established in the past decade. As other countries, Spain had set up many specialised bodies to improve flexibility and responsiveness of regulatory and other policies. In exchange for more accountability, these entities got more freedom in day-to-day operations (for instance, concerning human resources and spending controls) and the possibility to work under private law instead of administrative law. This trend, called *Huida del Derecho Administrativo* or flight from administrative law, needed extra care in a country like Spain because of its impact on the whole system of intricate administrative laws.[20]

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Table 1. **Evolution of the 1958 Administrative Procedure Law**

	1958 →	**→ 1992 →**	**→1997 →**		**→ 1999**
	Administrative Procedure Law	**Common Administrative Procedure Law (30/92)**	**Organisation and Operation of the General Administration of the State (6/97)**	**Government Law (50/97)**	**Reform of the Common Administrative Procedure Law (4/99)**
Elements dealing with procedures between the administration and the public	"Tacit negation" and minimum criteria to be followed in every procedure established.	"Tacit authorisation" becomes a rule for all procedures, but ministerial exceptions. Mandate for 1st review of existing procedures.			"Tacit authorisation" becomes a rule for all procedures, but Parliament exceptions. Mandate for 2nd review of existing procedures. Simplification Commission established.
Elements dealing with procedures for creating a law or regulation	General steps for preparing a law or regulation, including public consultation to social partners.		Requirement of an authorisation from MAP in case of impacts to the distribution of competencies between levels of government, the creation of a new administrative procedure, and changes to civil service regime.	Clarification of types and levels of regulations. A justification report and economic memorandum become mandatory. Strengthening of consultation process.	
Elements dealing with procedures for organisation of the central administration	Rights and duties of central administration.		Civil Governors eliminated in the provinces and replaced by regional delegates.	Clarification of role of co-ordination commissions.	
Elements dealing with the organisation of regulatory bodies	Two types: autonomous organisms and public enterprises.		Clarification and reform of regulatory bodies (*i.e.* autonomous organism and public enterprises).		

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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.[21] The 1995 *OECD Council Recommendation on Improving the Quality of Government Regulation* contains a set of best practice principles against which reform policies can be measured.[22] In Spain, no explicit policy on regulatory reform or regulatory quality exists covering social, administrative, as well as economic regulations, unlike other countries as the Netherlands or the United States, and this absence has fragmented reform efforts (see Box 1.1 in Part I for the OECD definition of regulatory reform). However, aspects of regulatory reform are folded into other reform policies, and these are moving Spain in the right direction. In particular, recent Spanish reforms to regulatory production processes and administrative simplification policy are boosting the capacity of the administration to produce higher quality regulations and formalities.

Spain has a long-standing policy, under the responsibility of the Council of State, to improve the *legal* quality of proposals of laws and regulations.[23] Through its annual reports and legal quality review, the Council provides overall analysis, proposals and guidance to the government on trends in quality, and gives formal opinions on the quality of specific proposals (see Box 6). Reforms in the Government Law of 1997 have the potential to also improve the *substantive policy content* of new regulations. Four reforms in the law were positive in terms of improving policy quality:

- The law lays down procedures for proposals of law and proposals for subordinated regulation (royal decrees and ministerial orders). With the above explicit definition of the set of different regulatory instruments available to the government, the law clarified the constitutionally mandated requirement to publish all regulations in the Official Bulletin.
- The law assigns an explicit supervision role to the Technical General Secretary of each ministry. These high officials play a key role in co-ordinating and managing budgetary and other resources inside each ministry.
- Each draft law or regulation is to be accompanied by a justification report and an economic memorandum about its cost. MAP also needs to provide an authorisation in case a regulation has an impact on the distribution of competencies between the central and the regional and local governments.[24]
- The law mandates that, as a general rule, all proposals should be subjected to public consultation.

These reforms are consistent with the 1995 OECD *Recommendation on Improving the Quality of Government Regulations* in establishing additional requirements to improve the quality of proposed regulations. The new law provided welcome clarifications to key mechanisms, such as public consultation, that were still ruled by old and unclear practices.[25] It also laid the foundation for a uniform process of regulatory management stretching across the public administration.

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However, the reform contains two weaknesses. First, there is little capacity to oversee compliance with its requirements. The law does not establish clear accountability or responsibility for regulatory quality assurance and compliance. In theory, the Technical General Secretary of each ministry is in charge of quality control, but his location in the ministry is not a line position, and is weaker than the Secretaries of State in charge of regulatory areas. Co-ordination and oversight are also absent from the rulemaking process established in the law. In practice, these tasks are assumed by the General Commission of General Secretaries and Sub-secretaries (CGSYS), before a final decision is made at the Council of Ministers. For some sectoral issues deemed to have a high economic impact, the draft law or regulation needs also to be discussed in the *Comisión Delegada* before going to the CGSYS. However, as the collegial CGSYS has other crucial responsibilities, its time to concentrate in providing critical and independent scrutiny of regulatory proposals is limited. Last, the CGSYS does not review ministerial orders, which often have important regulatory impacts. Best practice in other countries shows that a specific body or even a dedicated commission with a clear mandate and adequate resources are often needed to provide support in supervising the regulatory quality procedures. Such a body can also be a useful counter balance to powerful ministries in the regulatory management system.

The second weakness is that the law has not been reinforced by further principles, implementing regulations, definitions, or guidance to drafters that can help to prepare the reports and carry out consultation. Without clear standards or minimum parameters, regulators have few incentives to comply with the law and will tend to mechanically abide by the process and to inconsistently interpret the law's intent, especially if they are not cross-examined by an oversight body.

As other OECD Member countries' experiences show, quality standards and an effective regulatory management institution are interdependent requirements. Central oversight is more effective and accepted if objective quality standards for regulation are specified in detail. But quality standards and principles are often not enough to improve regulatory habits and counter incentives. An expert government-wide institution should be accountable for overseeing compliance. A concrete and market-oriented set of quality standards should be based in the OECD principles accepted by Ministers in 1997, which 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.*

Administrative simplification policy. Since the early 1990s, Spain has pursued administrative simplification. MAP had the main responsibility, though lately the Ministry of Economy and Finance, through its horizontal SME policy, has taken an increasingly prominent role. MAP's involvement has been broad in scope, encompassing both activities of central government administration and establishing basic administrative and managerial rules for regional and local administrations. Two main objectives have been pursued. The first aim has been to facilitate relationships between the administration and the citizens. Hence, MAP has focused on organisational aspects, implementing for instance, intermediary units (one-stop shops and start-up shops) or information technology tools. The second strategic objective has been to improve the efficiency of administrative procedures, and in particular to reduce the authorities' response time and promote implementation of the tacit authorisation rule.

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The current policy can be traced to the legal reforms of the Common Administrative Procedure Law of January 1999. The law established clear accountability in a new inter-ministerial *Simplification Commission* chaired by the Minister of Public Administration who reports to the Council of Ministers.[26] The State Secretary of Public Administration, the State Secretary for Commerce, Tourism and Small and Medium Enterprises and the Secretary of State for Social Security act as its vice-presidents. The sub-secretaries from all the ministries are standing members. The Commission is supposed to meet at least twice a year, and be supported by an Executive Commission. The General Directorate for Inspection and Quality of Service of the MAP will provide a Secretariat.

The purpose of the Commission is to propose reforms to the Council of Ministers. It thus lacks binding powers and relies mainly on peer pressure and transparency, such as through an annual report on compliance by ministries. In the short run, and by legal mandate, the Commission will concentrate on two targets: *(i)* harmonisation and elimination by April 2001 of "unnecessary" formalities, and *(ii)* implementation by April 2001 of the tacit authorisation rule in some procedures that were exempted previously. In carrying out these tasks, the Commission is obliged to design, approve and monitor a *General Plan for the Simplification of the General Administration of the State*. This annual plan will be based on simplification proposals provided by ministries in accordance with general directives and criteria approved by the Commission. Among its other tasks, the Commission will also provide an opinion on all new administrative procedures contained in legal or regulatory proposals.

It is too soon to evaluate the effectiveness of the new policy: the first meeting on the first plan is not expected to happen before September 1999, and additional elements are still being crafted (in particular guidelines for the submissions of ministries). However, based on the 1995 OECD Recommendation and other OECD country experiences, some important issues can already be flagged. It is a strong point that an accountability mechanism has been clearly established. The existence of a permanent mission with time frames is also a radical change to the previous *ad hoc* initiatives. The creation of an inter-ministerial commission is another good step to build a crosscutting view of the central administration, improve consistency and transparency, and promote reforms at all levels of government. Controlling new as well as existing administrative procedures is also a good practice. A strategy controlling the stock will be self-defeating through time if the flow is not attended. Overall, the institutions and processes for this simplification initiative are more structured and operational than for previous endeavours.

Though the reform is still at an early stage, some potential weaknesses and gaps can be identified. First, concerning the authority of the members of the Commission, it is not clear that the participating sub-secretaries, who are two levels under the minister, have enough clout to commit to painful changes by their ministries. The Commission will also operate through self-assessment and peer review rather than through independent assessments. As in any country, it is likely that ministries will propose reforms that do not threaten their authority or require basic rethinking of their roles. This is even more important as the Commission has only a consultative role, and its Secretariat has no access to budgetary and human resources other than those currently assigned to the General Directorate General Directorate for Inspection and Quality of Service, which are relatively limited.

Second, though general directives and criteria for the revision of new and existing administrative procedures have not yet been published, according to the MAP it is not intended to establish clear economic principles or methods for decisions on eliminating and simplifying procedures. Without objective standards and methods, accountability will not be maintained. Ministries will tend to generously interpret the benefits and minimise the costs of each formality to be eliminated. This is problematic, as the definition of administrative simplification is not clear in the law or elsewhere. The article of the law on the mandate says only that simplification includes "rationalisation and elimination of unnecessary formalities." The lack of a clear test of what is "necessary" and what is "unnecessary" makes it difficult for ministries to make the policy operational and may foster discrepancies and inconsistencies across the government. The

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same article emphasises the traditional thrust of administrative simplification; namely reducing response times and implementing the tacit authorisation rule. This could misdirect the initiative by giving priority to improving the speediness of current procedures, without considering the need to eliminate or reinvent them.

A related concern is the lack of transparency and open participation in the process. Except through publication of the General Plan and the annual assessment report, the working of the Commission is not exposed to citizens' inputs, nor is dialogue carried out with stakeholders. Again, this will tend to support administrative efforts to make incremental changes without truly resolving the problems of unnecessary controls and excessive intervention, nor weighing the costs and benefits of options. Public perceptions and experiences in following the procedures would help to assess true burdens and benefits. Additionally, because each ministry will consider its own administrative procedures, the lack of users' inputs will reduce the assessment on the duplication and aggregation of information requirements. Finally, lack of stakeholder participation will reduce the credibility and public support for the whole initiative.

2.2. Mechanisms to promote regulatory reform within the public administration

Reform mechanisms with explicit responsibilities and authorities for managing and tracking reform inside the administration are needed to keep reform on schedule. As in all OECD countries, Spain emphasises the responsibility of individual ministries for reform performance within their areas of responsibility. This is amplified by the tradition of strong and independent ministries and the principle of departmentalisation, which grants each minister broad autonomy and responsibility in the sphere of his or her competencies. Clearly, however, government-wide reforms requiring consistency and systematic approaches across the entire administration must depend on co-ordination mechanisms and strong institutional drivers. In Spain, inter-ministerial commissions and a few independent bodies relying on legalistic precedent and peer pressure have played such roles.

The most important co-ordinating body on regulatory affairs is the General Commission of General Secretaries and Sub-secretaries (CGSYS). It is chaired by the Vice-president of the Council, or in his absence the Minister of the Presidency. All General Secretaries and Sub-secretaries of the 14 ministries can participate. The Commission is responsible for preparing decisions to be taken to the Council of Ministers, and to this end it may revise proposed laws and royal decrees. A small secretariat from the Prime Minister's Office serves it.

The *Simplification Commission*, headed by the Minister of Public Administration, should soon have a higher profile in promoting reforms across the administration, though its mandate is only advisory and its function co-ordinative. A particular challenge will be to improve the co-ordination between the administrative simplification and the SME policies. In this sense, the nomination as one of three vice-presidents of the Commission of the State Secretary for SMEs of the Ministry of Economy and Finance is an important step forward. The government drawn up in July 1999 of the *Plan to Simplify the Regulatory Framework for SMEs Competitiveness* with the specific provision that it should be integrated into the *General Plan for the Simplification of the General Administration of the State* is also a positive signal of better co-operation between these two key ministries. Moreover, MAP's officials are now participating into SME bodies and initiatives such as in the working group on the simplification of the tax system of the SME Observatory, which is the government consultative body for SMEs policy.

In addition to servicing the Simplification Commission, the *Ministry of Public Administration* has two other important regulatory reform roles. First, it is in charge of relations with the autonomous communities and local administrations. In this role, it monitors the enactment of new laws and regulations by regional and local governments and facilitates the exchange of information between them. The MAP must authorise all proposed laws and regulations that may affect the distribution of competencies between the national administration and the autonomous communities.[27] MAP is also in charge of *ex post*

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evaluation, internal controls and auditing of central administrative functions through the General Directorate for Inspection, Simplification and Quality of the Services.[28] Specifically, the General Directorate reviews and scrutinises the satisfactory delivery of authorisations, the rationality of procedures, the reduction of red tape and all matters related to improving public services delivery.

Although not directly involved in improving the quality of regulations, the Delegated Commission of the Government for Economic Affairs (*Comision Delegada del Gobierno pasa Asuntos Económicos*) has power from the Council of Ministers to deal with economic issues of political relevance. As such, the *Comision Delegada* has discussed and influenced most structural reforms and economic liberalisation measures of the past decade, and is an initiator and supervisor of the implementation of reforms. This powerful commission is composed of all ministers directly involved in economic affairs. The Minister of Economy and Finance chairs it and the Secretary of State of Economy acts as its secretariat with the technical assistance of the Directorate General for Economic Policy and Defence of Competition.

The Ministry of Economy and Finance plays key roles in regulatory quality control through two other bodies. First, the Directorate General for Economic Policy and Defence of Competition hosts the prosecutors branch of the competition authority, *Servicio de Defensa de la Competencia*, which has promoted deregulation and regulatory improvements across many economic sectors (see background report to Chapter 3). The Ministry has also been responsible since 1996 for SME policy, and has been in charge of the *Plan to Simplify the Regulatory Framework for SMEs Competitiveness.* The General Directorate for SMEs Policy also provides the secretariat for the SME Observatory and has promoted significant reforms to tax formalities. As indicated above, closer co-ordination mechanisms between the SME State Secretary and the Simplification Commission have recently been established.

Two independent bodies need to be mentioned in connection with the regulatory quality management system. The *Tribunal for the Protection of Competition*, which acts as the decision-making body in competition policy, has been active in competition advocacy since the early 1990s, for instance through the publication of an influential analysis on the role of competition in 1993.[29] Second, the *Consejo de Estado*, which is by constitutional mandate the supreme counsellor of the government, assures the legal quality of the regulatory framework, including the transposition of European law (see Box 6).

2.3. Co-ordination between levels of government

Regulatory systems are composed of complex layers of regulation stemming from sub-national, national, and international levels of government. Complex and multi-layered regulatory systems have long been a subject of concern with respect to the efficiency of national economies and the effectiveness of government action. In Spain, sub-national and supranational levels are inextricable elements of the regulatory framework, and developments at one level affect developments at the others. The policies and mechanisms for co-ordinating regulations between the regions and municipalities on one hand, and the European level on the other, are essential to the establishment of a high quality regulatory environment in Spain.

Co-ordination with the autonomous communities and municipalities. The Constitution does not define Spain as a federation, though the system increasingly operates like one. Article 2 states that the Spanish nation "recognises and guarantees the right to self-government of the nationalities and regions of which it is composed". The legal realities of regional self-government are still evolving. From a highly centralised system in which there were two levels of government, the country has moved to a three-tier system composed of central, regional, and local governments. The regional level is made up of 17 self-governing or autonomous communities established between 1978 and 1983.[30] The local level is sub-divided into two tiers: fifty provinces and about 8 000 municipalities. Although provinces and municipalities are supposed to be "autonomous", in practice the former are often little more than administrative machines for the delivery of certain public services, and many of the latter lack the resources necessary to bring self-rule to full fruition.[31]

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Table 2. **Division of main regulatory powers**

Policy area/public service	**European level**	**Central level**	**Regional level**	**Municipal level**
Nationality, immigration, emigration	X	X		
Defence and armed forces		X		
International relations		X		
International trade, customs and import duties	X	X		
Monetary policy	X			
Competition policy	X	X		
Administration of justice	X	X	X	
Commercial, penal, penitentiary and procedural legislation	X	X		
Civil law, contract law		X	(1)	
Public administration, administrative procedure and expropriation		X	X	X
Public safety		X	X	X
Spanish cultural, artistic and monumental heritage			X	
Press, radio and television	X	X	X	
Industrial and intellectual property law	X	X		
Labour legislation	X	X		
Credit, banking and insurance activities	X	X	Mg	
Air transport and air traffic control	X	X		
Sea fishing	X	X		
Inland hunting and fishing			X	
Railways and inland transportation	X	X	mg	
Airports, ports		X	mg	
Merchant shipping		X		
Post Office		X		
Domestic trade and retail	X	X	X	X
Academic degrees and professional qualifications	X	X	(2)	
Telecommunication	X	X		
Industry and Agriculture	X	X	X	
Electricity	X	X		
Mining and energy (other than electricity)	X	X	X	
Environment	X	X	X	mn
Education		X	X	mn
Health care pharmaceutical products	X	X	X	
Social security		X		
Water resources		X	X	mn
Woodlands and forestry			X	
Urban and land use planning			X	X
Public works		X	x	X
Housing			X	X
Staple markets				X
Slaughterhouses			X	X
Waste disposal				X

Notes: This is an indicative table identifying main regulatory policies according to levels of decision. In many cases a subsidiarity principle applies and many laws are applied concurrently by the different levels of government.
(1): Except in those matters regulated by traditional regional legislation.
(2): Important self-regulation from the private sector.
Mg: (Marginal): based on basic national regulation, often the implementation aspects; **r** (Regional): only if one region is concerned.
mn: Municipal.

Source: Articles 148 and 149 of Spain Constitution and *Consejo de Estado* (1993), *De Cara a la Union Europea*, pp.175-187.

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Two constitutional articles define the general distribution of competencies. Article 148 enumerates the powers that may be adopted by the regions, and article 149 lists powers that are the exclusive competence of the national government (see Table 2). All residual capacities not enumerated are left with the central level if the regions have not claimed the competence in their regional basic law, known as a "Statute of Autonomy" (*Estatuto*). Although the lists are quite exhaustive, the actual distribution has needed interpretation and clarification by the Constitutional Court, in influential cases.[32]

The Constitution creates a continuing process to devolve powers, according to local capacities to exercise them. This has resulted in a multi-speed devolution, in which the degree of devolution varies from community to community. A community may assume full legislative and executive powers, or Parliament or the national government may explicitly delegate powers. The *Consejo de Estado* is responsible for overseeing devolution. The Constitutional Court settles *ex post* any dispute.[33] Some autonomous communities (the Basque country, Catalonia, Galicia, Andalucia, and to some extent, Valencia, the Canaries, and Navarra) have claimed from the outset the fullest degree of self-government possible under the Constitution, leading the other communities.

In addition to this asymmetry among autonomous communities, two other features determine the distribution and the differences in regulatory frameworks at sub-national levels. First, the constitutional arrangement differentiates between policy and implementing powers in many areas. For central government competencies, policy making -- often established on a "basic law" -- is very often kept at the central level, while the implementation and administration of regulations is delegated to autonomous or local levels. Second, in many areas, the central government sets minimum standards to be met and leaves each autonomous community, or even municipality, the capacity to adapt them according to environmental, social, political and cultural situations. Such is the case, for instance, for environmental rules where Andalucia, Catalonia, and Galicia have enacted more stringent environmental laws and regulation than the national government (or what is required by European Directives).[34]

Expansion of regional and local regulatory power has stimulated the emergence of regulatory innovations and alternatives. Some autonomous communities are laboratories of new ideas on legal approaches. For instance, although the "tacit authorisation" rule for all administrative procedures was discussed in the central government since the late 1980s, the Catalan government was able to implement the measure a few years earlier. In terms of regulatory processes too, autonomous communities have moved faster to reform and, in some cases, more radically. In 1989, eight years before the national reforms, the government of Catalonia requested by law a cost-benefit analysis for legal and subordinate regulations which, on paper, put Catalan reforms ahead of those of most OECD countries. Catalonia also established a process for approving laws and subordinate regulations that was more structured than those existing at the national level. A well-designed programme, based on training seminars and a very complete guidebook, backed these rules.[35] In recent years, however, the Catalan benefit-cost test has been reduced to only an assessment of impacts on the government budget, which is not a useful test for regulation.

In some cases, autonomous communities have been innovating in regulatory administration. For instance, new ways to deliver health care have been tried in Catalonia through consortia, in Anadalucía through semi-private bodies, and in Galicia through public foundations. Such initiatives inspired and influenced the 1996 reforms of the national law, which permitted public hospitals to become financially autonomous based on private-sector management principles.[36]

Such innovations were the exception rather than the rule, however, and in many policy areas decentralisation requires more attention to ensure that the new regulatory functions are carried out consistently with principles of regulatory quality. The rapid transfer of regulatory powers has fostered a rapid increase in the number of new regulations, creating overlaps and even inconsistencies between the national government regulatory framework and those of the autonomous communities, and between those

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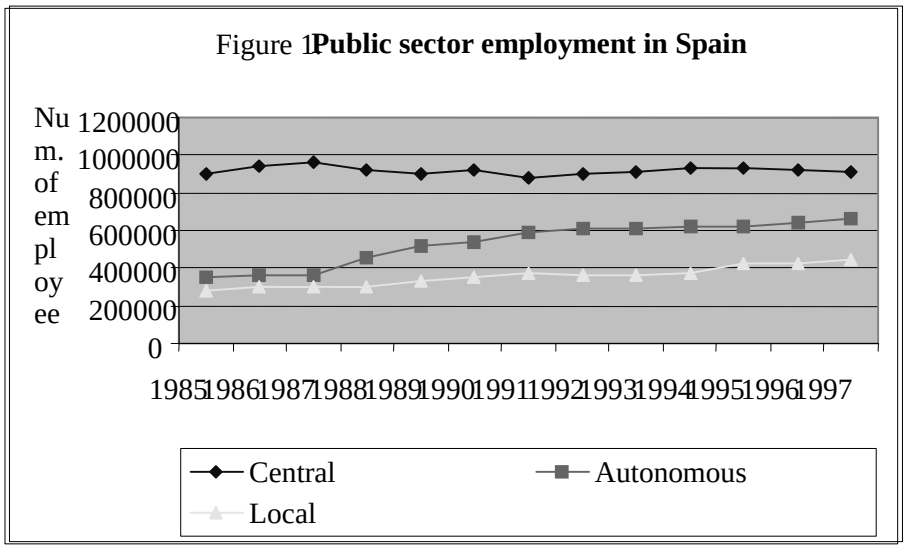
of the autonomous communities themselves. For instance, in 1991, the 17 autonomous communities enacted a total of 205 laws and 4 801 decrees.[37] Enactment and implementation of dissimilar and detailed regulations by regional and local governments has reduced legal security and made more complex the regulatory administration.

At a more fundamental level, the general discussion and negotiations in the past few years between the national and regional governments has concentrated on the question, "who regulates what?" instead of "is a regulation needed?" In allocating competencies, the *role* of government has barely been questioned, which may represent a valuable missed opportunity.

Other circumstances have affected the quality of the sub-national regulatory framework. Regional and local administrations have inherited the cultural and traditional rigidities of the national administration. An alarming re-emergence of interventionist policies and attitudes may be signalled by the acquisition by autonomous communities and municipalities of hundreds of public enterprises.[38] The benefits of bringing the administration closer to the people have partly offset by duplication and overlap of administrative services between different levels of government still remain in some areas. In the recent past, decentralisation has resulted in rapid growth in the civil service: the Spanish administrative structure grew 31.% between 1985 and 1997. Because the national administration has not changed, all the increase was attributed to growth in the public sectors of the autonomous communities (by 86%) and of the local governments (60% growth).[39]

Figure 1. **Public sector employment in Spain**



Source: OECD/PUMA (1999), Public Sector Pay and Employment Database.

The government has taken steps to correct some of these problems, for instance through reform of its administrative services at local levels. Given the political momentum toward devolution, it has concentrated its resources in reinforcing co-operation instruments. In the forefront of such initiatives, a web of intergovernmental boards or "sectoral conferences" has been created since the early 1980s to prevent conflict and improve communication between the national government and the autonomous regions. In mid-1999, 27 sectoral conferences are operating. Chaired by the responsible national minister, each conference specialises in policy areas (education, health, industry and energy, labour, etc.). The meetings cover the subjects of interest to both parties, though the national government decides whether a consultation is necessary.[40] It is through these fora that each national ministry consults with the autonomous communities on legal proposals and European Directives before they are submitted to Parliament.[41]

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As a complement to the sectoral conferences, the government established in January 1999 new institutions and co-operation instruments.[42] The Bilateral Co-operation Commissions (*Comisiones Bilaterales de Cooperación*) between the national government and individual autonomous communities are intended to permit a more focused and prompt approach to problems. These new bodies reflect a successful model developed for environmental policy; the European Environmental Agency, for example, has considered as best practice the co-ordination tools developed in Spain to integrate environmental concerns with other policies at regional levels. *Agencias del Medio Ambiente* (AMA) or Environment Agencies have been established in four autonomous communities. They bring together sectoral ministries to develop environmental policy and regulations, thus spreading the "ownership" of environmental protection measures and facilitating their implementation.[43]

The 1999 reform also reinforced an important co-ordination tool, the "co-operative covenants", in order to strengthen the institutional framework to develop joint plans and programmes between the different governments on particular issues.

Co-ordination with European institutions. Since accession in 1985, Spain has been a front runner in implementing European legislation. This is largely due to the fact that the government established a closely-knit system of co-ordination mechanisms built around the Inter-ministerial Commission for European Affairs. This Commission monitors the transposition of European Directives and prepares Spain's positions in European negotiations (together with the *Comision Delegada*). It is also in charge of implementing, following up and solving European Union issues affecting more than one ministry. The commission is chaired by the State Secretary for External Policy and the European Union, with two vice-presidents, the Secretary of the *Comisión Delegada* and the General Secretary for External Policy and the European Union. The General Director for Co-ordination of the Internal Market and Other Community's Policies of the Ministry of Foreign Affairs acts as its secretariat.

Two other important bodies participate in co-ordination with Brussels. In Parliament, the Joint Commission for the European Community (*Comision Mixta para la Union Europea*) contributes to the elaboration and implementation of European law. This important commission formed by an equal number of members of the two Parliament's chambers actively takes part in the preparation, discussion and approval of European laws and regulations. Also, during the transposition of European Directives, the *Consejo de Estado* oversees constitutional and legal aspects. In particular, the *Consejo* focuses on restricting the propensity of ministers to use the transposition process to include additional requirements (a practice known elsewhere as "gold-plating" or "gilding the Brussels lily"). Further, the *Consejo de Estado*, with the MAP, is in charge of verifying and controlling the capacities of the autonomous communities to incorporate in their legal and regulatory frameworks the elements of European law. Some autonomous communities have established regional legal consultation councils equivalent to, and recognised by the *Consejo de Estado*. In such cases, the regional council is responsible for assessing the conformity of their legal and regulatory frameworks with EU legislation.

In the past decade, autonomous communities have increasingly participated directly in European regulatory processes, either through national channels and co-ordination institutions, or by establishing representation offices in Brussels. In the former case, the government set up a system where two representatives of autonomous communities participate on a rotating basis in the Spanish Delegation in Brussels.

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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. Just as important is the role of transparency in reinforcing the 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; and implementation and appeals processes that are predictable and consistent. In the past two decades, Spain has taken steps to improve transparency in its regulatory and administrative activities. However, major challenges are not yet resolved.

3.1.1. Transparency of procedures: administrative procedure laws

As explained above, the Government Law of 1997 sets requirements for the process to be followed in promulgating laws and subordinated regulations. Previously, a system existed under the 1958 Administrative Procedure Law. The 1997 reforms clarified the procedures to ensure that regulatory decisions are made appropriately, predictably, and openly.

The general scheme established in the new law consists of a sequence of steps starting with a General Directorate or administrative units preparing a legal text. This is followed by a negotiated process and the gathering of mandatory and explicatory reports and opinions, which form the dossier. The proposal is presented to the Council of Ministers for final approval or for subsequent discussion in Parliament. The process ends when the measure is published in the Official Gazette (*Boletín Oficial del Estado*). The procedure applies to all proposals of laws, royal decrees and ministerial orders produced by the national government (see Box 3). The autonomous communities and the municipalities have adopted similar processes, although in general with fewer constraints.

Box 3. **The standard procedure for producing laws and subordinate regulations**

1. A General Directorate prepares the proposal and establishes a report on the necessity of the measure and an economic memorandum on its potential costs. In some cases, the General Directorate is assisted by the legal service of its ministry, the Legal Service of the Ministry of Justice, or the Codification Commission, a legal counsellor to the Central Administration.
2. The Technical General Secretary of the proponent ministry prepares a mandatory validation report. From this moment, with the support of the General Directorate, the Technical General Secretary is entrusted with the responsibility of managing the next steps of the procedure, the further elaboration of the dossier and the managing of the consultation process.
3. The promoters organise the public consultation, known as *trámite de audiencia*, according to one or more modalities. They need to prepare a mandatory written statement summarising the consultation (see Section 3.1.3).
4. According to the regulatory area, some ministries or units need to present an opinion or an authorisation on the proposals. For instance, the MAP needs to authorise a draft regulation if the proposal has impacts on the distribution of competencies between levels of government, if a new administrative procedure is created, or if it has effects on the civil service management policy.

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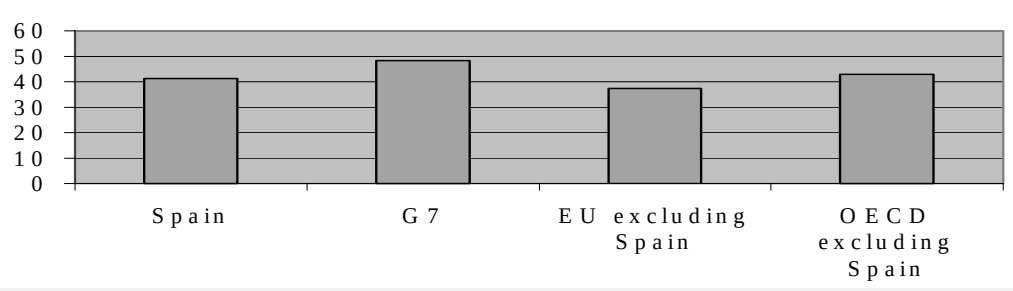
5. The proposal is sent to the *Consejo de Estado* for a legal opinion on its constitutionality, distribution of powers between levels of government, etc. This opinion is mandatory for royal decrees but voluntary for draft laws (see Box 6).
6. The proponent Technical General Secretary finalises the dossier. In particular, it gathers the economic memorandum prepared by the Ministry's Budgetary Office and approves the Questionnaire to Evaluate Regulations (see Section 3.3) and other documents prepared by the sponsoring General Directorate.
7. In parallel, the proposal and its preamble are distributed through an electronic network to all the members of the *Comision General de Secretarios y Subsecretarios* (CGSYS).
8. If the CGSYS approves the project, the Technical General Secretary transmits the dossier with the Questionnaire to the Council of Ministers for final authorisation. In the case of draft laws and regulations with substantial economic impacts, the *Comisión Delegada* also discusses and approves the draft.
9. In the case of laws, the Government Presidency sends the proposal to Parliament.
10. The approved law, royal decree or ministerial order is published in the Official Gazette (*Boletín Oficial del Estado*).

The scheme varies significantly according to the category of the proposals (laws or subordinate regulation), the nature of the task (transposition of an EU Directive, reform of an existing measure, etc.), and external circumstances (*e.g.* cases of emergencies). For instance, ministerial orders, which include by-rules developed by sectoral regulators under a legal or regulatory mandate, do not reach the Council of Ministers and are not overseen by the Council of State. Some sectoral laws have particular procedures to establish by-laws. Although not as lengthy as in some other OECD countries, the process may take years to be completed for complex laws. For such regulations, it is not infrequent to have the proposal presented several times to the Council of Ministers.

For technical standards, a different procedure linked to the European system exists.[44] Basically, every standard is created in the 115 Technical Standardisation Committees (TSC) organised under the umbrella of the Spanish Association of Normalisation and Certification (AENOR). The scheme goes by the following main steps: (1) a working party prepares a standard project; (2) the TSC approves the project and publishes it in the Official Gazette for comments; (3) TSC examines the comments and prepares the final proposal, and (4) an AENOR authorised body approves it and publishes it in the Official Gazette (for further details see background report to Chapter 4).

Box 4. **Transparency of regulatory systems in selected OECD countries**[45]

Based on self-assessment, 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. Spain scores above the EU average, but lower than the OECD and G7 averages. It loses points, in particular, due to the absence of public consultation for the evaluation questionnaire and lack of an annual report on regulatory reform.



Source: Public Management Directorate, OECD, 1999.

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3.1.2. Transparency in decision criteria: proportionality

Consistent with the OECD recommendation that "governments establish principles of 'good regulation' to guide reform," explicit standards for regulatory quality have been adopted, as have principles of regulatory decision-making. As noted above, the Spanish principles cover both economic and legal quality concepts.

However, a notable gap should be identified. The OECD has recommended as a key principle that regulations should "produce benefits that justify costs, considering the distribution of effects across society." This principle is referred to in various countries as the "proportionality" principle or, in a more rigorous and quantitative form, as the benefit-cost test. These criteria ask whether the size of the policy problem is sufficient to justify action and, if so, if the action proposed is the least cost option. Such a 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).[46] Some governments have adopted strict analytical standards that benefits should justify costs, while others have adopted more general proportionality criteria. This key principle of proportionality is insufficiently developed in Spain.

Spain's Government Law calls for all proposals of law and subordinate regulation to be accompanied by a "report or studies justifying the necessity and opportunity of the proposal, together with an economic memorandum containing an estimate of the foreseen costs" (Articles 22.2 and 24.1*a*). However, the Spanish framework for regulatory impact assessment includes neither consideration of proportionality nor a benefit-cost test. In practice, regulators have tended to comply through legalistic and descriptive assessments which are often too vague and lack sufficient detail to support good decisions (see further analysis in Section 3.3). Very often, the preamble of the measure or a brief note is considered to be sufficient. Some commentators have indicated that the end result is that public debates on regulation are still mainly based on political arguments with little economic foundation.

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

A strong trend toward expanding public consultation in regulatory development is underway in OECD countries. A well-designed process gives stakeholders the opportunity to have active input in regulatory decisions. Consultation can contribute to higher-quality regulations, identification of more effective alternatives, elimination of duplication across levels of government and ministries, lower costs to business and administration, better compliance, and faster regulatory responses to changing conditions. Properly constructed, it can also reduce the risk of capture and undue influence by special interests. In Spain, consultation mechanisms have been improved in regulatory matters. The Constitution of 1978 elevated a procedure called *tramite de audiencia* to a constitutional obligation, strengthening transparency and accountability as well as reducing corporatist elements of the 1958 Administrative Procedure Law system.

In November 1997, as part of the clarification and re-organisation of the rule-making process, the Government Law took further steps that brought Spain closer to international best practices. For subordinate regulations, it specified that consultation should take place within a reasonable time frame not less than 15 working days. Regulators are required to prepare a written statement summarising comments and justifying the consultation mechanism used. In addition, many sectoral laws have established advisory and consultative bodies with explicit mandates to review proposals of laws and subordinate regulations in their areas. At the end of the process for subordinate regulations, the Council of State assesses the extent and results of the consultation. After entering into force, laws and regulations may be annulled due to a lack of adequate consultation through legal appeal. Box 5 has the important features of the current process.

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Several consulting methods are used for regulations:

- *Audiencia a los interesados* (consultation with interested parties). The regulator usually sends the proposed regulation to selected groups or individuals believed to be affected. For instance, the Ministry of Environment organised a complex system to identify and inform lumberjacks in the north of Spain when preparing a new forestry law. This approach can be useful, but risks limiting the consultation to only those groups known to the ministry or excluding those groups that may be hostile. New electronic procedures hold the promise of opening up these consultations to a wider range of interests. The Ministry of Justice is experimenting with a new consultation procedure based on the Internet.
- *Audiencia corporativa* (consultation with organised groups). This form of consultation is the most structured and frequent. Two mechanisms exist that may be used separately or jointly. First, the proponent consults bilaterally or multilaterally with representative groups deemed to be stakeholders in the regulated issues. In addition, and depending on the subject or if a previous law mandated it, a consultation is organised with some of the 473 official consultative bodies currently in existence. The size, influence and scope of each consultative council vary greatly. Some have permanent staff, while others are *ad hoc*. A number are partially or totally subsidised by the government or autonomous communities. It is not infrequent that a law creates a consultative council with a mandate to review future subordinate regulations. Very often, Chambers of Commerce and Industry or unions appoint members to these bodies. Increasingly, other organised interest groups, such as environmental NGOs, are involved. Unless otherwise specified, the councils are subject to internal procedures regulated by the Administrative Procedure Law.
- In economic, social, and labour matters, the most important consultative council is the Economic and Social Council (*Consejo Economico y Social*), founded in 1991 as the main forum for social partners. Its 60 members represent in equal proportions employers, unions, and other representatives from consumers and agrarian organisations. Through a strict procedure, specialised committees and working bodies prepare reports on proposed regulations and laws that are discussed and approved. Minority opinions may accompany the report. The media and Parliament often use these reports as a basis for debate. The Council has a permanent research staff and an annual budget of nearly 6 million euros. In addition to its reports on regulations, the CES studies topics of interest to its members.
- *Informacion publica* (notice and comment). A third way to organise consultation is by carrying out a notice and comment procedure during the development of a regulation. For some types of rules, like land use or municipal rulings, notice and comments are mandatory, for others it is a suggested alternative to be used by the sponsor of the regulation. However, this type of procedure is less frequently used than the other consultation procedures. In part, this is due to scepticism surrounding the method and the poor results of the consultation obtained. Nonetheless, the Ministry of the Environment recently published a White Paper and a proposal for a new water law to widen the public debate on the proposal.

Forward regulatory planning that would permit public consultation on the overall regulatory and legal agenda proposed by the government does not exist in Spain, as it does for instance in the United States. However, some ministers have tried to publish on a biannual basis their regulatory agendas. The Tribunal for Defence of Competition presented an interesting consultation/communication scheme on regulatory budgeting in 1993, unfortunately not implemented (see below).

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Box 5. **Legal framework for public consultation in Spain**

Which regulations should be included in public consultation? Consultation is mandatory for subordinate regulations with general impacts on citizens. Only severe effects on the public interest justify omitting consultation. For proposed laws, consultation is at the discretion of the Council of Ministers. The legal doctrine considers that the discussions in the Parliament should be the main consultation mechanism for laws. In practice, however, most proposed laws are also subjected to public consultation.

Who should be consulted? The regulator should consult citizens if the subordinate regulation affects their "legitimate rights and interests". The consultation is to be done either "directly or through the representative organisations and associations legally established ... and whose objectives are directly connected with the goal of the proposal". The Council of State has defined "legitimate interests" as persons or bodies who "have professional or economic interest in the matter" and when the impact can be "considered serious, important or very direct" to a group of citizens.[47] In practice, wide discretion is provided to regulators when identifying citizens and/or their representative bodies. Some sectoral laws require consultation with *ad hoc* advisory groups. For instance, the Telecommunication Advisory Council reviews all proposed regulations prepared by the ministry and sectoral regulator, and the Economic and Social Council reviews all laws and regulations with economic and social impacts.

How much time does consultation take? The law indicates that the consultation period must allow a minimum of 15 working days, regardless of the mechanism chosen. However, it permits the regulator to reduce that time to a minimum of seven working days, if this is justified in the final written statement.

How is the consultation organised? Different forms of consultation are permitted by the law, as described in the text above. Neither the law nor a by-law defines permissible forms. No specification is provided concerning when during the regulatory process consultation should occur, nor the information that should be provided to the consulted party. The only discipline is that regulators must, at the end of the process, justify the choice of the consultative mechanism.

Assessment. In recent years, Spain has expanded and made more rigorous the public consultation process. The 1997 law amending the 1958 procedure is a clear break with older practices, and is a positive step towards a more transparent, uniform, and structured consultation system. Cases where regulations have been annulled by the courts for lack of consultation indicate the seriousness of the mechanism.[48]

However, important weaknesses should be corrected. Discretion given to regulators in choosing the consultation strategy is too wide to ensure transparency and accessibility, to provide an independent quality control mechanism, and to protect against capture. The law requires adequate consultation, but leaves regulators with important incentives to strategically control the information provided to the public and the extent and form of participation. The fact that a spirit of open government may exist among Spanish civil servants cannot compensate the fact that for tactical reasons or by tradition, consultation may be too hasty, may not reach important groups, or may be captured by interest groups.

Resistance to the use of notice and comment procedures for laws and subordinate regulations should be re-assessed. Initial experiments in Spain have shown meagre results. But experience in other countries shows that, as a complement to more pro-active forms of consultation and with due time and effort to embed the notice and comment approach in the regulatory and public culture, this tool can provide an effective and credible safeguard against information monopolies in the public administration and other regulatory abuses.

Although the 1997 reform increased the minimum time for sending comments during a consultation from 10 to 15 working days, this period is short for a thorough and widely-based consultation. In particular, representative organisations may experience difficulties in consulting their members and responding within this timeframe. The consultation becomes even more difficult if the 7 working days consultation period for exceptional cases is used. In the Australian state of Victoria, after nearly 10 years of RIA based consultation, a review of the law led to an increase of the minimum consultation period from 21 to 28 days, while the circumstances in which exemptions from RIA and consultation requirements can be granted are clearly specified and strictly limited. A few years ago, the US federal government increased the time for comments to 60 days after finding that 30 days was insufficient in many cases.

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A third concern relates to the extent of the review of the written consultation statement by the *Consejo de Estado* and the CGSYS. This key compliance and quality control mechanism is done too late, at the very end of the process. At this time, only very major flaws in the consultation can be detected and repaired. Important inputs and ideas that could have come from an adequate and early consultation may have been lost. Because regulators prepare the dossier, an incentive may exist to minimise the importance of negative comments. This phenomenon is even more important as no clear rules exist on making public comments or answers to them.

3.1.4. Transparency in implementation of regulation: communication

Transparency requires that the administration effectively communicates the existence and content of all regulations to the public, and that enforcement policies be clear and equitable. As a basic and fundamental rule, the Spanish Constitution mandates that all rules should be publicised (Article 9.3). The 1997 Law of the Government ratified this precept and regulated it indicating that all laws, royal decrees and ministerial orders be published in the Official Gazette (*Boletín Oficial del Estado)*. Spain has rules permitting all persons access to administrative information, though they must demonstrate a legal interest to consult the dossier for a regulation.

A system of identification of laws and regulations according to the date of publication has been in place since 1959. However, practical and functional access to regulations in force is not as easy in Spain as in other countries, and this may have impacts on legal security. A business survey conducted in 1997 found for instance that most businesses were having important difficulties in identifying existing environmental regulation.[49]

The most problematic issue concerns the lack of a consolidated code or registry. This creates difficulty in knowing which law, subordinate regulation, or articles can be enforced and which ones have been abrogated, totally or in part, by more recent laws and regulations. Three main reasons for the confusion are worth noting.

- First, matters are regulated by an array of laws on distinct matters. This is a more or less recent phenomenon identified by the Council of State as "legal mixture" which appeared in the 1980s,[50] and which was recently exacerbated by coalition governments. This trend is mostly manifested by annual enactment of the *Ley de Acompañamiento*, a special law similar to the US Omnibus Law, which is voted at the same time as the budget, and which includes dozens of modifications to other laws. Because the reforms are negotiated in the Parliament, they do not follow the procedures described in the previous subsections.
- Second, regulators (including the Parliament) have complied with difficulty with the obligation to have at the end of new laws or regulations an *exhaustive* list of articles and laws being abrogated by the new measure.[51] By law, a table (*tabla de vigencias*) summing up which articles have been derogated should accompany each new measure (either creating or reforming a regulation). Yet, according to the *Consejo de Estado*, more and more new laws and regulations tend to use a general formula indicating that "all previous rules which are contrary to the one being enacted are henceforth repealed".
- Finally, legal security and overall transparency of the regulatory environment have decreased due to rapid shifts in the distribution of regulatory competencies across levels of government – European, national, and sub-national.

Facing these challenges, the government has been working on a series of initiatives to improve regulatory information. Most are based on a growing use of information technology. An important scheme assessed in Section 4 has been the setting up of a consolidated registry of administrative procedures on the

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Internet. The project to publish the *Boletin Oficial del Estado* on the Internet will further improve access to the regulatory framework, though this is not a replacement for a consolidated registry, which definitively could improve legal certainty.

Improving the readability of legal texts by non-experts is also an important area for regulatory communication. Policies to increase simplicity and clarity require guidance, training and instructions to write regulations in "plain language". Complex or unclear regulations tend to increase compliance costs, as when specialists are required to interpret them. This is particularly the case for SMEs. Spain has developed training programmes on drafting techniques. The National Institute of Public Administration has trained more than 260 administrators in drafting skills. A legal think-tank (GRETEL) formed by public administrators and university professors, has also been active in improving and disseminating better legal techniques. Recently, the Council of State, ultimate guardian of legal quality, published a series of recommendations stating that what is important is that the addressee of the regulation clearly understand the rights and duties. In particular, it has advocated that regulations be clear, complete and easy to use.[52] Further, MAP has published manuals for administrators on style and accessibility. These include the *Style Manual* and the *Manual of Administrative Documents* published in the early 1990s. Currently, MAP is working on an ambitious effort to harmonise the design of all government documents, including formats based on principles of legibility and user-friendliness.

Box 6. **The role of the *Consejo de Estado* in the regulatory process**

The Council of State is the successor to previous advisory Royal Councils established since the 16th century. During the 19th century, it took a comparable form to its French counterpart, mixing administrative and judicial aspects. However, the constitutions of the last two centuries have always recognised the Council as the supreme consultative organ of the state. By mandate or tradition it has thus played a key role in administrative and legal matters. One of its important responsibilities is to advise the government on its use of regulatory powers. This advice is voluntary concerning legal proposals (although frequently used) and mandatory for subordinate regulations. In the latter case, the recommendations are not binding; however, the government must indicate explicitly its disapproval in the preamble of the regulation. In general terms, the type of advice can be divided into six categories:

1. *A legality control*. The Council verifies if the proposed measure is in conformity with the Constitution and the general legal framework. In particular, it controls if the authority has the legal power to regulate and to sanction and if the rank of the measure is adequate (a law versus a subordinate regulation).
2. *Control of competencies*. Here the Council of States checks if the distribution of competencies between the Central government and autonomous communities has been respected.
3. *Control of conveniency*.[53] In this case, the Council oversees the compatibility of the measure with European and international law. In particular it ensures the conformity of the transposition of EU Directives into state and/or regional law.
4. *Control of the process to produce laws and regulations*. In this control, the Council focuses in the extent and quality of the dossier, verifying if all of the mandatory reports and opinions were provided.
5. *Control of the quality of the legal drafting*. In this scrutiny, the Council concentrates, on one hand, on the legal techniques used (terminology, coherence of the parts, etc.), and on the other, on the readability and user friendliness of the text.
6. *General advice on administrative matters*. Through their crucial position at the end of the regulatory process, and based on the extensive experience of governmental matters, the *Letrados* (members of the Council of State) have developed a series of parameters that permit them to provide a non-binding opportunity assessment of the measure. Occasionally this assessment permits avoiding duplication and overlap and improving co-ordination between administrations. In a few cases, the Council has recommended not issuing the measure.[54]

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3.1.5. Compliance, enforcement, and appeal mechanisms

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.

A low level of regulatory compliance threatens the effectiveness of regulations, public policies, and ultimately the capacities and credibility of governments in taking action. It is notoriously difficult to tackle the compliance issue. Some countries, such as the Netherlands, have launched initiatives on this area.[55] In Spain, the issue has received little attention -- in part because regions and municipalities are predominantly in charge of implementation and enforcement. Nonetheless, problems with compliance may be substantial (see Box 7), and some innovations have recently been launched. The tax revenue agency is implementing a scheme based on covenants to improve tax compliance by multinational and large firms. In these pacts, the firm and the agency agree on the value of the transactions between the firm and its subsidiaries (advance price agreements) in exchange for a less complex and burdensome regime and supervision.. A network involving the autonomous communities and the ministries in charge of European structural funds has also been set up to monitor the enforcement of European Directives and regulations.[56]

Box 7. **The state of regulatory compliance in Spain**

Although some sectoral analyses have been published, no general study on regulatory compliance has been prepared. However, important signs show that a compliance problem may exist in Spain. The problem may be more acute for certain regulatory areas and for some sizes of enterprises. The *1996 Report on the State of the Environment* indicated that as much as 25% of solid urban waste in Spain was dumped illegally. For instance, the *OECD Environmental Performance Review* concluded that, in general, the degree of compliance by industry with environmental laws varies by company size.[57] In the case of complying with social security contributions, some studies have shown that the size of the informal economy (*economía sumergida*) may account for more than 7% of GDP.[58] This topic was so prominent some years ago that a "recommendation" to study the issue was part of the 1996 negotiation between employers and unions during the Pacto of Toledo reform of pension systems. Moreover, the complexity of the regulatory system may put pressure on the rate of compliance. Surveys from the General Council of Chambers of Commerce of Spain reveal that 90% of the new entrepreneurs ignore the formalities and other requirements when establishing their start up. Strategies to avoid compliance with onerous regulations can also be detected. The high proportion of very small enterprises and micro enterprises (with one to nine employees) may reflect an extensive use of subcontracting to circumvent tight job protection measures.[59] Non-compliance may grow in the future. Until today, Spain has greatly relied on public investments and subsidies to achieve higher regulatory standards. The possible reduction or re-orientation of European funds that have supported these public programmes may have an indirect impact on the level of compliance in some sectors, as enterprises may find great difficulties to finance their compliance costs through their own investments.[60]

Improving enforcement strategies has recently become more prominent on the government agenda, in particular for tax and environmental regulations. This is reflected in an increase in the number of inspectors and a more intensive use of computerised databases for obtaining the information needed to control.[61] For instance, under the 1996 pension reform agreement (*Pacto de Toledo)*, a Bureau on National Investigation of Tax Evasion (*Oficina Nacional de Investigación del Fraude*) was created. In the environment area, the Ministry of Environment has set up surveillance networks for air, toxic waste and sea water quality controls to help autonomous communities to compare their performance.[62]

Spain has not yet emphasised the need to design compliance-friendly regulations from the beginning by assessing the likely effects of regulatory rules and implementation strategies on target populations. This approach would require the regulator to understand how the regulated population will respond to rules and enforcement strategies, and how they can be encouraged to comply with regulatory objectives.[63]

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Another key element in a quality regulatory framework is an effective and timely appeal mechanism that affected parties can use to correct or protest regulatory decisions or new regulations. In addition to their value in terms of efficient dispute mediation and legitimacy, good appeal mechanisms have in many countries been powerful tools in improving the regulatory framework through "reality checks" and *ex post* valuation.

Spain has a comprehensive and diversified appeals system that provides protection to citizens against possible abuses by the authorities. The main element is the existence of tribunals that deal with all complaints against actions (normative or executive) of the public administration. These tribunals (*tribunales contencioso-administrativos*) are not administrative but judicial bodies. The decisions of these tribunals can also be appealed to the Supreme Court (*Tribunal Supremo*). In parallel to this judicial venue, citizens can also complain against singular administrative decisions by using administrative appeals directed to the author of the decision or superior decisions (respectively, *garantias de recursos* and *recurso de reposición*). An important novelty introduced by the 1999 reform is that the administrative appeals can now include appeals against not only decisions but also underlying regulations.[64] Finally, a claimant can denounce a regulatory practice to specialised bodies, including the National Institute for Consumers and the Service for the Protection of Competition. Other appeal venues include the constitutionally independent ombudsman, the *Defensor del Pueblo*, and procedures involving European bodies.

Spain's appeal mechanisms are accepted as fair, but also criticised as complex, slow, and costly compared to other OECD countries.[65] According to the Administrative Tribunal, some claims have taken 5-6 years to reach the Tribunal, and between 12-18 more months to be settled. Slowness is due to the fact that some offices are overloaded by cases, for instance those of Madrid and Barcelona. But mostly it is due to the complexity of the procedures, which force claimants to hire lawyers and other specialists to manage cases. Moreover, the appeals procedure has a disproportionate cost for smaller firms.

Facing these challenges, the government has launched measures that focus on establishing credible dispute resolution mechanisms. For instance, reforms to the Common Administrative Procedure Law in 1999 created a new arbitration instrument based on agreement and mediation. At the sub-national level, some autonomous communities like Catalonia and Madrid have created Arbitration Councils to handle small complaints. Another approach being explored is to improve existing complaint systems so that they can be used for administrative feedback, as is done in Japan. In 1997, the Ministry of Economy and Finance established a special broad-based council, *Consejo de Defensa del Contribuyente*, to speed complaints and reduce appeals against tax laws and the revenue service. The system has already improved the internal management of the Tax Revenue Agency: 59 out of 500 complaints triggered concrete organisational and administrative changes.

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 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. Reform authorities must take a clear leading role supportive of innovation and policy learning -- if alternatives to traditional regulation are to make serious headway into the policy system.

In Spain, as in many countries such as the United States, Denmark, and the Netherlands, the use of alternatives to traditional regulation is more developed in environmental protection, compared to other policy areas. Spain is less innovative than those countries, but some initiatives are noteworthy and may be seeds for future use in other regulatory fields where command and control styles are dominant.

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In the past decade, a series of *voluntary agreements* was concluded between firms and corresponding government authorities. At a national level, agreements with the automotive industry have been signed to promote the recycling of used cars. Community administrations are also using voluntary agreements. In Catalonia, the local ministry has signed agreements to promote cleaner production practices in the chemical industry. In the mid-1990s, the government of Catalonia also launched a programme to help more than 600 companies that could not comply with pollution standards to continue operating under a voluntary agreement to gradually improve their environmental performance.[66]

Certification programmes have become important tools to achieve higher standards, in particular when targeting compliance by small businesses. Recent clarification and adoption of rules by the Spanish Standardisation and Certification Association have fostered implementation by firms of third party ISO compatible certified environmental audits. The number of certification bodies for environmental management systems (series ISO 14000) nearly doubled during 1996-1997.[67] According to the Ministry of Environment, such a development will increase the penetration of instruments such as eco-labelling and over the medium-term will reduce pressures on enforcement activities.

Properly structured, *economic incentives* offer two great advantages over traditional "command and control" regulation. First, they allow business and others to achieve regulatory goals in the least costly manner. Second, market incentives reward the use of innovation and technical change to achieve these goals. Spain has lagged in the use of economic instruments. In 1996, the OECD inventoried six schemes at the national level based on charges for environmental services, including wastewater and coastal area management, and a dozen schemes in regions and municipalities to collect fees from polluting installations and for garbage collection. In part, such infrequent use of monetary instruments is explained by the complex distribution of fiscal authorities between levels of government, and the reluctance of municipalities to address tax issues.[68] It is also related to scepticism by regulators in the value of unfamiliar policy instruments. For instance, no marketable permit programmes have been adopted in Spain, though in the discussion of the preparation of a new law on water, some studies have proposed creating a market for tradable water concessions.

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

The 1995 OECD *Recommendation 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 to Ministers on Regulatory Reform* recommended that governments integrate regulatory impact analysis into the development, review, and reform of regulations. A list of RIA best practices is discussed in detail in *Regulatory Impact Analysis: Best Practices in OECD Countries*,[69] and provides a framework for the following description and assessment of RIA practice in Spain.

In Spain, all proposals for laws and subordinate regulations must be accompanied by a report on the necessity and opportunity of the measure, and an economic memorandum estimating costs, together with additional reports and assessment deemed necessary to guarantee the appropriateness and legality of the text.[70] No guidance or directive specifies the content of these documents. However, for laws and royal decrees, regulators may use an Evaluation Questionnaire for Norms (*Cuestionario de Evaluacion de Proyectos Normativos*) to comply. This structured checklist is designed to help organise and summarise the main elements of the dossier (see Box 8) when presenting the proposal to the Council of Ministers. In the case of ministerial orders, the assessment is done by the internal services of the responsible ministry.

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Box 8. **The regulatory dossier**

The regulatory procedure consists of a gradual compilation of a series of reports and assessments, which will form the dossier considered by policy officials such as ministers. This will usually have the following elements:

- The legal text with its preamble in a harmonised official format.[71]
- *Report on the necessity and appropriateness* of the regulation -- mandatory.
- *Economic Memorandum* on the future costs of regulation (*Memoria economica*) -- mandatory.
- *Written assessment on the consultation process*, justifying the type of mechanism used or why no consultation was done -- mandatory.
- *Opinion of the Consejo de Estado on the legality of the measure* -- voluntary for laws, mandatory for subordinated regulations.
- *MAP's authorisation* -- mandatory if the proposal has impacts on the distribution of competencies between the central government and autonomous regions, contains administrative procedures or has effects on the human resource policies of the administration.
- *Evaluation questionnaire for Norms*, which summarises the above reports -- voluntary.

The Evaluation Questionnaire is widely used for proposals of laws and, to some extent, royal decrees. The General Director sponsoring the regulation answers it and prepares the economic memorandum. The Technical General Secretariat in the responsible ministry is in charge of certifying it. The Budgetary Office of the responsible ministry also needs to certify the economic memorandum. The Questionnaire has 20 questions divided in three sections: *(i)* necessity of the project, *(ii)* legal and institutional impacts, and *(iii)* social and economic impacts. Typically, the ministry reports and the answers to the questions are descriptive and do not include quantitative assessments. The only exception is the economic memorandum, which should be included in Part 3, and concentrates in practice on the possible impacts of the proposal for the public budget.

No overall assessment or evaluation has been made on the use and quality of the Questionnaire and associated reports (in particular due to the lack of centralised control). In the following assessment against OECD best practices, this system is considered as the Spanish regulatory impact analysis system.

Maximise political commitment to RIA. Use of RIA to support reform should be endorsed at the highest levels of government. Spain's system meets this criterion. The Government Law clearly mandates promoters to assess the legal, social, and economic impacts of laws and regulations, and the CGSYS and the Council of Ministers review such assessment.

Allocate responsibilities for RIA programme elements carefully. To ensure ownership by regulators, while at the same time establishing quality control and consistency, responsibilities for RIA should be shared between regulators and a central quality control unit. Spain's RIA programme scores poorly here. The regulators (the Technical General Secretary together with the General Directorate) prepare the reports and the answers to the Questionnaire. These documents are then distributed to the CGSYS and to the Council of Ministers. If the economic impacts are deemed significant, *the Comisión Delegada* also reviews the dossier before, and even sometimes after, being submitted to the CGSYS. However, no parameters define the quality of the reports and the Questionnaire is not mandatory. More problematic, no central body scrutinises the quality of the answers on a consistent basis, and no criteria or parameters exist to provide direction to drafters and respondents. The ministerial orders are not externally reviewed.

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Train the regulators. Regulators must have the skills to prepare high quality RIA, including an understanding of the role of RIA in assuring regulatory quality, and an understanding of methodological requirements and data collection strategies. Training and guidance are also essential to ensure methodological consistency between the RIAs, and contribute to cultural change within the administration. In Spain, there are currently no formal training programmes or guidelines on how to prepare the reports and answer the Questionnaire.

Use a consistent but flexible analytical method. The Spanish RIA does not specify a method to analyse the impacts of regulation. Economic memoranda, according to officials, usually focus on impacts on the government budget. This is mostly driven by strong political commitment to keep with the ambitious medium term policy set to achieve the Maastricht criteria. Although important for policy decisions, clearly this type of analysis is most limited when evaluating the true impact to citizens, businesses and society as a whole. Worrisome gaps, as noted, are the absence of any cost-benefit principle, of any reference to economic compliance costs for citizens and businesses, and of a structured approach to assessing benefits. The lack of a uniform approach to regulatory assessment dramatically reduces the usefulness of the programme in supporting good decision-making.

Develop and implement data collection strategies. No data collection strategies are developed as such for the regulatory analyses. Since data issues are among the most practically difficult in conducting quantitative analysis, the development of strategies, and guidance for ministries on data collection would provide support for a successful RIA programme.

Target RIA efforts. RIA efforts should be targeted at regulations where the impact is greatest and where the prospects are best for altering outcomes. The law in Spain, however, makes no distinction between the importance of regulations. The reports and Questionnaire do not have a threshold level and in theory should be done for all new or reformed measures. A consequence is a flood of RIAs. This may not allow regulators to maximise the value of their analytical resources by concentrating on more important proposals. As more quantitative methods are used, the importance of targeting also grows, since the resource requirements involved are larger.

Integrate RIA with the policy making process, beginning as early as possible. Integrating RIA with the policy making process is meant to ensure that the disciplines of weighing costs and benefits, identifying and considering alternatives, and choosing the best policy option are a routine part of policy development. In some countries where RIA has not been integrated into policymaking, impact assessment has become merely an *ex post* justification of decisions or a meaningless formality. Integration is a long-term process, which often implies significant cultural changes within ministries. In Spain, the questionnaire and most of the accompanying reports are often finalised just before the presentation to the CGSYS and the Council of Ministers. What is more, it is frequent that the CGSYS members receive only part of the dossier and rarely the Questionnaire. This late preparation of the analysis greatly reduces its usefulness as a decision-making instrument, and suggests that it may be only a formality.

Involve the public extensively. Public involvement in RIA has several benefits. The public, and especially those affected by regulations, can provide data necessary to complete RIA. Consultation can also provide important checks on the feasibility of proposals, on the range of alternatives considered, and on the acceptance of the proposed regulation by affected parties. In Spain, the law does not require regulators to share the reports and Questionnaire with consulted parties. In practice, the analysis is rarely made public. A summary description of the proposal is the only element that accompanies the proposal when sent to consultation participants.

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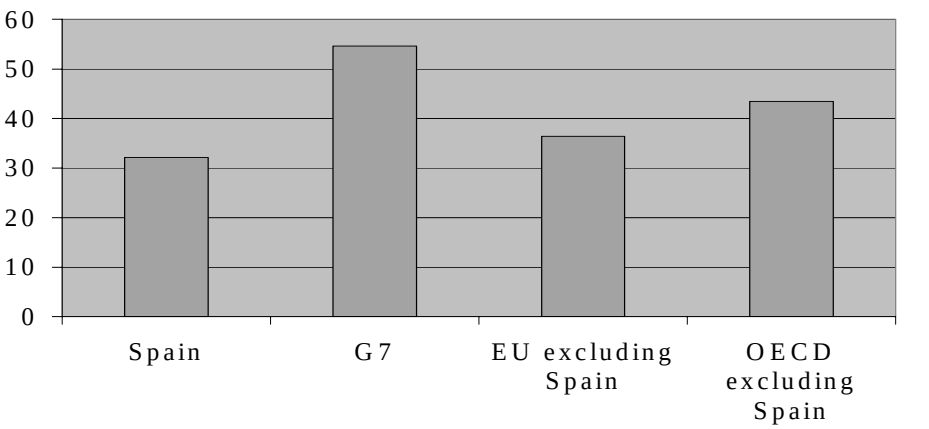
Box 9. **The formal scope and breadth of the RIA system**

This indicator 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. Spain lags behind OECD countries and rest of the EU member states on this criterion. Key shortcomings are that the quality of the impact assessment reports and evaluation questionnaire are not reviewed by a body independent of the regulator, RIA is not applied to all cases, and RIA is not released for consultation. Systematically reviewing the quality of these documents, making them mandatory, and integrating them with consultation are a key policy priority.



Source: Public Management Directorate, OECD, 1999.

In sum, RIA in Spain is not functioning well as an aid to good regulation. The lack of uniform methods and quantitative tests that examine all of the important regulatory impacts reduces the usefulness of the legal requirements. As the recommendations below suggest, necessary reforms include the use of quantitative methodologies that estimate economic costs for citizens and businesses, a wider and earlier sharing of the reports and Questionnaire with the affected public, and better guidance and training for regulators, combined with creation of mechanism and institution for independent scrutiny and quality control.

A wider and more consistent use of regulatory analysis has also been examined in Spain. The Tribunal for the Defence of Competition proposed in 1993 a scheme similar to a regulatory budgeting exercise for laws and regulations. The proposal was to compile all estimated costs from economic restrictions on competition. An annual budget covering all sectors, and their respective laws and subordinated regulations would provide the monetary value of the costs imposed on society by regulations. The intent was to present this budget every year to Parliament for information. Since then, the proposal has not been elaborated further.[72] Indeed, no OECD country has succeeded in developing a workable regulatory budget (see the OECD *Review of Regulatory Reform in the United States*).

3.4. The changing institutional basis for regulation

As have other countries, Spain has created a number of new regulatory institutions to manage the new market-oriented regulatory frameworks. New agencies are increasingly in charge of the revision, extension, and application of the regulatory system. The Government Law of 1997 acknowledged this trend in regulatory management in the preamble of the Law of Government and provided a clearer institutional basis for the development of agencies. In particular, the law tried to reduce the heterogeneity of institutional and administrative design for such bodies.

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Currently, 68 autonomous agencies (*organismos autónomos*) operate in Spain. Most are executive agencies with few regulatory powers. For instance, since the mid-1980s, autonomous agencies, private associations, and other third type organisations have handled tax receipts (*Agencia Estatal de Administratción Tributaria*), operated harbours (*Ente Público de Puertos del Estado*), and run other state-owned enterprises (*Sociedad Estatal de Participaciones Industriales*). However, in the past four years, a new kind of regulatory body has been established to regulate important economic sectors. The most important of these are:

- The National Commission for Electricity (CSEN) established in 1995, which will be replaced at the end of 1999 by a new commission on energy including the gas sector (see background report to Chapter 5).
- The Commission for the Telecommunication Market (CMT) established in 1997 (see background report to Chapter 6).
- The National Commission of the Securities Market, (CNMV), reformed in 1997 and provided with a higher degree of independence
- The Commission of the Tobacco Market (CTM) established in 1998 with widespread regulatory powers.

The performance of these agencies, with respect to providing high quality regulatory frameworks for market competition, depends on several factors, including governance dimensions. Since most of these agencies are very recent, an assessment of their performance is preliminary, but some issues are emerging.

Establishing clear regulatory roles and objectives, particularly between ministers and regulators, makes regulation more effective by removing conflict and uncertainty. To that end, regulators should have a clear statement of functions and objectives. In Spain, the regulatory agencies are established in laws that make a division between policy functions on the one hand, and executive and regulatory functions, on the other hand. Policy powers are kept in the ministries, and regulatory powers delegated to the agencies. However, in some cases, the line is not clear. Important regulatory functions like scrutinising entrants and deciding on entry concessions are shared between the regulators and the ministry.

Autonomy helps to ensure that regulators are free to satisfy their stated objectives transparently and neutrally. In accordance with European Directives, CMT, CNMV, and CSEN enjoy substantial autonomy in staffing and budget policies. Fixed-term appointments of senior commissioners are government nominations, communicated in advance to the Parliament. The tenure of the commissioners is longer than the maximum time frame for a legislature, theoretically increasing the political neutrality of the appointments over the medium term . These Commissions disclose their activities through biannual reports to the Parliament.

Autonomy must be accompanied by accountability for performance. The Spanish system of accountability is based on a submission to Parliament of an annual report. Appeals can be brought through the judicial system.

Transparency requires that regulators publish and explain their actions. By law, all Spanish agencies publish and explain their decisions. New rules take the form of ministerial orders, and follow the procedure described in Section 3.1, though they are exempted from scrutiny by a horizontal body like the *Consejo de Estado*, the *Comisión Delegada*, and the CGSYS. Additional transparency is provided through *ad hoc* consultative bodies. The government has also tried to ensure transparency by the process of granting market entry concessions for electricity and telecommunication services. That can be difficult to achieve, though, because the process of granting concessions is inherently discretionary. Increasingly,

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OECD countries are turning to open auction procedures to grant such permits, because they convey a clearer guarantee of transparency and protection against the risk of undue discretionary power, and reveal more clearly the price set by a free and open market.

4. DYNAMIC CHANGE: KEEPING REGULATIONS UP-TO-DATE

Most OECD countries have enormous stocks of regulation and administrative formalities that have accumulated over years or decades without adequate review and revision. The OECD *Report on Regulatory Reform* recommends governments review regulations systematically to ensure that they continue to meet their intended objectives efficiently and effectively. In the past 20 years, Spain has extensively reformed its regulatory frameworks. However, such revision has not been systematic. Ministries have been responsible for updating and adapting their laws and regulations. Moreover, no centrally organised programme, with the exception of improving administrative procedures (see below), has taken place. Tools like sunsetting or mandatory periodic reviews are absent from the legal tradition. As a result, there is a risk in Spain that damaging regulatory rigidities will be durable, and that the costs will grow over time as regulations become increasingly ill-suited to changing conditions.

One example, however, of good practice in Spain is a review process aimed at reducing the response time for all existing administrative procedures. As noted in Section 2.1 these efforts culminated in 1999 in the establishment of an Inter-ministerial Commission on Simplification. Setting-up, operating and closing a business in Spain appears to be a more cumbersome process than in other countries (see Box 10). The main culprit is a complex system of authorisations, permits and licences existing at all levels of government. Indeed, government authorities have traditionally relied on *ex ante* controls, instead of relying on *ex post* surveillance, self-regulation or other performance-related regulations. One-third of the 2 080 existing procedures are authorisations and many share the same information requirements across numerous government agencies in three levels of government.[73] The overall burdens are disproportionately borne by the very large SME sector in Spain composed of around 2.5 million non-rural enterprises -- 55% of which are self-employed businesses. This is even more important as in Spain SMEs represent a much higher proportion of the private sector than elsewhere in Europe.[74]

Box 10. **Administrative compliance costs in Spain**

Irrespective of an entrepreneur's decision to incorporate the firm, all new enterprises must carry out 13 to 14 general formalities to start a business, and some additional ones in particular sectors.[75] The legal registration of a business involves a minimum of five steps. On average, each step requires four pieces of documentation, and involves a minimum of six different agencies. The total time required to fulfil these legal requirements is estimated to be between 19 and 28 weeks, although for a non-incorporated firm, the period can now be reduced to one day. In contrast, it takes around half a day to establish a new enterprise in the United States.[76] On average, according to the business confederation (CEOE) an entrepreneur needs 500 000 PTAs (3 000 euros) and six months to start a business. Operating a business is also complex and burdensome. An OECD business survey in 1999 estimates that the administrative compliance costs related to fiscal, employment and environmental regulations for SMEs in 1998 was around 5 777 billion pesetas (around 6.9% of GDP). This amount represents 425 000 pesetas (2 554 euros) per employee.[77]

Contradictions and abuses in the application of these authorisations have also been identified. In land zoning permits, mayors hold important discretionary powers. In a few cases this has created incentives to ask for "contributions", either in money or in kind (for example through the "donation" of land or public installations to the town hall), in exchange for prompt delivery. Indeed, this system has worked as a substitute for unpopular local tax increases. This situation results in a lack of regulatory transparency and accountability, and establishes an environment favourable to corruption.

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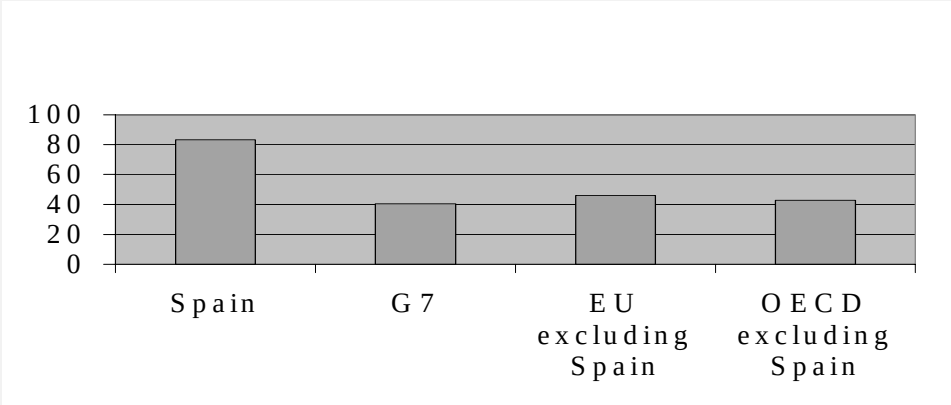
The Spanish administration has launched a series of initiatives to reduce or solve these problems. An important project, begun at the end of 1992, was a review of all procedures to incorporate the tacit authorisation rule contained in the Common Administrative Procedure Law.[78] The law also required that response periods be reduced to a maximum of three months, unless otherwise specified in a law or a subordinate regulation. Further, the law required the government to inventory all existing procedures, clarifying for each the situations when non-response means tacit authorisation (*presunta estimatoria*) or negation (*presunta desestimatoria*).

The State Secretary for Public Administration (one of the two secretaries of MAP) was charged with the review. Ministries and agencies, with the help of a questionnaire, reported their procedures to MAP. Three years later, the first inventory was published. In November 1997, it was updated and published on the Internet (http://www.igsap.map.es). The current registry lists 2 080 formalities, categorised according to type of procedure, effect of non-response, official time for responding, objective of the procedure, legal basis, and administrative unit in charge.

Box 11. **Simplifying business licences and permits**

This synthetic indicator of efforts to simplify and eliminate permits and licences ranks more highly those programmes where countries use the "silence is consent" rule to speed up decisions or to have set up one-stop shops for businesses, where there is a complete inventory of permits and licences; and where there is a specific programme, co-ordinated with lower levels of government, to review and reduce burdens of permits and licences. Spain ranks very high on these scores relative to other G7, EU and OECD countries. In particular this is due to general policy to establish the 'silence is consent rule' and the underway programme to review and reduce the number of licences and permits.



Source: Public Management Directorate, OECD, 1999.

This review was an important step in transparency and better management of administrative procedures. However, in terms of simplification and reduction of response times, the results appear disappointing. Less than 23% of the formalities incorporated the "tacit authorisation" rule, and most opted for the maximum permissible response time. The reasons for such results appear to be lack of political support at the highest levels and resistance from ministries.[79]

These considerations were instrumental in the 1999 modification of the law launching a second review. The process is entrusted to the Inter-ministerial Simplification Commission and deadlines have been set. In addition to the general "tacit authorisation" rule, the new programme has a mandate to rationalise and eliminate formalities. MAP has indicated its intention to continue to improve the capacities and accessibility of the Internet registry with enhanced search capabilities and with the publication of a user-friendly guide to finding formalities

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A second effort to reduce administrative burdens is the establishment of one-stop-shops and start-up shops for entrepreneurs. The MAP project *Ventanillas Unicas* has two components. First, co-operation agreements are signed with local authorities to establish a series of performance-based service standards. Then the central government provides formats, access to databases and manuals. In parallel, the governments has supplemented the programme with a business start-up scheme, *Ventanillas Unicas Empresariales*, which adds to previous elements, an information service unit and some approval capacities to help start ups by persons and very small businesses. For this project, each start-up shops is staffed by special officers delegated by the Ministries of Economy and Finance, of Public Administration and of Employment and Social Affairs. Since June 1999, six of these shops have been set up in Valladolid, Palma de Mallorca, Santa Cruz Tenerife, Las Palmas de Gran Canaria, Getafe and Madrid. In the first three months more than 150 new firms have been created and about 700 requests of information have been attended through the shops. In April 1999, the programme was extended to chambers of industry and commerce, which can sign similar agreements to install *ventanillas unicas empresariales* in their areas.

The MAP is developing information technology systems to support the expanding web of one-stop shops. The PISTA project will permit the interconnection of registries and files of all the administrations. This system, based in Electronic Data Interchange (EDI) technology, should implement the legal right, established since 1992 but technically unfeasible until now, of permitting applicants to provide only once the requested information or documentation to any authority. The authorities would share their data banks. Pilot PISTA systems have been set up in the Valencia and Galicia regions and eight municipalities.

5. CONCLUSIONS AND RECOMMENDATIONS FOR ACTION

5.1. General assessment of current strengths and weaknesses

In 20 years, Spain has experienced an historic process of social, political, and economic change of a magnitude seen in few other OECD countries. This has brought Spain considerably closer to the mainstream of regulatory practices in the OECD, and in some areas it is moving ahead. Democratisation, devolution to regions, and convergence with the rest of Europe have transformed its governance system and its administrative and legal environment. The pace of change toward market-oriented policies and government institutions has accelerated in recent years through a series of bold economic reforms. These economic reforms will of necessity work their way through the regulatory system, driving regulatory reform into new areas and directions. Perhaps due to strong political leadership, these changes seem to be well accepted in Spain. Though there is considerable debate about the pace at which new reforms proceed, there are few calls to halt or reverse the process.

A second factor supporting further regulatory reform is the recognition by the government of the importance of the regulatory framework in the economic development of Spain. Because the European Monetary Union and the EU Stability Pact constrain demand-side policies, the government has indicated that it will support national competitiveness by concentrating on microeconomic reforms such as improving regulatory frameworks to boost competition and innovation.

Yet carrying out current policies, as well as launching new policies, requires more effective capacities for implementation. A disconnect exists between the relatively well-developed policies based on deregulation and competition, and the government's less-well-developed capacities to produce the high quality regulatory regimes that are needed. The direction of change, though, is positive. The 1997 reforms to the Government Law moved Spain in the right direction toward more transparent and less discretionary regulatory practices. Today, the Spanish administration has a clear mandate to use regulation more carefully and more in line with market-led growth. Regulatory transparency is much better today, and

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represents a real success that inspires confidence in other reform measures. The government has also recently strengthened administrative simplification policy, which should permit a reduction of the burdensome formalities that are strangling entrepreneurs throughout the economy. As other countries' experiences show, this could stimulate SME growth in the short to medium-term. New institutions to manage regulations and construct sectoral regulatory regimes are promising, though still evolving. Their performance is not yet demonstrated.

But these initiatives are not sufficient to change the regulatory practices of the administration as quickly or deeply as current policies require in order to be successful. Much change has been achieved in economic deregulation, but the quality of social regulations has not been systematically enhanced. Regulatory impact analysis is not yet a useful tool for good decision-making, and there is considerable resistance inside the administration. Reducing administrative burdens, too, poses unmet challenges. The meagre results of the previous simplification policy argue for bolder and more robust approaches. New and worrisome problems are emerging. Co-ordination of regulatory policies and reform between levels of government is improving, but inefficiencies from regulatory layering seem to be large and perhaps growing. Overall, legal security may be declining in Spain. Problems with regulatory compliance may be larger than suspected. Innovation and use of other policy instruments such as economic incentives are rare, and the focus on procedures rather than results will slow the introduction of new methods. These problems may significantly reduce the potential benefits of economic structural reforms.

Remedying six weaknesses would be particularly beneficial for Spain in the short and medium term:

- Spain's 1997 policy on regulatory improvement does not provide a clear policy framework for reform. A strong and articulated commitment is needed if a complex, government-wide, and multi-annual policy is to successfully achieve its ambition.

- Reform institutions find it difficult to carry out administration-wide reforms. Difficulties encountered in past reforms indicate that strong opposition to change will slow attempts to strengthen disciplines on regulatory quality. A more rationalised and centralised structure might be needed. The number and the duplication of competencies of inter-ministerial commissions, plans and diverse programmes erode the impact of the regulatory reform policy.

- The Spanish regulatory process leaves excessive discretion to regulators. Without explicit parameters, mandatory elements of quality control could become mere formalities, not useful to decision-making. The evaluation questionnaire in particular has not achieved its potential because it is not mandatory, it is implemented too late in the process, and it is not made public. Public consultation, too, would be more useful if there were clearer rules about who is consulted, when, and what material is shared. Ministerial orders, which often contain costly requirements, avoid the scrutiny and consultation controls altogether.

- Transparency has improved significantly across the government. Yet the Spanish system still falls short of best OECD practices. The consultation process is unsystematic. It is vulnerable to manipulation by ministries and capture by interest groups. The proliferation of regulations at multiple levels adds to the opacity of the legal and regulatory environment, makes it difficult for administrations to enforce the rules, and fosters a propensity for non-compliance by citizens and firms.

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- Administrative simplification policy and competition policy should be more closely integrated with the policy to improve the quality of new regulations. It is more efficient to redress anti-competitive effects and paperwork burdens before regulations are adopted than trying to repair the damage once the regulations and administrative frameworks are in place.

- Government actions rely on an excessively legalistic approach as the standard for quality. A clear preference for legal details and technicalities is still pervasive in the preparation or application of regulations. This *modus operandi* is not yet balanced with an efficiency test. Lack of attention to cost-effectiveness and benefit-cost ratios is one reason for the undue reliance on control and command regulations instead of market-based or other approaches.

5.2. Policy options for consideration

This section identifies actions that, based on international consensus on good regulatory practices and on concrete experiences in OECD countries, are likely to be beneficial to improving regulation in Spain. They are based on the recommendations and policy framework in the 1997 OECD *Report to Ministers on Regulatory Reform*. In brief, Spain would benefit from several steps to improve the responsiveness, accountability, and transparency of the regulatory management and reform:

- *Adopt at the political level a broad policy on regulatory reform that establishes clear objectives, accountability principles, and frameworks for implementation*

The 1997 reforms created an implicit policy that is closer to international best practice. Yet this policy will have limited success until it becomes explicit. An explicit policy adopted at the highest levels of government should be based on principles of good regulation such as those in the 1997 OECD *Report to Ministers on Regulatory Reform*. Such a policy could integrate the various reform efforts now underway, and establish a uniform set of quality standards. Significant gaps remain in defining the dimensions of regulatory quality, such as the principle that regulations shall be adopted only if costs are justified by benefits. Competition principles should be strengthened in the overall policy framework, perhaps through incorporation of the "competition test" advocated by the Tribunal for the Defence of Competition.[80] For the success of the policy, political accountability and targets should be clarified, with a clear relationship with competition policy, market openness, and public management reform.

- *Establish an oversight unit with (i) legal authority to make recommendations to the Council of Ministers, (ii) adequate capacities to co-ordinate the programme through the administration, and (iii) a secretariat with enough resources and analytical expertise to provide an independent opinion on regulatory matters.*

The achievement of ambitious structural reforms embodied in the accession to EMU demonstrate that Spain has the political will and technical machinery to change quickly. The successful mechanisms in place for monitoring progress and achieving results in terms of liberalisation of product and service markets and adoption of European Directives also provide valuable precedents. A similar determined approach is now needed if government objectives on regulatory reform are to be reached. As a central element, an institution to promote, steer and co-ordinate the reform programme is required. Its mandate, political accountability and operation should be more focused than current institutions. It should also bring economic and public management skills to complement work on legal quality performed by the *Consejo de Estado*.[81]

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Such a central oversight unit should have clear responsibility for regulatory quality control across the administration, and should be integrated directly into the rulemaking process. To ensure that it has a broad policy view, it should be close to the Prime Minister or Council of Ministers, rather than in a sectoral or line ministry. For this central unit to deliver expert advice and to co-ordinate, two distinct elements should be strengthened. First, the unit would need a well-resourced secretariat with cross-governmental views. Its personnel should be drawn largely from non-regulatory ministries to enhance its "challenge" function; it should have sufficient financial resources to collect and assess information and buy the expertise of private think-tanks and scholars; and its role in the government's legislative and regulatory procedures should be formalised. Second, the unit would need to assist in designing thematic and sectoral programmes of reforms, co-ordinated across all relevant policy areas. With the regulatory ministries, the unit would develop performance targets, timelines, and evaluation requirements, and would advise the centre of government on the quality of regulatory and reform proposals from regulatory ministries. The central unit could also assist in reviewing new regulations under a "notice and comment" process (suggested below). One possible interim solution would be to create a secretariat on regulatory reform reporting directly to the Council of Ministers, or eventually to the *Comision Delegada*. In the longer-term, the government should consider creating a permanent advisory and analysis central unit on regulatory reform that is responsible to the Prime Minister.

- *Revise the evaluation questionnaire on the basis of OECD best practices, make it mandatory for all proposed regulations, including ministerial orders, and make the responses publicly available as part of public consultation procedures. As part of this, implement across the administration a step-by-step programme for improving regulatory impact assessment, based on OECD best practice recommendations, for all new and revised regulations. The analysis should begin with feasible steps such as costing of direct impacts and qualitative assessment of benefits, and move progressively over a multi-year period to more rigorous and quantitative forms of analysis as skills are built in the administration. For rapid and successful implementation, a useful step would be creation of a training programme, managed by the regulatory oversight unit discussed above, to instil the necessary skills in the public administration.*

The current regulatory process, where drafts are negotiated and discussed, has advantages. The possibility of checking with all government agencies, through collegial membership of the CGSYS, can strengthen the quality of proposals, as can the legal check by the *Consejo de Estado*. The evaluation questionnaire is an important tool supporting more transparent analysis of the impacts of a proposal.

However, more effort is needed to operationalise good regulatory practices in the "culture" of the public administration. As noted, the current process lacks the explicit disciplines and uniform parameters needed to enable regulators to consistently judge if a regulation is necessary or if there are better alternatives. A key step to improve regulatory quality is to improve the analysis of social and economic impacts. Three-quarters of OECD countries now use RIA and the direction of change is universally toward refining, strengthening and extending the use of RIA disciplines. RIA can be a powerful tool, especially if integrated with notice and comment procedures, to boost regulatory quality by giving policy officials better information on the impacts of regulation on the economy. While benefit-cost analysis may be a long-term goal, interim steps feasible with current administrative skills, such as user panels and surveys, could be implemented quickly. OECD's best practice principles should be the basis for a RIA programme, overseen by an appropriate quality control body with analytical expertise at the centre of government. To make this RIA operational as soon as possible, a training programme and support capacities should be implemented.

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- *Improve transparency by further strengthening the public consultation process, by adopting uniform notice and comment procedures, and by launching a programme of codification to reduce legal uncertainty.*

Spanish regulators typically consult affected parties, and consultation is increasing. However, the consultation does not always produce higher quality outcomes. The most frequent form of consultation is the sectoral advisory group involving social partners and other organised interest groups. Yet such interests can unduly represent "insiders" who have incentives to limit competition. A lack of clear participation rules and of carefully scrutiny by the government (independent from the promoting ministry or agency) puts the approach further at risk of a rent-seeking approach to regulation. A useful improvement would be a further clarification of the consultation rules established in the Government Law. As in the case of the previous recommendation, this could be done through the development of clear guidelines and parameters. For example, the consulted parties should have direct access to the reformed evaluation questionnaire, and the promoters of the regulations should also be required to prepare written and public replies to the comments expressed by consulted parties.

Other steps to improve the efficiency and effectiveness of consultation processes may merit consideration. First, it might be useful to reduce the number of advisory groups. The Netherlands discovered that reducing the number of advisory bodies from almost 500 to 100 improved the quality and speed of consultation. Second, the government should experiment with new target-oriented methods like the Danish Business Panels and focus groups. These groups can help to identify the costs of a proposed regulation and assist in the development of more effective and efficient alternatives. Third, the legal requirement for notice and comment, already required for technical standards, should be extended to all proposals. Other countries' experiences show that this mechanism can complement other procedures as a safeguard against possible abuses. Adoption of a general requirement covering all substantive new laws and subordinate regulations (including ministerial order) would promote both the technical values of policy effectiveness and the democratic values of openness and accountability. The effectiveness of the notice and comment requirements would be further enhanced with the provision of better information, based on a robust evaluation questionnaire. Moreover, the adoption of notice and comment procedures would also permit a central unit, such as the recommended secretariat on regulatory management, to review new ministerial regulations against the principles of good regulation.

- *Establish a centralised registry of all regulatory requirements with positive security.*

A single authoritative source for regulations would significantly enhance transparency for users in terms of the content and form of permissible regulatory actions, and force a rationalisation of ministry rules. "Positive security" means that regulations must be included in the registry to have legal effect, which ensures against any non-compliance by ministries. This central registry, based on citizens' needs and information technology platform, should be a complement and an added value instrument to the Official Gazette.

Spain is among the few OECD countries that have adopted an indicative registry for administrative procedures. Based on this experience, the government should pursue its effort into two directions. First, it should seek to give positive security to the registry. Additionally, the government could implement a certification process consistent with good quality standards to be renewed every five years, together with a logo delivered on completion, for all formats. Such a process could be inspired on the French CERFA (*Centre d'Enregistrement et de Révision des Formulaires Administratifs*) model. More ambitious, Spain could adapt the 1980s Swedish initiative, where after establishing a central registry of regulations and giving time to ministries to register individual regulations, the government, through delegated powers of the Parliament, nullified – through the well-known "guillotine" mechanism -- all the hundreds of regulations that were not individually enlisted.

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- *Strengthen the administrative simplification policy by (i) assuring that good regulation guiding principles and specific parameters are used in the revision of existing formalities, (ii) by assigning to the Simplification Commission a dedicated secretariat with analytical expertise and resources, and (iii) by concentrating on reducing authorisations, licences and permits.*

The establishment of the inter-ministerial Simplification Commission was an important step toward making the administration more slim and efficient. To achieve its potential in improving the quality of administrative procedures, it should at an early stage develop detailed methodological requirements for the presentation of each ministry's proposals. To improve the ministries' accountability in the process, the Commission should also put the onus on the ministries to justify objectively and publicly the need for each procedure. Second, experience shows that in such complex reviews asymmetric information favours the regulator *vis-à-vis* the reviewer. An important element for the success of a review is a capable secretariat reporting to the Commission. Third, to maintain political support, early and visible results are needed. The 9-10 months limit to eliminate unnecessary formalities is a useful target. To produce the most benefits in this period, the Commission should concentrate its resources on eliminating or improving permits and licenses, which are among the most damaging of government formalities with respect to business start-ups and among the most costly to administer. Last, the government should assist the Commission in clarifying and simplifying the institutional network for administrative simplification, particularly in ensuring communication and co-ordination among the various bodies at work. The strengthening of linkages between the Commission's work and the government's SME policy and initiatives stirred by the Ministry of Economic and Finance is an important step forward and should produce results in the short term. The work of the Commission should also be clearly linked to the regulatory reform and competition policies.

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

Progress in devolving regulatory powers to bring them closer to citizens and business has been impressive. The orderly way that this has been done could be considered a lesson for many countries. 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 autonomous communities 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 establishing fora for such purposes as well as to resolve issues arising from regulatory conflicts. A complementary strategy should also be developed to help autonomous communities encourage municipalities to launch regulatory reform programmes. Continued leadership from the centre to encourage and learn from experimentation at the sub-national level will speed up efforts.

5.3. Managing regulatory reform

Spain's regulatory reform programme has concentrated on economic regulations. Market openness, deregulation, privatisation, and liberalisation reforms of product, capital, and labour markets have shown positive results. Administrative regulations have also been a focus of reform, though results are not yet apparent. Little consideration has been given to improving the quality of social regulations, although estimates from the United States indicate that, in that country, social regulations impose costs 3-4 times higher than do economic regulations and that administrative regulations have a disproportionate impact on SMEs.

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This suggests that Spain should balance its regulatory reform programme to gain its full potential benefits. But the expansion of the programme means also a new approach. Social regulations will continue to be an important instrument to carry out government policies. Administrative regulations are necessary for modern governments needing extensive information to target policies. Deregulation and privatisation cannot be the guiding philosophy for reform in social and administrative areas. The approach should be based on a case by case analysis of trade-offs between different forms of government action and no action at all. The OECD recommendations are based on the belief that this will be possible only with a more permanent, transparent, and empirical decision-making process based on adoption of regulatory quality standards, regulatory impact analysis, public consultation, a wider assessment of alternatives to regulation, and constant review and updating of regulation.

An equally important determinant of the scope and pace of further reform is the attitude of the general public. Willingness to support reform may dwindle when important elements of what they considered founding blocks of their recently new Welfare State are scrutinised. Communication and consultation strategies are key. Evaluation of the impacts of reforms and communication with the public and all major stakeholders with respect to the short and long-term effects of action and non-action, and on the distribution of costs and benefits, will be increasingly important for further progress.

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NOTES

1. In October 1998, with only 2.7% not yet implemented of the 156 Single Market Directives, Spain was ranked the 6th country among the EU State Members, European Commission (1998), *Single Market Scoreboard*, No. 3, DG XV October, p. 4.

2. Consejo de Estado (1993), *De Cara a la Union Europea*, Memoria del Consejo de Estado, Madrid, p. 175.

3. Consejo de Estado (1992), *La Recepción del Derecho Communitario*, Memoria del Consejo de Estado, Madrid, p. 140 and Consejo de Estado (1993), *De Cara a la Union Europea*, Memoria del Consejo de Estado, Madrid, pp. 178-184.

4. An interesting exception is the budgetary comptroller, IGAE. With convergence to EMU strategy and implementation, its role and power have in the past few years increased.

5. This in part is linked to rigidities in the enrolment and management of the civil service. Alba, Carlos (1995), "L'administration publique espagnole: réforme ou modernisation", *Revue Française d'Administration Publique*, No. 75, July-September, p. 389. Sanchez, Antonio Ramiro (1997), "Más reformas en la Administración, Para qué?" *Gestión y Análisis de Políticas Públicas*, No. 9, May-August, p. 63.

6. Consejo de Estado (1992), *La Seguridad Jurídica*, Memoria del Consejo de Estado, Madrid, p. 103.

7. OECD (1998), *Economic Surveys: Spain*, p. 136.

8. Consejo de Estado (1992), *La Seguridad Jurídica*, Memoria del Consejo de Estado, Madrid, p. 101.

9. Consejo de Estado (1992), *La Seguridad Jurídica*, Memoria del Consejo de Estado, Madrid, p. 107.

10. José Luis Palma (1997), *La Seguridad Jurídica ante la Abundancia de Normas*, Centro de Estudios Politiccos y Constitutionales, Cuadernos y Debates, No. 68, Madrid.

11. Labour reforms have also been prominent in the Toledo pact and agreements. Financial reforms were mostly completed by mid1980s through the application of European Directives.

12. Reino de España (1992), *Programa de Convergencia*, Madrid, March.

13. Kingdom of Spain (1998), *1998-2002 Stability Programme*, p. 3 and p. 43.

14. Sanchez (1997), p. 63; Alba (1995), p. 39.

15. MAP (1992), *Plan de Modernización de la Administración del Estado*, April, Madrid, p. 208.

16. Alba (1995), p. 397.

17. Sanchez (1997), p. 63.

18. The Legal Regime of the Public Administration and Common Administration Procedure Law (30/1992) *Ley de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común.*

19. Ley de Organización y Funcionamiento de la Administración General del Estado or LOFAGE (6/1997).

20. Consejo de Estado (1992), *La Seguridad Jurídica*, Memoria del Consejo de Estado, Madrid, p. 112. Lastly, some additional legal reforms to the old administrative procedure law concentrated on improvement to the appeal procedures, the rules for using information technology instruments, the definition of new rights with regard to access to administrative archives and records, etc. See Plaza Marin, Carmen (1995), "Note on Spanish Public Law", *European Public Law*, Volume 1, No. 4, p. 57.

21. OECD (1997), *The OECD Report on Regulatory Reform: Synthesis*, Paris, p. 37.

22. OECD (1995), *Recommendation of the Council of the OECD on Improving the Quality of Government Regulation*, OCDE/GD(95)95, Paris.

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23. The Legal Service of the State, *Servicio Jurídico del Estado*, provides also advice on improving the legal quality of draft laws and regulations from ministries that required its assistance (Ley de Asistencia Jurídica al Estado e Instituciones Públicas (52/1997)).

24. Other mandatory notifications to MAP concern civil service employment policies and the establishment of new administrative procedures.

25. In 1993, the Consejo de Estado recommended clarifying the consultation requirements. Consejo de Estado (1993), *La Audiencia de los Ciudadanos*, Memoria del Consejo de Estado, Madrid, p. 107-126.

26. The Commission was established by Royal Decree of 23 April, 1999.

27. Government Law 50/1997, Article 24.3.

28. The General Directorate replaced the General Inspection Service of Public Administration (IGASP).

29. Tribunal de Defensa de la Competencia (1993), *Policies to Boost Free Competition in the Service Sector and Put an End to the Damage done by Monopolies*, p. 30-31.

30. Melilla and Ceuta, two city enclaves in Northern Africa, also enjoy a particular autonomous regime similar to the autonomous communities.

31. OECD/PUMA (1996), "Spain Country Report", *Managing Across Levels of Government*, p. 327-340. Malaret Garcia, Elisenda (1998), "Multidimensional Decentralizations in Spain; Variable Geometry Decentralization", *International Review of Administrative Sciences*, Vol. 64, p. 663-664.

32. A strong and old, but long suppressed, tradition of self-rule has existed in Spain dating from the unification of the Kingdom in the 15th century. A clear reminiscence is the continued existence of the "Derecho Foral" in some regions like Aragon, Baleares, Catalunia, Navarra, and Basque country, and to some extent Ayala, Baylio, Viecedo, and Galicia. These legal codes involve some aspects of civil law and local taxation. Sometimes limiting the geographic jurisdiction of these codes has been problematic, as is the case of Vizcaya. Consejo de Estado (1993), *El Derecho Foral*, Memoria del Consejo de Estado, Madrid, p. 157-174.

33. Central control is exercised over Autonomous Communities by the Constitutional Court for regulatory matters; by the Court of Audit with regard to financial and budgetary matters; and by the government in consultation with the Council of State. Most autonomous communities have, in turn, provided for the creation of their own Court of Audit exercising authority over their own territories. OECD/PUMA (1996), p. 329.

34. Fundación Entorno (1998), *Libro Blanco de la Gestion Medioambiental en la Industria Española*, Madrid, p. 173.

35. The cost-benefit test is in Article 63.1 of the Common Administrative Procedure Law (3/1989). The general framework and guidebook was in part based on the Germany's Landers experiences with *checklisten* and cost-benefit tests. For instance, the Catalan guidebook divides the costs into three components: those to prepare the regulation, to comply with the regulations, and to enforce it.

36. Spanish Government response to OECD Review Questionnaire on Regulatory Reform, March 1999, p. 4.

37. Consejo de Estado (1992), *La Seguridad Jurídica*, Memoria del Consejo de Estado, Madrid, p. 101. Javier Font, estimates that by late 1990s, "[the autonomous communities] legislative production … had reached more than 2 000 laws ... [which were however] hardly innovative". Font, Javier (1999), *Managing Value and Devolution; The Experience of Spanish Regional Governments*, presentation at the International Working Group on Public Sector Productivity, IIAS, Portoroz, March 4-5.

38. OECD (1998), *Economic Surveys: Spain*, Paris, p. 94.

39. OECD/PUMA (1999), *Public Sector Pay and Employment Database*, Paris.

40. It should be noted that in the case of the *Comisión de Política Fiscal y Financiera*, formed by the financial counsellors of all regional governments and chaired by the Ministers of Economy and Finance and Public Administrations to discuss and reach agreements on the financing of regional governments, meetings can

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be convoked by the national government but also by regional governments when a certain number of them ask for it.

41. OECD/PUMA (1996), p. 337.

42. Reforms of the Common Administrative Procedure Law (4/1999).

43. European Environmental Agency (1998).

44. The European Union, Directive 98/34/CE establishes the procedure for informing other Member States and the Commission about standards and technical regulations.

45. The indicators used here are part of a dataset under construction as a contribution to the OECD Secretariat's horizontal work programme on regulatory reform. They are based in part on a survey of all OECD countries carried out in March-April 1998.

46. Deighton-Smith, Rex (1997), *Regulatory Impact Analysis: Best Practices in OECD Countries*, Paris, p. 221.

47. Consejo de Estado (1993), *La Audiencia de los Ciudadanos*, Memoria del Consejo de Estado, Madrid, p. 107-126.

48. For instance, with the royal decree on professional co-operative groups (*Colectivos de Profesionales*) repealed in the early 1990s.

49. Fundación Entorno (1998), *Libro Blanco de la Gestion Medioambiental en la Industria Española*, Madrid.

50. Communication of the Consejo de Estado (1999).

51. This rule was first established in the General Tax Law of 1963.

52. Consejo de Estado (1993), *Cuestiones de Tecnica Normativa*, Memoria del Consejo de Estado, Madrid, p. 146.

53. Fundación Entorno (1998), *Libro Blanco de la Gestion Medioambiental en la Industria Española*, Madrid, p. 162.

54. Consejo de Estado, communication.

55. OECD/PUMA (1999), *The State of Regulatory Compliance : Issues, Trends and Challenges*.

56. Ministry of Environment, communication.

57. OECD (1997), *Environmental Performance Review*, p. 129.

58. Consejo Economico y Social (1999), *La Economía Sumergida en Relación a La Quinta Recomendación del Pacto de Toledo*, draft report (April). For this study the definition of submerged economy centred on low and non-compliance with social security and pension contributions.

59. OECD (1997), *Environmental Performance Review*, Paris, p. 134.

60. According to officials at the Ministry of the Environment, compliance with some European Directives has been problematic in Spain. In part because the transition periods were to short, in part because some of the directives and methodologies were designed with other parameters (social, economical, and ecological) corresponding to more Nordic European countries. For instance, the Water Quality Directive has been hard to apply in Spain because the average level of water, which determines the concentration of pollutants, changes radically, when the measurements are done during the dry or the wet season.

61. Communication from the Spanish Government to the OECD, March 1999.

62. Ministerio de Medio Ambiente (1998), *El Sistema de Inspección Ambiental en España*, p. 18-20.

63. OECD/PUMA (1999), *The State of Regulatory Compliance : Issues, Trends and Challenges*.

64. Reforms to the Common Administrative Procedure Law (6/1999).

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65. OECD (1998) *Economic Surveys: Spain*, p. 146 and Kingdom of Spain (1998), *Progress Report on the Reform of Goods, Services and Capital Markets*, November, p. 19.

66. OECD (1998), *Economic Surveys: Spain*, Paris, p. 134.

67. Communication from the Ministry of Economy and Finance (1999).

68. Fundación Entorno (1998), *Libro Blanco de la Gestion Medioambiental en la Industria Española*, Madrid.

69. OECD (1997), *Regulatory Impact Analysis. Best Practices in OECD Countries*, Paris.

70. Articles 22.2 and 24.1.b of the Government Law (50/1997).

71. Since 1991, Spain established standards to submit legal and subordinate regulations to the Council of Ministers: *Directrices Sobre la Forma y Estructura de los Anteproyectos de Ley.* The standards are not mandatory, yet are widely followed; in part because they have been included in the curricula of law students.

72. Tribunal de Defensa de la Competencia (1993), *Policies to Boost Free Competition in the Service Sector and Put and end to the Damage done by Monopolies*, p. 30-31.

73. MAP (1998), *Estudio sobre los Procedimientos Administrativos de la Administración General del Estado. Relación de Procedimientos*, p. 15-21.

74. OECD (1998), *Economic Surveys: Spain*, p. 130-133.

75. These steps are set out in detail on the website of the Ministry of Economics http://www.ipyme.org/temas/empresas/crea.htm.

76. OECD (1998), *Economic Surveys: Spain*, Paris, p. 144-146.

77. SMEs analysed were firms with 1 to 500 employees in the manufacturing and service sector (*i.e*. self-employees, large firms, and firms in agriculture, mining were excluded). The estimates are based on a labour unit cost of 1 878 pesetas/hour, and a GDP in business sector at factor cost in 1998 of 82 650 billions pesetas. The survey was conducted between April and June 1998, based on a common framework developed by the OECD in consultation with the OECD's Regulatory Management and Reform Group. It was implemented by the *Direccion General de Politica de la Pequeña y Mediana Empresa, del Ministerio de Economia y Hacienda* in co-operation with Gallup, Spain. PUMA/OECD (2000), *Multi-Country Business Survey on Benchmarking the International Regulatory and Administrative Business Environment: Report on the Results for Spain*, (forthcoming).

78. It should be noted that speeding and improving the administrative procedures has been a century old goal of the government. The Council of State cites different initiatives since 1889, when a law stated that all formalities should be finished in a period of one year. The 1958 Administrative Procedure Law reduced that period to six months and for the first time established a silence is a negation rule. This was an improvement in legal sense, because after such a period an applicant needed only to prove the passing by of the six months to start an appeal in the judiciary, instead of waiting for a confirmation from the authorities stating that the request had actually been negated.

79. Sanchez (1997), p. 57.

80. Tribunal de Defensa de la Competencia (1993), *Policies to Boost Free Competition in the Service Sector and Put an End to the Damage Done by Monopolies*, p. 26.

81. The Consejo de Estado, acknowledged this situation when a few years ago, it recommended to the government delegating to a dedicated body the study of the regulatory inflation. Consejo de Estado (1992), *La Seguridad Jurídica*, Memoria del Consejo de Estado, Madrid, p. 113.

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