Chapter 2

Institutional capacities for Better Regulation

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

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

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

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

Assessment and recommendations

General context

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Recommendations

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

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

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

Rationalising the framework of independent regulators

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

Evaluation

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

Source: OECD (2004).

Background

The French public governance context

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

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

- *Government oversight of parliament.* The system established by the 1958 constitution is said to be a "rationalised" parliamentary system, as it sets strict

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

- *The maintenance of strong central government.* Traditionally a unitary and centralised state, France has embarked on a process of decentralisation over the last three decades. This has led to a transfer of power and authority to locally elected representatives and the territorial authorities (see Chapter 8), as well as to new forms of institutional relationship between the central administration and the latter. Central government retains full responsibility in relatively few areas (such as pensions), and shares it with the territorial authorities in many others. However, it still plays a leading role which may involve exercising almost full responsibility (for example in the fields of employment and health even where some arrangements are decentralised). The central government remains the main employer of public servants (accounting for 2.5 million out of 5 million in this category on 31 December 2003) ahead of the territorial authorities (1.5 million) and the hospital sector (under 1 million).

- *Public administration made more professional by a competitive examination system.* Under this system, public servants become members of a distinct professional category (comprising a body of officials with the same special status, as in the case of prefects and highly qualified schoolteachers), in which they pursue their career. Essentially meritocratic, the system is meant to ensure a high standard of competence and integrity. However, administration is clearly affected by somewhat closed attitudes with regard to the wider world, particularly given that few high-level staff are externally appointed and outside consultants have relatively little influence. While legal competence is widely distributed, economic skills often remain confined to specialist research departments. Administration is also characterised by a mass of regulations which are not conducive to smoothness and flexibility, as well as by fragmentation into a high number of "corps" (professional sub-categories comprising some 500 different kinds of "corps").

- *Public administration is also characterised by the role of the "grands corps de l'État" (the several distinctive major corps of public servants).* There is no precise legal definition of the concept of grand corps de *l'État*. It may be defined as a highly unified body of state officials which enjoys considerable prestige because its members occupy hierarchically very senior posts in the administration. These leading *corps* also play a very important role in the entourages of the President of the Republic, the prime minister and ministers in general, as well as in the parliamentary arena. The three administrative *grands corps* are the Finance Inspectorate, the *Council of State* and the *Court of audit*. All these corps are independent from the external hierarchy, and in principle fully autonomous in the case of magistrates.

- *A relatively preponderant public sector.* Public administrative expenditure accounted for almost 53% of GDP in 2008, second only in level to that of Sweden

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

Developments in France's public governance context

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

- *The constitutional reform of 2008 and the strengthening of parliament.* The constitutional law of 23 July 2008 gave parliament new mechanisms (the agenda of parliamentary business was to be jointly managed by the government and parliament, approval of documents as submitted by parliamentary committees and not the version drawn up by the government, limits to the possible use of article 49-3 which allows bills to be passed without a parliamentary vote, and scope for referendums organised on the initiative of one-fifth of the members of parliament supported by one-tenth of registered voters, possibility to adopt resolutions). The reform also seeks to alter the methods by which executive power is exercised (including the possibility of addressing parliament granted to the President of the Republic), and to uphold new rights for citizens (mechanism for constitutionality checks on legislation as a defence, and establishment of the post of "Defender of Citizen's Rights"). The new provisions to strengthen parliament have significant limitations, not least of them being the willingness of members to make the most of them. They are also conditioned by the reality of a parliamentary majority. Except where this is strongly divided, it seems difficult for a parliamentary majority elected in the wake of a presidential election (which has been the case since the introduction of the five-year presidency) to trouble an executive branch on which its own existence depends. (For details about the constitutional reform, see Annexe D).

- *The territorial reform.* This was begun following the debate prompted by the report of the *Attali* Committee (2008) which, amongst other things, advocated the dismantling of one of the main administrative levels (that of the Department). The government set up a Committee for the Reform of Local Authorities chaired by the former prime minister, Édouard Balladur, and asked it for proposals to simplify the structure of public administration. The main thrust of its recommendations has been that certain regions or Departments should be grouped together on a voluntary basis and that local tax arrangements should be restructured. In October 2009, the government submitted a bill to the Senate, which was partly inspired by these proposals (and is undergoing review).

- *The reform of the public service.* It was drawn up by the President of the Republic in September 2007 and includes a reduction in the number of public servants and an overhaul of the regulations governing the service, so that there is a better match between needs and jobs. Following the second Council for the Modernisation of Public Policies and the publication of a White Paper on the public service,[1] the law of 3 August 2009 on mobility and public service career paths lists provisions to abolish legal and statutory barriers to the mobility of public servants (especially between the different corps or other categories) and create more flexible conditions for engaging in temporary work or cumulative part-time work. The law further seeks to encourage staff to exercise their right to mobility, or to facilitate their mobility when it is enforced.

Institutional Framework for Devising Public Policies and Regulations

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

Box 2.2. Institutional framework for devising public policies and regulations

The Executive

The President of the Republic

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

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

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

The government and the prime minister

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

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

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

The Legislature

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

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

The Judiciary

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

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

The Council of State

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

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

The Constitutional Council

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

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

The Territorial Communities[2]

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

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

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

The Court of Audit

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

Independent Administrative Authorities

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

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

Developments in Better Regulation institutions

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

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

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

1966	Establishment of the Administrative Forms Registration Centre (CERFA).
1983	Establishment of the Commission for the simplification of formalities incumbent on companies (*COSIFORM*). Its remit was extended to include formalities incumbent on private individuals in 1989.
1995	Establishment of the Commissariat for State Reform (following the *Picq* report). The *Cosiform* was abolished.
1998	• Establishment of the Inter-departmental Delegation for State Reform (DIRE), which replaced the Commissariat for State Reform and led policy for the reform of administrative authorities until 2003.
	• Establishment of the Committee for Simplified Administration (COSA), linked to the prime minister's office from 2 December 1998.
2001	Establishment of the Committee for the Simplification of Administrative Language (COSLA) (July).
2002	The National Committee on Public Debate became an independent administrative authority with a broader remit.

2003	The DIRE was replaced by: • the Delegation for Modernising Public Administration and State Organisations (DMGPSE); • the Delegation for Users and Administrative Simplifications (DUSA); and • the Agency for Developing E-Government (ADAE).
2005	First edition of the "Guide for Drafting Legislation and Regulations".
2006	Establishment of the Directorate General for State Modernisation (DGME) within the Ministry of the Budget, which merged the DUSA and the ADAE.
2007	The legislative department of the SGG became the "department of legislation and quality of the law". Second edition of the "Guide for Drafting Legislation and Regulations".
2008	Decree N° 2008-225 of 6 March 2008 on the organisation and activity of the *Council of State*.

Key institutional players for Better Regulation policy

The executive centre of government

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

The General Secretariat of the Government (SGG)

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

Box 2.3. The General Secretariat of the Government

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

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

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

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

General Secretariat for European Affairs (SGAE)

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

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

Directorate General for State Modernisation (DGME)

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

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

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

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

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

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

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

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

Co-ordination across central government on Better Regulation

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

Box 2.5. Inter-ministerial meetings

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

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

The parliament and Better Regulation

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

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

Box 2.6. The *Warsmann* report on legal simplification

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

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

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

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

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

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

Consultation processes for all users:

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

Implementation of laws:

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

One simplification law a year:

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

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

Note: www.premier-ministre.gouv.fr/acteurs/communiques_4/premier_ministre_recoit_rapport_62473.html.

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

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

Independent institutions

The *Council of State*

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

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

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

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

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

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

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

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

- The establishment of a new section – the administration section – with a uniform set of powers giving it a cross-functional view of the overall issues in state reform. While bills and draft decrees concerned with public service were formerly dealt with by three different sections depending on the ministry that originated the legislation, the new administration section now deals with all these matters in the *Council of State*. And in addition to handling relations between public administration and users, undisputed administrative procedure and national defence, the section also manages all public contracts as well as public property. The administration section is thus the one in charge of public management mechanisms.

- The setting up, within each administrative section, of an ordinary group which is small in number and responsible for the least complex matters, so that work on case files is organised in accordance with their importance.

- The granting of discussion and voting rights to all members of administrative sections, job enlargement for members assigned solely consultative duties, and the creation of a post of deputy chairperson to point up the corporate nature of activity.

- Securing greater support from persons who, in the light of their knowledge or experience, are well placed to inform the activity of the various consultative groups so that the *Council of State* is more responsive to the world beyond it.

The Constitutional Council

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

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

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

- Through a decision in 1999,[10] the *Constitutional Council* established that the aims of accessibility and intelligibility of the law had constitutional force.

- In 2003,[11] it considered that the "equality before the law referred to in article 6 of the Declaration of the Rights of Man and of the Citizen and the assured 'observance of the law' required by its article 16 would not apply if citizens lacked adequate knowledge of the regulations applicable to them and if these rules were needlessly complex".

- Through a decision of 2005,[12] it censured an article of the finance law, which introduced a global ceiling on tax relief, for being over-complex.

- Furthermore, the *Constitutional Council* has recognised that the transposition of Community (EU) directives into internal law was a constitutional requirement (see Chapter 7).[13]

The Court of Audit

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

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

Independent Administrative Authorities (AAI)

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

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

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

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

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

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

The judiciary and Better Regulation

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

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

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

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

Local levels of government and Better Regulation

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

Resources and training

Staff

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

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

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

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

Training

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

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

- Establishment of training courses following the publication on 1 August 2006, of the new Public Procurement Code. In all, 384 trainees took these courses in 2007 (1 131 course-days). Special courses were also provided on the subject of the new code, including one for the Ministry of Defence which alone was attended by no less than 41 staff (204 course-days).

- Publication of a special issue of the *Perspective gestions publiques* periodical[18] devoted to Better Regulation, in September 2007 (summary of the sixth "International Meeting on Public Management" organised in July 2007 in Paris, in partnership with the OECD).

Notes

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

15. Constitutional Council, 18 September 1986, Freedom of Communication. The Constitutional Council accepted here that the provisions of article 21 of the Constitution did not "prevent the legislature from assigning to an authority other than the Prime Minister the task of fixing (…) standards for implementation of a law", on condition that it was "in a specified field and within the framework established by the laws and regulations".

16. In 2006, the parliamentary office for the evaluation of legislation thus published a report on the independent administrative authorities, which was submitted by the senator, Mr Patrice Gélard. The office approved 30 recommendations advocated in the report, seeking to rationalise the legal system and organisation of the AAIs, guarantee their independence and strengthen parliamentary oversight of their activity (*www.assemblee-nationale.fr/12/rap-off/i3166-tI.asp*).

17. Through its *Assemblée Société* KPMG decision and other decisions of 24 March 2006, the Council of State formally endorsed the principle of legal certainty, by firmly undertaking to provide for provisional measures in a decree on a code of conduct for auditors.

18. In this periodical ("Public Management Outlook"), IGPDE takes stock of the main issues concerning public management and activity, with numerous international comparisons.