Chapter 3

Transparency through consultation and communication

Transparency is one of the central pillars of effective regulation, supporting accountability, sustaining confidence in the legal environment, making regulations more secure and accessible, less influenced by special interests, and therefore more open to competition, trade and investment. It involves a range of actions including standardised procedures for making and changing regulations, consultation with stakeholders, effective communication and publication of regulations and plain language drafting, codification, controls on administrative discretion, and effective appeals processes. It can involve a mix of formal and informal processes. Techniques such as common commencement dates (CCDs) can make it easier for business to digest regulatory requirements. The contribution of e-Government to improve transparency, consultation and communication is of growing importance.

This chapter focuses on two main elements of transparency: public consultation and communication on regulations (other aspects are considered elsewhere in the text, for example appeals are considered in Chapter 6).[1]

Assessment and recommendations

Public consultation on regulations

Since the 2004 OECD review, the French approach to public consultation has experienced major changes, France has moved away from a model based largely on corporatism, though with plenty of scope for traditional elements. The method chosen for reshaping the approach has not been to do away completely with traditional institutionalised forms (advisory boards or committees) and pursue "all-out use" of the Internet, but to supervise them more closely, diversify consultation procedures and involve stakeholders more effectively beforehand in drawing up public policies. These lines of action reflect recognition of the need to reform public consultation so that it is more effective, and to adapt consultation methods to changes in society, while taking account of the institutional heritage and some degree of wariness among many administrative authorities regarding the effectiveness of open consultation over the Internet.

In recent years, significant breakthroughs have been achieved in revitalising public consultation. First of all, rules have been devised governing the establishment and operation of all advisory boards, and almost 40% of these boards were abolished in June 2009, following a process of review with "cut-off" clauses. This rationalisation of the advisory boards will only have a long-term impact if it occurs in conjunction with regular monitoring of the rules for the establishment and the work of the boards. Second, ministries have developed new consultation methods to involve stakeholders more effectively in drawing up public policies prior to the process (the *Grenelle* forum, Internet forums on reforms or major schemes under consideration, and the establishment of a "Business Council"). Third, with the January 2007 law for modernisation of the social dialogue, the reform of public consultation has also affected the processes of consultation and negotiation involving the government and "social partners" (trade unions and business representatives).

The work undertaken has to be part of a broader and more ambitious policy for reshaping public consultation. This need is recognised by the administration, which is seeking to establish clearer guidelines, but it has not (yet) resulted in comprehensive reflection and discussion. While reform of the advisory boards may make the system less cumbersome, it must be part of a more strategic vision of what public consultation is expected to achieve. Although the progress made is widely acknowledged, a sense of frustration has also been apparent in the discussions. Consultation is first and foremost a means of identifying all points of view needed for fully enlightened decision-making.

What does one wish to gain from a consultation process? It would enable improved identification of the one or more methods to be adopted. For example, in devising new policies from the outset, it is desirable to ensure that all the stakeholders are able to contribute and provide feedback informed by experience, so that the government can grasp the measure of the claims and the evidence, and allow for innovative ideas. Two points call for special attention. First, there is a need to strengthen the openness and diversity of consultation procedures, beyond experimentation with new methods. It is indeed increasingly hard to rely solely on predetermined expert groups in more complex societies. Next, the present field of consultation should also be reviewed since, as the 2004 OECD report already noted, consultation is used broadly for bills and draft decrees relevant to the autonomous regulatory field of the government, but far less for implementation decrees or legislative proposals.

Recommendation 3.1. Engage a discussion on the overhaul of public consultation. This could be partly based on targeted audits, for example, on open consultation processes on the Internet.

Consultation currently lacks a baseline methodology to support a clearer strategy and raise its profile. During the OECD discussions, several interlocutors (from within and outside the public administration) highlighted the need to establish more structured procedures and, more generally, to develop guidance on consultation. Reference was made to how the views of stakeholders were often not considered and to the lack of feedback on consultation (a frequently mentioned weak point, and not solely in France), partly because of the pressure of time. Each ministry develops its own methods of consultation (informal consultation, open consultation over the Internet, forums), which means that the aspects specific to each area can be taken into account, and gives free rein to innovation. Yet baseline methodologies would make it easier to share experience and raise the profile of consultation.

Recommendation 3.2. Establish consultation guidelines. Set up a consultation portal (in which the forum website could be integrated). Encourage ministries to share their experiences to highlight good practices and the most useful processes.

Consultation should also be included in the process of impact assessment. This is a provision of the organic law introducing the new impact assessment system whereas, until now, impact assessment and consultation have been regarded as separate processes. It may also be noted that parliament has recently introduced measures along these lines. However, good practice, not to mention firm requirements in this area, is (still) not clearly defined (Chapter 4).

Box 3.1. Passages from the 2004 OECD report: Public consultation

Recommendation

Improve the efficiency of the consultation process, making consultation of third parties systematic to improve transparency

The high number of consultative bodies in France does not necessarily ensure an efficient consultation process. A transparent and systematic process of public consultation which takes into account the impact on citizens and business ensures an improved quality to the regulatory process in many OECD countries. Internet offers an interesting opportunity which should be taken. For example, France could set up a central unique registry on the Internet with all the drafts in consultation. The registry should also include the comments of the interested parties with the comments and answers from the regulatory authorities. The process could in addition be integrated to the framework of the Regulatory Impact Analysis. It is common in the French administrative system that parties involved in drafting a law or defining a policy meet beforehand. However, this is neither systematically applied nor formalised at a legal level, except in the environmental field […]. The parties have a great amount of freedom to make proposals and counter-proposals when consulted on a regulation concerning either draft laws (initiated by the Government), or draft decrees from the Government's autonomous regulatory domain. On the other hand, and by their nature, neither draft parliamentary laws nor parliamentary amendments can be considered for prior consultation, carried out by the government, on a proposed law. Similarly, the freedom of parties involved to propose or counter-propose is quite limited when it concerns a decree for implementing a law.

Evaluation

The undeniable effort in consultation, however, results in a large number of consultative bodies. This proliferation and lack of standard procedures may lead to a complex situation. The excessive number of consultative bodies is a source of confusion and leads to impenetrability. In spite of the fact that there appear to be a number of consultative procedures, the general consultative system often remains insufficient. The edict, adopted in 2003 to simplify administration, proposes rationalising consultative bodies. The various bodies do not have a standard consultative procedure as the rules are defined for each individual case. Nevertheless, some procedural rules are common. These have been elaborated by administrative case law. The efficiency of the consultation process in France could be improved through more transparent and more systematic consultation processes.

The development of the Internet has been the major innovation in enabling constituents to get together to work on regulations. Ministries have used this vehicle to launch several forums to enable the general public to react to projects involving several topics. At the end of 2001 the Government decided that each national public internet site distributing information on public policies would have to have some means of debate with the citizens on specific topics (digital fingerprinting). Local public sites would be encouraged to develop this type of functionality in co-operation with the general sites

www.service-public.fr and *www.vie-publique.fr*. Internet offers an interesting opportunity which should be taken. For example, France could set up a central unique registry on the Internet with all the drafts in consultation. The registry should also include the comments of the interested parties with the comments and answers from the regulatory authorities. The process could in addition be integrated to the framework of the Regulatory Impact Analysis.

In spite of the large number of formal options for consultation, for some topics there are fewer consultation and drafting procedures. Therefore, alongside this general background, press leaks also play a significant role and allow us to find out a little about the evolution of the process. Moreover, when there has only been partial prior consultation, the parliament's role is to afterwards listen to various interest and population groups, which will try to make their voice heard through the limited means provided by amendments. Sometimes, the absence of prior consultation triggers spontaneous reactions in the public and unions' opinions, with public protest movements or strikes which force a second consultative phase.

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The structure is the same at local level for all decisions relating to town planning, agriculture or the environment. The difficulty here lies more in the plethora of local committees and consultative bodies. These committees call upon so many local elected representatives and union or socio-professional representatives at local level that it may become difficult for them to operate properly. This therefore brings about the problem of consultation "fatigue" and difficulties in recruiting for local assemblies.

Source: OECD (2004).

Access to the law

Much attention is focused on access to the law. Considerable effort has been invested and maintained in developing mechanisms for accessing the law, and in particular the *Légifrance* and *mon.service-public.fr* websites. Both are still being expanded and are visited with increasing frequency. It would appear that the *Légifrance* website has considerable scope for future development, which would strengthen access to the law still further, especially as regards publicising local law (*Warsmann*, 2009).

Recommendation 3.3. Consider how to improve *Légifrance* (the public website publicising legal processes) further.

Background

Public consultation on regulations

Public consultation in France has been traditionally based on many institutionalised administrative boards and written obligations in official documents, which if they are overlooked, may result in the administrative judge revoking the text concerned. There is a conspicuous trend towards a stronger more modern approach. Consultation is one of the main activities prioritised by France in the area of regulatory governance. According to

the French government, a fresh balance is being reached between traditional forms of institutionalised consultation (advisory boards) and more open forms (open consultation over the Internet). The "modernisation of consultation with the stakeholders" is a formally declared aim of government action.

Major structural reforms have occurred since the 2004 OECD report:

- rationalisation of the institutionalised advisory boards ("cut-off clause" in the decree of 8 June 2006 which abolished 40% of them), and the establishment of operational rules for all the boards;
- growth of open consultation over the Internet;
- growth of new methods of consultation, occasionally on an experimental basis (in particular the *Grenelle Environnement Forum*). One may also cite the Business Council, an informal body whose purpose is to promote dialogue and debate between businesses and public administration;
- reform of the social dialogue which seeks to promote consultation with the social partners for reform schemes in the area of work, and alters the conditions of union representativeness;
- openness towards citizens to strengthen local democracy (see Chapter 8); and
- restructuring of impact assessment arrangements (see Chapter 4), in which an impact assessment has to include the list of bodies consulted.

If one takes account of the well-established approaches (formal conventional committees, dialogue on major infrastructural schemes) that exist alongside new forms, France currently possesses a wide range of consultation methods. An obligation to undertake prior consultation exists for the greater share of the production of legal norms, as specified in the "Guide for Drafting Legislation and Regulations" (see also Chapter 4). The idea underlying these rules about consultation is to gather the opinions of those stakeholders who are considered as the most concerned, or at least to ensure that they have had the opportunity to express their point of view. In most cases, this form of consultation is based on a preliminary draft text prepared by the government. However, other procedures may be preferred in certain areas. Thus, in the social sphere, consultation is now organised at an earlier stage of the process using a strategy document, which leaves unbroken the very principle of reform.

A distinction should be drawn between procedures which may be applicable to a draft text, and those appropriate to the preparation of a policy in outline, before reaching the stage of a properly drafted bill (assuming this is the case). It should also be emphasised that involvement of the stakeholders may occur on the basis of official consultations carried out as part of the official system for drawing up draft laws or decrees provided for by the Constitution or organic laws. This makes it compulsory for certain bodies to be consulted, such as the Economic, Social and Environmental Council. Involvement may also be based on more informal non-standardised procedures.

Public consultation on regulations

Formal consultation and advisory boards

Obligations associated with consultation

In French law, there are many obligations pertaining to consultation. They involve various bodies closely linked to central government, which were recently over 500 in number (Box 3.2). These obligations are of considerable legal significance, especially in the case of regulatory acts, since disregard for them may lead the administrative judge to revoke the text concerned for this reason alone. Consultation with these bodies is distinct from any consultation or discussions undertaken beforehand or concurrently with stakeholders on a less official basis.

The mandatory nature (or otherwise) of consultation with a particular body stems either from the text which has established the body (which may originate from various levels, namely the constitution, a law, decree or regulation), or more frequently from a text providing for such a procedure. Aside from the very few cases in which a higher level text requires that the bodies consulted approve a proposal, their opinions are not binding on the government, which may take account of them or not, as it wishes. Where consultation is mandatory and even if the administrative authority is not bound by the opinion(s) expressed, it may not take a decision on fresh matters regarding the proposal submitted for consultation or the comments it may have elicited from the body concerned.

Box 3.2. Consultative bodies

Irrespective of what these bodies are called (board, council, commission, committee, etc.), their aim is to provide political or administrative authorities with instructive information and involve all interested parties in the decision-making process, including sometimes a few members of parliament and, very frequently, highly qualified prominent persons.

Some of these bodies are fairly general in purpose, as in the case of the Economic, Social and Environmental Council (CESE) whose existence is enshrined in the constitution, with its duties specified in organic laws, and whose membership includes representatives of civil society and personalities from all walks of social and economic life. Most other consultative bodies belong to specialised fields of interest, within a single sector such as the environment, transport or agriculture. The government may also form *ad hoc* consultative commissions when preparing draft documents or a particular reform, for the purpose of bringing together categories of citizens who represent different interests which are not always represented in the official consultative bodies.

The CESE has undergone reforms. The constitutional reform of July 2008 extended its purview to environmental matters and instituted a procedure under which citizens could petition it (until then only the prime minister was empowered to do so). An in-depth reform of the CESE, whose membership[2] and usefulness are often challenged, is currently in discussion in parliament. A study report requested by the President of the Republic highlights the uncertain position of the CESE (in competition in reality with a great many specialised consultative bodies) and weaknesses in its operational activity. The report emphasises that its make-up is anachronistic and not representative of contemporary society, that its work is too wide-ranging in scope and that it lacks visibility (Chertier, 2009).

Certain rules concerning the procedures that the state must follow when dealing with consultative bodies have been set by the decree of 8 June 2006.[3] They include an obligation to convene the consultative body and send them relevant useful documents at least five days before the meeting; the conditions for a quorum and voting regulations; formal exclusion from the proceedings of members with a personal vested interest in the matter considered; and the obligation to provide written minutes of meetings. These general rules may be specified for each individual case in the text which established

the body to be consulted. In practice, if the period covered by the consultation procedure varies depending on the particular body, the questions raised, and their possibly urgent consideration, which the government may request, consultation generally occurs in the weeks preceding submission of the text to parliament or – in the case of regulatory documents – before their signature by the prime minister or other ministers and, where applicable, before consultation with the *Council of State*. The rules concerning mandatory forms of consultation are covered in the "Guide for Drafting Legislation and Regulations"[4] (see Chapter 4) which recommends that they should also apply to optional consultations.

Consultative bodies at local level have the same structure, in the case of all decisions relating to town planning, agriculture or the environment.

Rationalisation of the advisory boards

In recent years, the French government has begun to rationalise the advisory boards by doing away with some that served little purpose and requiring any new ones to demonstrate they satisfy a real need, thereby reining in their continued expansion. The government and administrative authorities consider that this method of consultation provides a way of engaging with different interests and reaching a shared perspective, but that it may also very significantly delay final decision-making, especially when the field concerned is a narrow one and meetings are therefore somewhat few and far between. This disadvantage has been aggravated by the marked increase in consultative bodies set up since the 1980s. In many cases, the tasks of these new bodies could have been performed by others already in existence.[5]

As regards the advisory boards close to central government departments, the decree of 8 June 2006 ruled that, unless their existence was provided for in law, they would be established by decree for a five-year period. A study had to be undertaken beforehand to check that their proposed tasks corresponded to a real need and were not already performed by another board. The decree also included a "cut-off clause" under which all boards whose existence had not been ratified within a three-year period would be abolished. After a period spent making an inventory, the implementation of the decree led to the abolition of 211 boards out of a total 545 set up through regulatory procedures.[6] The prime minister is planning a similar operation for boards established by law.

Boards linked to geographically decentralised administrative authorities were also reformed. Order N° 2004-637 of 1 July 2004[7] replaced around 70 formerly decentralised boards by a limited number of subject-oriented boards close to the prefects, which are sometimes termed *commissions pivots* ("anchor boards"). The remit and the rules governing the organisation and operations of these boards are now determined by decree.[8]

Special-purpose consultation

In addition to formal consultation, there is the practice of informal consultations, which occur very frequently during the preparation of reforms to help the regulatory authority grasp the specifics of particular aspects of the problem at issue. Thus the government may undertake bilateral consultation with representatives of the parties concerned when drawing up the draft regulation.

In a more formal way, the government may also entrust members of parliament or influential people with exploratory missions to examine a reform proposal. Their role would be to consult all interested parties and if necessary to test a draft law. They normally rely, to a considerable extent, on officials and administrative departments which

provide support for drafting and carry out synthesis work. Such missions enable officials, union officials, representatives of economic circles and experts from the academic world to meet. Another example of informal but organised consultation is the Business Council set up in July 2007 and linked to the Minister for Economic Affairs, Industry and Employment responsible for business and foreign trade. This Council is an informal body whose purpose is to promote dialogue between businesses and administration, and "break down artificial barriers within the worlds of business and administration, so as to be more fully responsive to the realities of businesses and establish permanent contact with them" (see Chapter 5).

Use of the Internet

Open consultation over the Internet has occurred on an *ad hoc* basis in recent years. It may involve bringing on line preliminary draft texts, or less commonly White or Green papers, as well as forums on reform topics. These consultation processes occur on the initiative of individual ministries which are responsible for their content, the practicalities of transmission and, where applicable, the publication of a summary of results (see for example the actions of the DGME in the area of administrative simplification, Chapter 5, and the consultation on the White Paper on carbon tax in June 2009). Internet discussion forums are concerned with wide-ranging reform proposals, rather than specific texts.[9] They generally supplement consultation with established boards or commissions. In 2008 a dedicated portal[10] for accessing ongoing and archived forums (including a summary of contributions to them) was set up to make it easier to access these forums. Furthermore, all ongoing or planned public debates can be followed on the *Vie-publique.fr* website, which includes provision for mapping them throughout France in its entirety. This is a recent facility which has yet to prove its worth.

The discussions organised by the OECD revealed contrasting appraisals of the effectiveness of Internet consultation, which typically reflected the whole spectrum of approaches from the conservative to the innovative. Some informants pinpointed the weakness of the results compared to the time needed for this kind of consultation and the need to rely on intermediaries. There may therefore be some wariness, if not outright distrust, of Internet consultation. Others highlighted successful experiments and the maturity of civil society, noting that these open forms of consultation had resulted in helpful information and, in some cases, enabled difficulties to be identified in the process of drafting the regulation.

The "Grenelle" forums

Recently, consultation has tended to occur at an earlier stage in the preparation of draft proposals and to combine different types of procedure. A prime example of this tendency is provided by the drafting of the bill on "active solidarity income" (RSA).[11] It led to consultation on a "Green Paper" which was almost unheard of in France. Over 60 contributions from bodies of all kinds were submitted.[12] The second example is the "*Grenelle de l'environnement"* (the *Grenelle Environment Forum*), the name given to the consultation procedure on environmental policy development.[13] Initiated in July 2007, this process has included consultation involving special working groups, institutional advisory boards, meetings organised in the regions and open consultation over the Internet (Box 3.3). This method of consultation has since been adopted for other topics using the name *Grenelle* (*Grenelle* on the sea, *Grenelle* on social integration, *Grenelle* on radio broadcasting) or similarly *états généraux* (national consultations), with *états généraux* on the press and on the overseas territories.

Box 3.3. *Grenelle* Environment Forum

The *Grenelle* Environment Forum brought together the central government and representatives of civil society in order to draw up a road map for ecology, and sustainable development and planning. The aim was to establish an action plan of 15-20 concrete and quantifiable measures that would meet with the broadest possible agreement among participants.

The *Grenelle* Environment Forum led the government to combine several forms of consultation, joint action or appeals for contributions, as part of a co-ordinated process:

- The first phase from mid-July to the end of September 2007 was given over to dialogue and the preparation of proposals within six working groups consisting of 40 members drawn from five colleges all of exactly the same size, namely the central government, local authorities, NGOs, employers and wage-earners. They were given the task of identifying not just a diagnosis but above all operational proposals to respond to it. Each proposal for action was expected to indicate impediments of any possible kind (whether legal, social, budgetary or technical) facing it, as well as the resources needed to eliminate them. These proposals were recorded in a set of reports.

- The second stage of the *Grenelle Forum* from the end of September to mid-October 2007 was devoted to consultation with the public on the action proposals from the working groups, via different channels:

  - The government took stock of the opinions of the various advisory boards, institutions or bodies, including parliament: 31 councils and committees were consulted, while parliament debated them on 3 October in the National Assembly and on 4 October in the Senate.

  - Regional meetings were organised from 5-22 October 2007. Any citizen could take part on application to the prefecture of the Department concerned. The government selected 17 towns (or cities) as follows: Annecy-le-Vieux, Arras, Aurillac, Besançon, Bourges, Brest, Chalons-en-Champagne, Drancy, Épinal, Laval, Le Havre, Mulhouse, Nice, Périgueux, Perpignan, Saint-Denis (Réunion), Saint Etienne. These gatherings were often preceded by workshops chaired by prominent local people to give a first opinion concerning the proposals and conclusions of the national working groups. These regional meetings were attended by almost 17 000 participants in all, including elected representatives, people representing the economic, social and voluntary sectors or ordinary citizens.

  - Finally, another form of participation was proposed over the Internet: citizens were able on line to comment on and suggest amendments to the proposals of the working groups on the website forum, from 28 September to 14 October. This method of online consultation was an unqualified success, with 72 000 visits and over 11 000 contributions published in 17 days.

- The third stage on 24-26 October resulted in negotiations and decisions. Within four panel discussions involving the five colleges, 268 commitments were identified.

- In the fourth stage (December 2007), 33 operational assignments were initiated in order to obtain proposals for action enabling the conclusions of the *Grenelle* Forum to be implemented.

The results of these assignments fed into the bill for environmental programming which was passed by parliament in June 2009. The act known as the *loi Grenelle 1* identifies major lines of action and

reveals the decisions taken without however always stating precisely how they will be implemented or funded. It places on a legislative footing the commitments reached in October 2007. The funding and precise procedures for giving effect to the arrangements set out in the *loi Grenelle 1* were itemised in the finance law for 2009 (December 2008) and in a second law known as *Grenelle 2* (undergoing review in parliament). The two bills arising from *Grenelle* were the subject of an economic, social and environmental impact assessment, and were publicised on the Internet as soon as they were submitted to parliament.

The public debate procedure for schemes concerned with planning or amenities

Public debate – a procedure governed by the law of 2 February 1995 on protecting the environment – is a stage in decision-making which occurs prior to the process of drawing up a significantly-sized scheme concerned with amenities or planning. It constitutes a phase of openness and dialogue in which people can obtain information and give their opinions on the scheme at hand before final decisions on it are taken. The law of 27 February 2002 transformed the National Committee on Public Debate (CNDP) set up under the law of 2 February 1995 into an independent administrative authority and broadened its remit. The *Grenelle 2* law (undergoing review in parliament), which seeks in particular to encourage broader consultation prior to public decision-making whenever a significant impact on the environment is at issue, adds a few further elements to this public debate procedure (Box 3.4).

Box 3.4. The National Committee on Public Debate

Law 2002-276 of 27 February 2002 concerning local democracy transformed the National Committee on Public Debate (CNDP), set up under the act known as *Barnier's law* in 1995, into an independent administrative authority and broadened its remit.

The CNDP is now charged with ensuring that the general public are involved in the process of preparing schemes for planning or amenities in the national interest, as soon as the proposals raise major socio-economic concerns or are set to have a significant impact on the environment or regional planning. Public participation may be in the form of a public debate on the timeliness, aims and main features of the scheme.

La CNDP has 21 members. Besides its president and two vice-presidents, it includes members of parliament, local elected representatives, members of the administrative and civil jurisdictions, the *Court of audit*, representatives of environmental and consumer defence associations and highly qualified public figures. The CNDP may either organise the public debate itself or entrust the task, in accordance with its own recommendations, to the developer concerned. If it considers that there is no real need for a public debate, it recommends that the developer organise a consultation process and proposes what form it should take. Public involvement is guaranteed during the entire phase of preparing the scheme, from the point at which preliminary studies are undertaken until the end of the public enquiry prior to the order declaring the scheme to be in the public interest. The *Grenelle 2 law* (undergoing review) includes an amendment to the make-up of the CNDP, adding representatives of employee trade union organisations and of economic interests to its membership. It broadens the range of subjects that may be brought before the CNDP. And it institutes an obligation to inform the public about the follow-up to the debate.

The social dialogue and its reform

In the French system, the government may involve trade unions and business representatives (referred to as "social partners") in decision-making by means of a discussion or "dialogue" phase. This dialogue may entail the provision of information on

government policies and decisions, or on the form of unofficial or official consultation about a decision (which may be more or less interactive). Finally, the decision may be the direct outcome of a tripartite agreement reached between the government, trade union and employer organisations, or a bipartite agreement involving the social partners alone. The arrangements underlying this "social dialogue" have been the focus of reforms with the adoption of the law of 31 January 2007 (Box 3.5).

Box 3.5. Modernisation of the social dialogue

The law of 31 January 2007 to modernise the social dialogue established that the social partners (nationally recognised representative employee trade unions and inter-professional employers' organisations) had to be consulted beforehand about any government scheme involving reforms of industrial relations, employment or vocational training, so that a negotiation procedure could be started. For this purpose, the government has to provide the social partners with "strategy documents" setting out its diagnosis, its aims and the procedures envisaged in the event of negotiation. It is for the social partners to inform the public authorities whether they wish to negotiate and to indicate the timetable they consider necessary. This reform is the follow-up in particular to the "Chertier" report which took stock of the organisational arrangements underlying negotiation between the social partners.[14]

The legal draft documents stemming from any such negotiations then have to be submitted for an opinion to the *Commission nationale de la négociation* collective (National Collective Bargaining Commission). The Commission is formed from the ministers responsible for employment, agriculture and the economy, as well as from representatives of national employee trade unions and employers' organisations. Where applicable, the Higher Council for Employment and the National Council for Lifelong Vocational Training may also be consulted for an opinion. Furthermore, the new article L.2211-3 of the labour regulations states that "each year the main lines of government policy concerning individual and collective labour relations, employment and vocational training, as well as the timetable envisaged for implementing them are submitted, for the forthcoming year, to the National Collective Bargaining Commission".

Negotiations on modernising the labour market have been among the first to be affected by this new framework:

- On 18 June 2007, the prime minister sent the social partners two strategy documents on, first, the modernisation of the labour market and the provision of career security and, secondly, on social democracy. Following a meeting organised soon afterwards, the social partners decided to begin a negotiation procedure on modernising the labour market, with the focus on the provision of career security, the employment contract and unemployment insurance.

- A series of meetings beginning in September 2007, led in January 2008 to an agreement between the three employers' organisations (MEDEF, CGPME and UPA) and four of the five employee trade union organisations (CFDT, CGT-FO, CFTC and CFE-CGC). The law of 25 June 2008 on modernising the labour market transposed the provisions of this national inter-professional agreement.

The negotiations begun early in 2008 on representativeness, the development of the social dialogue and the funding of the trade unions applied the new provisions arising from the law of 31 January 2007 for a second time. On completion of a similar process, the law of 20 August 2008 on revitalising social democracy and the reform of working time transposed the measures in the "common position" which was signed on 10 April 2008 by two trade union organisations (CGT and CFDT) and two employers' organisations (MEDEF and CGPME) and concerned the representativeness of trade union organisations and the funding of the social dialogue. Other ongoing reforms, particularly in the area of working conditions and occupational health services, as well as staff and skills management planning (GPEC) and vocational training, are currently the subject of negotiation by the social partners in accordance with this law.

The case of the economic regulation authorities

Like their counterparts in the other EU countries, the economic regulation authorities[15] have established their own public consultation processes when preparing their decisions. ARCEP (responsible for regulation in the telecommunications sector) provides an illustration of this (Box 3.6).

Box 3.6. Regulation authorities and public consultation: The example of ARCEP

Since it was established in 1997, the *Autorité de régulation des communications électroniques et des postes* (ARCEP, or the Authority for the Regulation of Electronic Communication and Postal Services) regularly consults the sector about draft decisions with an effect on the market, such as those concerned with relevant market analysis and the portability of landline numbers, as well as the transmission of calls to fixed or mobile portable numbers, the price control of mobile voice call termination, the quality of the landline service, shared use of 3G facilities, future needs regarding mobile numbers and the opening of the 07 block of numbers for use by mobile services, and access to letter boxes in buildings fitted with access control systems, etc. The aim is to obtain the opinions and comments of interested players, thus upholding the principle of transparency to which the institution is committed.

Working groups. The Authority co-ordinates the activity of many working groups on sometimes highly specialised technical subjects. These forums provide an opportunity for dialogue, especially with operators, to consider certain problems and ways of overcoming them. For example, the Expert Committee for the Introduction of new Local Loop Techniques, which was set up in 2002, brought together operators unbundling the metallic local loop, the main components manufacturers and the established operator France Telecom. Chaired by a recognised expert in the industry, the Committee aims to issue opinions on technical questions concerned with introducing new technology into the local loop. In 2007, it declared itself in favour of introducing the ADSL2+ technique to the street cabinet, the VDSL2 technique to the France Telecom local loop and the E-SDSL technique to the MDF (metallic distribution frame). In the postal sector in 2007, the Authority led a working group on technical and operational matters that could make it easier to implement the principle of accessing private letter boxes in buildings with the parties concerned (operators, building manager representatives) before initiating a public consultation on the subject.

Specialised advisory boards. The Advisory Board on Electronic Communication Networks and Services (CCRSCE) and the Radio Communications Consultative Commission (CCR), both of which are advisory boards close to the minister responsible for electronic communications and ARCEP under the law of 26 July 1996, are forums for institutional consultation in the telecommunications field. A decree determines the membership, responsibilities and operating conditions of these two boards for which ARCEP provides the secretariat. Their members are representatives of service providers and service users, as well as highly qualified prominent figures, who are appointed by the minister for three years. These boards are specifically responsible for examining draft regulatory texts concerned with both mobile telephony and electronic communication networks and services. They are consulted by the minister for electronic communications or by ARCEP on any subject within their remit.

The Committee for Inter-connection and Access consists of representatives of network operators, active in the market for inter-connection services, as well as service providers and consumer associations, all appointed on the basis of a decision by ARCEP. The president of the Authority chairs the Committee and ARCEP provides its secretariat. The Committee is a forum for discussion and dialogue between players in the sector on topical subjects relating to fixed or mobile inter-connection.

The Committee of Public Initiative Networks (CRIP), set up by the Authority at the end of 2004, is a discussion forum which brings together the territorial authorities, operators and players involved in digital planning and development throughout the country. Public and private players come together in technical groups and sub-groups which meet regularly throughout the year. Once a year, a plenary

session provides an opportunity for interested elected representatives and the Authority to appraise the work carried out and fix the work programme for the year ahead.

The Consumers' Committee is a body engaging in work, dialogue and discussion, which was set up at the end of 2007, to find suitable approaches to issues affecting consumers within ARCEP's terms of reference. This Committee includes consumer associations and public institutions (INC, DGCCRF, DGE, the electronic communications mediator). Operators may be invited to join it, depending on the subject concerned. The Committee meets once a year in plenary session to report on its activity and fix the general focus of the work programme for the following year. Activities are carried out by groups and sub-groups which meet regularly throughout the year.

Access to the law

Publication of laws and decrees

Governmental and ministerial laws and regulatory measures are centralised and published in the Official Gazette which has been available in its entirety on line since 1990. As French law does not put a time limit on the validity of laws, the management of the Official Gazettes updated a database which included old laws published before 1943, which went back to the end of the 18th century, some of which are still partially in force.[16] The Gazette (the *Journal official*) is published by the Directorate of Legal and Administrative Information (DILA)[17] which also edits about 700 titles including works organised by topic and about fifty codes or collective agreements (agreements between unions and employers which have regulatory force relating to employment relations when they are agreed). As well as the Official Gazette, these editors also publish various economic and financial bulletins (Official Bulletin of civil and commercial announcements, Bulletin of compulsory legal announcements, Bulletin of public markets' announcements).[18]

The publication of regulatory acts is less significant in determining their legality as such than their enforceability against those to whom the regulation is directed. The law of 17 July 1978 on administrative transparency obliges governments to publish directives, instructions, circulars, ministerial notes and replies which include an interpretation of positive law or a description of administrative procedures. The most important documents are published in the Official Gazette of the French Republic, while the remainder appear in an official ministry bulletin.[19]

Publication of circulars

A decree from the prime minister in 2008[20] made it mandatory to publish on a website circulars and instructions sent by ministers to state departments and institutions, failing which they would not be applicable. Circulars and instructions already signed before the website came on line are regarded as repealed if they are not included on it.[21] The dedicated website,[22] opened in May 2009, thus lists all applicable circulars by date and by topic, which also remain included in the official bulletins of ministries. The launch of this website is intended to promote consistency in the action taken by administrative authorities, through regular updating of its content and the repeal of outdated circulars. Its legal impact for ordinary citizens is however limited in that their rights and obligations derive from legislative and regulatory measures and not from circulars which consist of comments and interpretations of them. Circulars are only enforceable before the administrative judge if they contain a mandatory requirement, which in practice applies only to the tax area (see Chapter 4).

Transmission of the law and legal information over the Internet

The *Légifrance* website

General transmission of the law over the Internet is via the *Légifrance* website, which offers free access to the entire body of public law that can be viewed on line in France (Box 3.7). The website contains all texts published in the Official Gazette of the French Republic, whose electronic version is legally binding, and an extensive range of other data of a purely informative nature. This includes the consolidated texts and judicial, administrative and constitutional case law. The website also provides links to national institutional judicial websites, the official bulletins of ministries, and websites concerned with European and international law. Since access to *Légifrance* became free of charge (in 2002), it has attracted visitors in continually increasing numbers, with the total rising from 31 million visits in 2005 to 47 million in 2008.

The *Warsmann* report emphasised how it would be well worth developing the *Légifrance* website further (*new ambitions for Légifrance*). It proposed expanding the information available and placing on the website the decisions of the independent administrative authorities. The report also proposed the provision of easier access to territorial administrative law. It pointed to the ineffectiveness in practice of publishing the entire collection of administrative acts (RAA), which constitutes a chronological stack of textual material (the "territorial administrative records, whether those of the territorial authorities or the geographically decentralised administrative authorities, do not seem to comply with the minimum requirements of ready accessibility"). It advocated placing local law on line with subject-based access and the development of Department-based or regional websites. A debate is under way as to how local law might be made electronically available, with possible support from *Légifrance*.

Box 3.7. *Légifrance*

The *légifrance* site (*www.Légifrance.gouv.fr*), governed by decree N° 2002-1064 of 7 August 2002, displays all public law that is accessible on line in France. It replaced the *Jurifrance* website introduced in January 1998 which charged for access to its main data (the Official Gazette, legal codes and main laws). *Légifrance* differs from it in covering a far broader range of information with free access to its content.

The *Légifrance* website is placed under the authority of the prime minister's office. In managing this public service, the prime minister relies on the Committee of the Public Service for the Transmission of Law over the Internet, whose members include representatives of businesses specialising in the field of legal publishing. The annual report of this Committee is available on the *Légifrance* website.

The main features of *Légifrance* are as follows:

- It makes available to the public free of charge most prescriptive acts in force (the Constitution, codes, laws, regulatory acts issued by the state authorities, and acts that stem from France's international commitments, including directives and regulations published in the *Official Journal* of the European Union), set out in the form resulting from their successive amendments. Around a dozen codes are available in English and Spanish. The website also provides access to collective labour agreements in force and to the official bulletins of ministries.

- It provides access to several foundations of case law, be this constitutional, judicial, administrative or European case law; website users can subscribe daily free of charge to an electronic version of the Official Gazette of the French Republic via email messaging.

- The website provides information on the production of legal norms: "Guide for Drafting Legislation and Regulations", monitoring of the application of laws, statistics on the production of laws, orders and decrees.

- The design of the website has relied on associating databases organised as far as possible with a view to providing for easy searches on *Légifrance*; the site also serves as a portal to other authoritative public websites, such as those of the parliamentary chambers, and includes private judicial website references.

Licences to reuse the material contained in the public websites are awarded free of charge to people who wish to make use of these data as part of their work whether it is commercial or not.

The Vie Publique and Service Public portals

The *Légifrance* website is supplemented by information portals for the general public, which are administered by the DILA. The *vie-publique.fr* portal contains information for the general public on ongoing reforms and the development of regulation, with for example fact sheets on laws nearing adoption under the *panorama des lois* ("overview of laws") heading.[23] It is supplemented by the *service-public.fr* portal for private individuals and businesses, which provides easier access to various public bodies and online services, and lists all administrative formalities in accordance with the subjects of concern to individuals (600 of which can be performed on line). In 2007, the average number of visitors stood at 2.1 million a month.

Websites for businesses

Several other public websites have sections on law governing businesses and/or of interest to them, especially at the Ministry for Economic Affairs and the Ministry of Labour, as well as the chambers of commerce and industry (Box 3.8).

Box 3.8. Public websites with information for businesses

The website of the Ministry for Economic Affairs, Industry and Employment (*www.minefe.gouv.fr*) includes sections on the world of business, including business accountancy, training in the working environment, new business formation, the development of businesses, and standardisation or, again, competitive clusters and government procurement. Each section is further subdivided into sub-categories containing, as appropriate, guides and practical information sheets such as *Le Guide du créateur d'entreprise* ("The Guide for Starting a Business"). Furthermore, the section entitled "*professionnels*" at *www.impots.gouv.fr* provides help for businesses with completing certain tax formalities (for example, company tax, VAT or professional tax) but also as regards information and the rights of businesses in the area of tax.

The Minister of Labour, Social Relations, the Family, Solidarity, and Towns and Cities has placed on line all forms needed for the social activity of businesses, as well as practical information sheets covering many areas of labour law (such as holidays and employee absence from work, employment contracts, vocational training, dismissal, etc.) and health and safety regulations (*www.travail.gouv.fr*).

The *www.pme.service-public.fr* website run by the Documentation française, offers a variety of help and practical advice aimed at facilitating and, where appropriate, supporting SME entrepreneurs with the formalities that are part and parcel of their business activity. The website has various sections

informing them about both the formation and the takeover of an SME and about management (certification, kinds of authorisation and obligations related to the activity, financial support, the environment, tax issues, administration, accountancy, litigation, logistics, human resources), but also about development and innovation, and finally the transfer and termination of activity.

The chambers of commerce and industry (*www.cci.fr*) provide a variety of information on the activity of businesses. More specifically, the online business formality centre at *www.cfenet.cci.fr* provides help concerning the main formalities relevant to businesses and their activity. The *www.enviroveille.fr* website, for its part, sets out the regulations and case law pertaining to environmental, health and safety legislation. The *Sémaphore* system of the chambers of commerce and industry (*www.semaphore.cci.fr*) contains on a single website all kinds of financial and technical assistance concerning every issue in the life of businesses (formation, transfer – takeover, employment, innovation, international aspects, the environment, location – property, etc.). Finally, the network of chambers of commerce and industry has a "portal on business transfer and takeover" seeking not just to list offers and advertisements but additionally to provide resources and advice facilitating the transfer and takeover of craft and trade businesses.

Common dates for entry into force

As in most other countries of the European Union, France does not use common dates for entry into force of legislative and regulatory documents. The rules governing the entry into force of legislative and regulatory texts derive from the first article of the civil code. They leave scope for mechanisms for delayed enforcement, which are commonplace, especially in complying with the principle of legal certainty when taking account of the period needed by recipients of the regulation to adjust to the newly approved rules.

Notes

1. Procedures for rule-making (Chapter 4); codification (Chapter 5); appeals (Chapter 6).
2. The Economic, Social and Environmental Council has 231 members, who are appointed for a five-year period in two ways: 163 of them are designated by the organisations they represent (representative trade union organisations, professional organisations, bodies for co-operation and mutual benefit schemes, family associations); 68 others are appointed by the government (some of them at the proposal of other bodies).
3. Decree N° 2006-672 of 8 June 2006 concerning the establishment, composition and activity of administrative boards of an advisory nature. The provisions applicable to administrative boards which mandatorily have to be consulted were already laid down in a decree of 28 November 1983 (rescinded on 1 July 2007).
4. *www.legifrance.gouv.fr/html/Guide_legistique_2/212.htm.*
5. Reply by France to the questionnaire.

6. Decree N° 2009-613 of 4 June 2009 amending decree N° 2006-672 of 8 June 2006 concerning the establishment, composition and activity of administrative boards of an advisory nature. Each ministry has established by decree the list of confirmed boards, giving the reference of the decree or regulation which governs them.

7. Order N° 2004-637 of 1 July 2004 concerning simplification of the composition and activity of the administrative boards and the decrease in their number.

8. Decree N° 2006-665 of 7 June 2006 concerning the simplification of the composition of various administrative boards and the decrease in their number.

9. By way of example, one may cite a forum on the future of the retirement system in April-May 2008, and a forum concerning the digital dividend in May-June 2008.

10. *www.forum.gouv.fr*.

11. "Active Solidarity Income" is a social provision initially introduced experimentally between 2007 and 2009, and then extended on a general basis in June 2009, in order to lessen the complexity of the minimum social criteria system, reduce the proportion of poor workers and increase work incentives.

12. *www.premier-ministre.gouv.fr/IMG/pdf/livre_vert.pdf.*

13. The term *Grenelle* refers to the *Grenelle* agreements (negotiated and signed in 1968 at the Ministry of Labour in the rue de *Grenelle*, Paris).

14. "*Pour une modernisation du dialogue social*" ("for modernisation of the social dialogue"), a report submitted to the Prime Minister in 2006 by Mr. Dominique-Jean Chertier. Taking its cue from the Community (EU) model of social dialogue, as well as from foreign examples, the report regretted the lack of a "common language" between the State and the social partners, as well as the rapid increase and lack of clarity in consultative bodies. It made many proposals, including the preparation of a reform agenda which would be shared by all players and familiar to all, and then regularly re-examined and updated. For carrying out the reform, it also recommended that time should be planned specifically for consultation, and possible negotiation, and that support should be sought from modernised and accountable bodies such as the Economic and Social Council.

15. Authorities responsible for regulating sectors such as telecommunications and other network sectors, as well as other sectors of an economic nature such as the financial sector.

18. Text of 1566 on the inalienable nature of the royal domain.

17. The Directorate of Legal and Administrative Information (DILA) is a central administrative directorate of the Prime Minister's office, which was set up in January 2010. It is the result of a merger between the managements of the *Documentation française* and the Official Gazettes, It falls under the authority of the General Secretariat of the Government.

18. With regard to bills and legal proposals, it may also be noted that debates in the parliamentary chambers (the National Assembly and Senate) are published in the official journal of parliamentary debates. The documents containing bills

and legal proposals, reports and opinions from the parliamentary committees are also published and may be accessed on the websites of both chambers: *www.senat.fr*; *www.assemblee-nationale.fr.*

19. See Articles 7 and 9 of law N° 78-753 of 17 July 1978 as amended on various provisions to improve relations between the administrative authorities and the public, and decree N° 2005-1755 of 30 December 2005 resulting from its application.

20. Decree N° 2008-1281 of 8 December 2008 concerning the conditions for publication of instructions and circulars.

21. Decree N° 2009-471 of 28 April 2009 concerning the conditions for publication of instructions and circulars introduced an exception: "The measures […] do not apply to circulars and instructions published before 1 May 2009 which the law enables a citizen to invoke". These are primarily fiscal instructions. Where this is so, the texts will remain effective against the administrative authorities but not enforceable by them. This decree was approved to protect the rights of taxpayers, which have been based on fiscal instructions.

22. *www.circulaires.gouv.fr.*

23. *www.vie-publique.fr/actualite/panorama/.*