

Chapter 8

The interface between subnational and national levels of government

Multilevel regulatory governance – that is to say, taking into account the rule-making and rule-enforcement activities of all the different levels of government, not just the national level – is another core element of effective regulatory management. The OECD’s 2005 Guiding Principles for Regulatory Quality and Performance “encourage Better Regulation at all levels of government, improved co-ordination, and the avoidance of overlapping responsibilities among regulatory authorities and levels of government”. It is relevant to all countries that are seeking to improve their regulatory management, whether they are federations, unitary states or somewhere in between.

In many countries local governments are entrusted with a large number of complex tasks, covering important parts of the welfare system and public services such as social services, health care and education, as well as housing, planning and building issues, and environmental protection. Licensing can be a key activity at this level. These issues have a direct impact on the welfare of businesses and citizens. Local governments within the boundaries of a state need increasing flexibility to meet economic, social and environmental goals in their particular geographical and cultural setting. At the same time, they may be taking on a growing responsibility for the implementation of EC regulations. All of this requires a pro active consideration of:

- The allocation/sharing of regulatory responsibilities at the different levels of government (which can be primary rule-making responsibilities; secondary rule-making responsibilities based on primary legislation, or the transposition of EC regulations; responsibilities for supervision/enforcement of national or subnational regulations; or responsibilities for service delivery).
- The capacities of these different levels to produce quality regulation.
- The co-ordination mechanisms between the different levels, and across the same levels.

Assessment and recommendations

There have been important developments since the OECD’s 2000 report, with a progressive but far reaching devolution of powers to the Autonomous Communities. A progressive decentralisation process has been taking place based on provisions of the 1978 Constitution, and the ACs have acquired a growing number of competences. The speed and depth of this process has varied across the ACs. As a result, Spain presents an asymmetrical institutional landscape across the two main levels of government. There has, however, been some convergence since the early 1990s. The Spanish public governance framework is now highly decentralised. Aspects of the process remain a work in-progress.

The engagement of the Autonomous Communities in Better Regulation is crucial. The ACs now have numerous and significant responsibilities, notably in areas such as planning, local government, public

safety, and the environment. They also provide major public services such as education and health. Not least, from the perspective of Better Regulation, they account for the majority of new regulations.

The EU Services directive has provided a boost to reform. Implementation of the transposing measures for this directive requires modernisation and simplification of the public administration. It has been used as a driver to unlock blockages and introduce changes, not least with respect to the ACs and municipalities. The Better Regulation Committee, created by Law 17/2009, embedded in the Ministry of Economics and Finance, is a good example. Formed by AGE, ACs and local entities, its main tasks are to foster, in all Public Administrations, Better Regulation in the economic domain to avoid the introduction of any unjustified restriction within markets; to encourage co-operation in Better Regulation of services activities and to monitor and co-ordinate all measures carried out by all Public Administrations to guarantee a correct transposition of the Services Directive.

The devolution and re allocation of competences has, however, raised some complex challenges. As in some other countries with fast evolving decentralisation, the process raises issues, which need to be addressed before they become serious problems. In its 2008 Annual Report the Council of States noted that there is no conflict prevention mechanism to avoid disputes, or to resolve simple contradictions and overlaps between the State and the ACs, which can occur because there is no obligation for ACs to consult with, or even to notify, the State when they issue a new legislative proposal. Unresolved disputes of this kind end up in court, which adds to the congestion of the judicial system. Other stakeholders drew the OECD peer review team's attention to the problem of concurrent competences.

Leadership from the centre is important. The 2000 OECD report noted that continued leadership from the centre was important, to encourage the adoption and sharing of good regulatory practices and reform. This remains true today. The central government is taking important initiatives to provide a lead, most notably through the inclusive "whole of Spain" approach to the Action Plan for the Reduction of Administrative Burdens. The review team did, however, hear that central government communication on Better Regulation developments could be reinforced.

Effective co-operation between the levels of government on Better Regulation is another key requirement. Although it was beyond the scope of this review to test their effectiveness, a range of formal and informal approaches to co-ordination between the State and the ACs is now in place.

The Autonomous Communities' own work on Better Regulation is equally vital. With some important exceptions, Better Regulation practices are not as developed as at State level, but are starting to gain ground, generally building on the programmes for administrative simplification which are already in place. All the ACs have now established Better Regulation programmes. The 2000 OECD report noted that the ACs as innovation laboratories (2000 OECD report underlined this, and gave examples such as "tacit authorisation rule for administrative procedures started outside the central government". Some of the ACs said that further training would be helpful.

Co-operation between the ACs is also important, to share best practices. Horizontal co-operation between ACs is less formalised than that between ACs and the State. It was beyond the scope of this review to test the success of informal networking but it appears to be an approach that works well for some ACs. There is no formal benchmarking, as in some other countries, which could help to spread best practices as well as encourage innovation.

Some issues may need attention at the municipal level. The OECD peer review team heard that the high degree of autonomy of each municipality to set its own policies and procedures results in different requirements and procedures for the same dossier, causing unpredictable delays. Given that Spain has a higher than average proportion of SMEs in its business community and the fact that this level of government is often the first and most important point of contact for SMEs, the efficiency of municipalities matters.

Recommendation 8.1. Encourage further multilevel co-operation, including the development of friendly competition, 17 autonomous community “brains” being better than one (Belgium and Germany may offer some examples). This can build on the fora and *ad hoc* groups which are already underway as a means of by-passing the formalities of the constitution.

Box 8.1. Recommendation from the 2000 OECD report

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

Progress in devolving regulatory powers to bring them closer to citizens and business has been impressive. The orderly way that this has been done could be considered a lesson for many countries. However, managing regulations at different levels creates potential concerns for the future coherence and efficiency of the national regulatory system. Safeguarding the gains made at the national level through regulatory reform will require intensive efforts to promote regulatory quality at subnational levels. Adoption by autonomous communities and municipalities of programmes of reform based on consistent principles should form the basis for more formal co-operation measures. Consideration should be given to establishing fora for such purposes as well as to resolve issues arising from regulatory conflicts. A complementary strategy should also be developed to help autonomous communities encourage municipalities to launch regulatory reform programmes. Continued leadership from the centre to encourage and learn from experimentation at the subnational level will speed up efforts.

Background

General context

Box 8.2. Spain’s decentralised structure and competences across the levels of government

The Kingdom of Spain was established as a parliamentary constitutional monarchy in 1978, the year in which the Spanish Constitution (SC) was ratified.

The Constitution underpins a dynamic equilibrium. It defines Spain as unitary and indissoluble based on principles of mutual solidarity,¹ but it also recognises and guarantees the principle of autonomy of nationalities and regions and of the four administrative levels: State (*Estado*), Autonomous Communities (*Comunidades Autonomas*), provinces (*provincias*) and municipalities (*municipios*).^{2,3}

The Constitution provides for the Autonomous Communities (ACs) to acquire legislative competences (if they so wish) which are not expressly reserved in the Constitution for the State. A progressive decentralisation process has been taking place since 1978 based on these provisions, and the ACs have acquired a growing number of competences. The speed and depth of this process has varied across the ACs. Some ACs claimed the full (or a wide) range of competences from the outset.⁴ Others are building up their competences more slowly, either because they did not choose to take on more initially, or because they lacked the infrastructure and resources to do so. This is a political process that implies the agreement of both parties. The process is normally accompanied by the transfer of central resources to the region. The Constitution states that the law that delegates competences to ACs must foresee an adequate financial transfer.⁵ As a result, Spain presents an asymmetrical institutional landscape across the two main levels of government. There has, however, been some convergence since the early 1990s.

Today, each AC has its own charter in the form of a regional Statute of Autonomy (*Estatuto de Autonomía*) approved through a national organic law.⁶ The statute sets the geographical boundaries and regulates fundamental aspects of the community, such as the organisation and functioning of its parliament and government; the role of its President; the competences assumed; its administration; and its language and symbols, as well as how the community relates with the State and the other ACs.

The Statutes of Autonomy of the ACs make the following distinctions in the powers of the ACs: (1) exclusive powers of the ACs deriving from the competences which they have adopted (legislative powers, implementing powers to develop secondary regulations, and enforcement); (2) powers to

implement and enforce State legislation; and (3) powers restricted to the enforcement of State legislation.⁷

Structure of local governments

Spain is divided into 17 Autonomous Communities (ACs)⁸ and two Autonomous Cities (*Ciudades con Estatuto de Autonomía*, Ceuta y Melilla). Each community comprises one or several provinces up to a total of 50 across the national territory. In turn, each province is divided into a variable number of municipalities, for a total of 8 111 overall. Other territorial entities with legal status exist, such as groups of municipalities (association of municipalities) or authorities at a lower level than municipality, known as minor local authorities.

The Constitution expressly indicates that all the entities of the State should enjoy autonomy with regard to the administration of their respective interests.⁹

ACs issue their own laws and regulations, in accordance with the Spanish Constitution and their Statute of Autonomy (*Estatuto de Autonomía*). ACs have acquired significant competences. They also have significant responsibilities for the implementation and enforcement of State regulations (see also Chapter 6).

The provinces are considered by the Spanish Constitution to have a double character: a local entity, formed by several municipalities; and a unitary territorial subset that facilitates the provision of services by the State Administration on the territory. Like the municipalities, the provinces have their own autonomy when managing their competences. Thus, the ACs, to which the province belongs, cannot represent the interests of the latter.¹⁰

There are a large number of small municipalities. The demographic distribution across the territory is very unequal. Out of the 8111 municipalities, 4 878 (60.14%) count less than 1 000 inhabitants and 6 845 (84.39%) less than 5 000. There are only 136 centres with more than 50 000 inhabitants, *i.e.* 1.67% of the total.¹¹ Castilla y Leon is typical, with 80% of its 2 200 municipalities counting less than 100 inhabitants. The position of local governments has evolved compared to 1978. For example, it is now possible for them to have direct access to the Constitutional Court,¹² and a separate and specific system exists for large cities.

Responsibilities and powers of local governments

Autonomous communities

The Constitution grants ACs their own status, domains and rights.¹³ It provides for them to acquire legislative competences (if they so wish) which are not expressly reserved in the Constitution for the State. A progressive decentralisation process has been taking place since 1978 based on these provisions, and the ACs have acquired a growing number of competences. The Spanish Constitution does not define a finalised model of autonomy, but instead it provides for a decentralisation process to unfold within certain limits.

ACs have strong organisational autonomy. They can organise their own institutions; territory; and financial activity.¹⁴ The Constitution does not impose a single model for the organisation of AC institutions. In practice, however, all ACs have followed the model set by Article 152 SC, and have a president; a democratically elected legislative assembly, and a government with executive and administrative functions. The structure of the legislative assemblies is basically the same in each AC and closely resembles that of the Congress at State level. The President of the AC is elected by its parliament and is the head of the government. S/he is the supreme representation of the community and also represents the State in the community, although this function is more symbolic.

Although the Spanish Constitution provides for ACs to have executive and legislative institutions, it does not grant them judicial powers. Judicial power is unitary in Spain and AC courts are courts of the State.

Overall, this makes for numerous and significant responsibilities, notably in areas such as planning, local government, public safety, and the environment. ACs provide major public services such as education and health, administering a significant portion of public spending (close to 40% of the total). The size of the regional civil service is significantly greater than that of the State.

Box 8.3. Competences and powers of the ACs

The Statutes of Autonomy of the ACs make the following distinctions in the powers of the ACs: (1) exclusive powers of the ACs deriving from the competences which they have adopted (legislative powers, implementing powers to develop secondary regulations, and enforcement); (2) powers to implement and enforce State legislation; and (3) powers restricted to the enforcement of State legislation.

Legislative competences

The Constitution distinguishes between exclusive competences of the State or of the ACs (*competencias exclusivas*), and shared or concurrent competences (*competencias concurrentes*).

- *Exclusive competences.* The Constitution explicitly (albeit generically) lists the exclusive competences of the State.¹⁵ It does not list the exclusive competences of the ACs: these are left to be filled out in the future Statutes of Autonomy. The latter may include all the powers not expressly attributed to the State by the Constitution. There is no obligation on the ACs to take up these powers.
- *Concurrent or shared competences.* In some areas, State power is limited to framework legislation (e.g. labour legislation and intellectual property law) or to determining the principles and essential aspects underpinning certain matters (e.g. the legal system for public administration and environmental regulation). In such cases, the ACs are responsible for implementing the regulatory framework through further laws and regulations, provided that they meet the regulatory “minimum common denominator” set by the State in the framework law.

Implementation and enforcement

The State may devolve implementation (fleshing out of primary laws in secondary regulations) and enforcement of legislation relating to its exclusive competence to the ACs. To oversee that this is properly done, the State relies on the so-called “peripheral administration” (*administración periférica*), offices representing the General Administration of the State (*Administración General del Estado*, AGE) on the national territory.¹⁶ Overall, some 100 000 officials work in the peripheral administration. They are headed by a *delegado del Gobierno* in each of the ACs, and *sub-delegados* in the provinces.

The ACs also implement and enforce their own legislation (*i.e.* in areas where they have acquired competence).

Mechanisms for clarification and flexibility

The Constitution provides for mechanisms to structure and adjust the allocation of powers and provide for some flexibility.¹⁷ These mechanisms allow for readjustments in the distribution of powers, without the need for constitutional or statutory reforms. They include specific laws relating to the “delimitation of powers”, which are issued notably in areas such as public safety, the administration of justice, education, and the mass media. Another mechanism is “harmonising laws”, which are used only very seldom.¹⁸

In addition, the Constitution qualifies the status of State and AC law, specifying that the first shall have primacy over the latter in case of conflict, regarding all matters in which exclusive jurisdiction has not been conferred on the ACs. The Constitutional Court (*Tribunal Constitucional*) settles disputes over the allocation of competences.

Provinces

Provinces have their own judicial status. Their aim is to secure the principles of balance and solidarity among the different municipalities in the framework of economic and social policy. Specific provincial competences are, among others, the co-ordination of the services provided by the municipalities; technical, economic, and judicial assistance to the municipalities (notably those with less economic and management capacities); the delivery of supra-municipal services; and the co-operation of the promotion of the economic and social development as well as the territorial planning.

To this end, each provincial government (*deputation*) issues annual provincial plans for the co-ordination of works and services provided by the municipalities. The plans are prepared with the participation of the municipalities, and must be accompanied by a report indicating the objectives and criteria for the allocation of funds. The plans are co-ordinated at the AC level and may be funded by the own budget of the province, through municipal contributions, as well as by the AC and the State.¹⁹

Municipalities

Constitutional references to local government are limited to the guarantee of the autonomy of municipalities, the respect of democracy, and the requirement to have sufficient financial resources to meet their responsibilities.²⁰ The Constitution says nothing about their functions and responsibilities. Local government autonomy (institutional, organisational, and financial) is based on State and AC laws. Competences at the local level are also set out by law.²¹

As in most other EU countries, municipalities manage issues of local interest such as, among others, safety in public spaces: the regulation of vehicle traffic and individuals on the road; civil protection and fire prevention and extinction; town planning; housing; management of parks and gardens; paving of urban public roads and conservation of rural paths and the historic-artistic heritage.

The law obliges municipalities to provide certain minimum services, differentiating obligations in accordance with the population: those affecting all municipalities (*e.g.* public lighting, cemeteries, street clearing, etc.); those affecting municipalities with more than 20 000 inhabitants (civil protection, social services, public sports facilities, etc); and those required from municipalities with more than 50 000 inhabitants (environment protection and public passenger transport). The law also states that the municipalities may carry out complementary activities to other public administrations and particularly those related to education, culture, promotion of women, housing, health and environment protection. Such delegation requires the agreement of the municipality and the AC, respectively. Among other issues, the agreement should regulate the scope and the duration of the delegation, as well as the necessary resources that the administration is giving to the municipality to carry out the task delegated.²²

Municipalities, as in most other EU countries, play a major role in licensing and planning. The law gives the central State and the ACs the possibility to delegate their enforcement responsibilities to the municipalities, depending on the resources of the latter. A good example of local enforcement is the Land Law (*Ley del suelo*). The State approved its *Ley del suelo*, the ACs then approved their own regulation based upon the principles established by the State, and municipalities enforce the regulation in their territory through their ordinances (*ordenanzas*). Another example is the EU Services Directive, which has been transposed into the Spanish legal system by Law 17/2009 and Law 25/2009, especially in two domains with regard to municipalities: the substitution of Administrative Authorisation by previous communication or simple declaration, and the substitution of silence is not consent by silence is consent.

Funding of local governments

The ACs enjoy considerable autonomy in the management of financial resources, as well as in establishing their own revenue raising policy (through *tributos*, *tasas* and *recargos*) and adopting their annual budget.²³ The AC funding system distinguishes two regimes. Due to their “historical rights”, which are recognised by the Constitution, Navarra and the Basque Country have a special regime that gives them

significant autonomy in financial and tax issues. All other ACs fall under the general regime. They obtain their resources mainly from totally or partially devolved State taxes; their own taxes; transfers from the Inter-territorial Compensation Fund; returns from their own patrimony; and credit transactions. The Inter-territorial Compensation Fund was created to soften economic unbalances across the regions and to give effect to the principle of solidarity among ACs.

The provinces may raise their own specific taxes; participate in State taxes; and receive specific subsidies as for economic local co-operation. For their part, the municipalities rely on their own taxes; a participation in State taxes; specific subsidies for public transport, the creation of infrastructures, services and equipment, etc.; public payment for activities under their own competence; and public or private credit.

It was beyond the scope of this review to go into any detail, but the OECD peer review team heard that the funding system raises some issues which have implications for Better Regulation, such as licensing (this is a major source of funding for municipalities so they have little incentive to streamline their approach) and an uneven quality of public services across the territory.

Better Regulation policies deployed at the subnational level

Generally, and as might be expected, Better Regulation practices are not as developed as at State level, but it is starting to gain ground among the ACs. Progress is uneven across the ACs, partly because of the significant differences between the ACs in terms of size and wealth, although the gap is narrowing. The ACs have all now launched Better Regulation policies within their sphere of competence. A number of them have adopted measures such as the reduction of administrative burdens, documentary simplification, single points of contact, electronic administration, and measures to improve the quality and effectiveness of regulation.

Progress in setting up programmes has been especially significant in relation to administrative simplification and the reduction of administrative burdens on companies and citizens (mirroring developments at State level). In many sectors subnational regulation tends to be similar from one region to the other, so that the Spanish internal market is not significantly fragmented in terms of administrative burdens. The OECD peer review team heard, however, that problems for business at local level have often less to do with the level of burdens *per se*, but rather the high degree of autonomy of each municipality to set its own policies and procedures. This discretion results in different requirements and procedures for the same dossier, causing unpredictable delays.

Like other EU Member States, Spain is working on the transposition of Directive 2006/123/EC on services in the Internal Market (so-called Services Directive). The implementation of the transposing measures requires modernisation and simplification of the public administration, and appears to be used as a driver to unlock blockages and introduce changes, not least with respect to the ACs and municipalities, and including impact assessment. The Better Regulation Committee, created by Law 17/2009, embedded in the Ministry of Economics and Finance, is a good example. Formed by AGE, ACs and local entities, its main tasks are to foster, in all Public Administrations, Better Regulation in the economic domain to avoid the introduction of any unjustified restriction within markets; to encourage co-operation in Better Regulation of services activities and to monitor and co-ordinate all measures carried out by all Public Administrations to guarantee a correct transposition of the Services Directive.

- **Impact assessment.** RIA systems where they exist are generally in their infancy, often triggered by the recent establishment of an administrative burden strategy.
- **Administrative burden reduction.** A number of ACs have set up programmes to tackle their own regulations, additional to their formal engagement in the State burden reduction policy.

- **Public consultation and communication.** Overall, this is also relatively in its infancy. In some cases, social dialogue committees have been set up and the plans on competitiveness have been submitted for consultation with representatives of trade unions and entrepreneurs.
- **Better Regulation units.** ACs' internal organisation does not easily allow for inter service co-operation. Only a few ACs have established central units for Better Regulation initiatives.

Box 8.4. Better Regulation initiatives in some Autonomous Communities

Specific regional initiatives include:

- Catalonia introduced a form of regulatory impact assessment in May 2008 on measures for the elimination of processes and the simplification of procedures to facilitate economic activity. The regulatory impact report requirement is planned for the drafting of all regulations that may influence economic activity.
- A plan of measures to simplify processes for economic and business activity and administrative simplification ("48 measures Plan" until 2010) was also agreed. The plan includes the use of "responsible declarations" to replace administrative authorisations and registrations or the harmonisation of installation companies via the Government Agreement of 17th July 2007.
- Catalonia was among the first to enhance ICT, notably through a decree in 2001 regulating the relations between citizens and the regional public administration. The adoption of a decree in April 2009 promoting and developing electronic resources in the administration of the regional government represents a step further in this direction, whilst the number of sectoral procedures in which electronic processing is available is extended.
- Castile and Leon approved a decree in March 2009 on measures related to documentary simplification. The decree eliminates numerous obligations to present document, generalises the use of responsible declarations and generally eliminates the obligation to present certified copies of documents. A catalogue of documents which no longer need to be presented has been created and will be constantly updated. The same decree establishes that a reduction of administrative burden programme will be prepared within a period of six months.
- A regulatory quality guide has also been prepared as a support manual for services to simplify the submission of RIA on certain regulations. This manual serves as a self-evaluation checklist, helping services to reflect on the method to follow when preparing regulations.
- The region also approved an Electronic Administration Plan and prepared a complete study on a single point of contact for physical services in March 2009.
- Andalusia approved a Plan of measures for the simplification of administrative procedures and streamlining of processes in January 2009. The Plan includes 232 administrative simplification initiatives to be implemented in 2009-10. The Plan sets out diverse actions related to electronic administration, including the implementation of the civil servant certificate,²⁴ the elimination of the obligation to present documents already in the hands of the administration, the possibility for citizens to find out the status of their processes, etc.
- In February 2009, a Decree law was approved, adopting urgent administrative decisions related to 46 measures of the Simplification of Measures Plan.

Co-ordination mechanisms

Co-ordination between central and local governments

The Ministry for Territorial Policy is formally responsible for managing and tracking the co-operation agreements between the State and other administrations, through a registry. It manages a number of

dedicated bodies with political, technical and sectoral mandates.²⁵ The Ministry also technically assists and advises the local authorities on economic matters; issues relevant reports; and contributes to the relations between the local authorities and the ACs and internationally.²⁶

A mix of formal and informal approaches is deployed, as can be seen in other decentralised countries. The central government told the OECD peer review team that the informal aspects were very important and had led to some good results.²⁷ Many of the issues related to BR appear to fall into the difficult and sensitive category of shared or exclusive competence, where it may be formally impossible to conclude binding agreements.

Specific institutions and co-operation instruments exist, partly introduced by law in January 1999.²⁸

- *Sectoral conferences*. These can create covenants for co-operation in sectorial issues, when matters of interrelated competences among the State administration and the ACs are at stake.
- *Bilateral Co-operation Commissions (Comisiones Bilaterales de Co-operación)*. These are similar to the sectoral conferences but they are established between the State and a single AC. These Commissions seek to solve co-ordination problems in a more focused and timely manner. They reflect a successful model developed for environmental policy. Regional Environment Agencies have been established in four ACs. They bring together sectoral ministries to develop environmental policy and regulations, thus spreading the “ownership” of environmental protection measures and facilitating their implementation. The European Environmental Agency has adopted this approach as a best practice.
- “*Co-operative covenants*” (*convenios*). This tool strengthens the institutional framework used to develop joint plans and programmes between the different governments on particular issues. They are geared towards enhancing the efficiency of the co-operation agreements. *Convenios* have been used for Better Regulation issues such as the agreement on administrative burden reduction.
- *General protocols*. These only establish a general political orientation or a general framework and a methodology for collaboration.
- *Joint Plans and Programmes*. These are created on the initiative of the respective sectoral conference to achieve common objectives in matters where the State and the ACs have concurrent competences.
- *The Conference of the Presidents*. This is a forum regrouping all the ACs Presidents and the President of the Government.
- *The Users and Consumers Council (Consejo de Consumidores y Usuarios)*.²⁹ This has served since 1990 as a platform for the public administrations and consumers and citizens associations.
- *Better regulation projects*. Two specific projects were launched in 2008 that seek to unify various tasks pursuing Better Regulation.³⁰ These are fully independent projects, additional to any further regional initiative drawn up and executed in ACs and municipalities.

Vertical co-operation also takes place through (general or sectoral) action plans and programmes. An example of the latter is the General Plan for economic activity or the general co-ordination in scientific and

technical research. A Conference of the Cities (*Conferencia de ciudades*) has also been created by law within the sectoral conference for local matters.³¹

In its 2008 Annual Report the Council of States raises a number of issues that need attention. It notes that there is no conflict prevention mechanism to avoid disputes, or even to resolve simple contradictions and overlaps between the State and the ACs. There is, for example, no obligation for ACs to consult with the State when they issue a new legislative proposal, or even in some cases to notify the State. The Council calls upon the State and ACs to regulate these interfaces more effectively, not least with a view to reducing the number of disputes in the courts.

The government nevertheless notes that there has been significant recent progress (Box 8.5.).

Box 8.5. Progress of the Central Administration in reinforcing contact with the subnational level

The Working Group with Autonomous Communities has held six meetings since its creation in January 2009. Four out of these six meetings took place from July 2009 to April 2010. That shows a strong commitment from the Central Administration to reinforce the contact with the subnational level. Within that Group a subgroup was created in order to develop a common method for SCM implementation. This subgroup gathered several times and finally produced a method that was approved by the plenary of the Working Group on 18 November 2009.

The Working Group was created in order to have a forum to share experiences in the field of better regulation and burden reduction. It is the aim of all its members to go further and produce new initiatives that can be applied by all Administrations. In this respect four subgroups have been created in the March 10th 2010 meeting about the following topics: creation of an enterprise, life events about birth and death of a person, IT system for common method and juridical definitions about better regulation. The two first groups have to study the juridical frame of those topics (regulation, procedures, etc) and should prepare a proposal about simplification to be studied and discussed by the plenary of the Working Group. If that proposal is approved by the Group the Central level or the Autonomous Communities will modify the regulation and procedures.

In the next months there will be more meetings of the Working Group to discuss the results of the work of the groups. There is also the commitment to celebrate these meeting in other parts of Spain not just in Madrid.

In November 28th 2008, the Ministry of Public Administration (MAP) signed a covenant with the Autonomous Community of Cantabria about burden reduction, simplification and better regulation. This covenant has worked satisfactorily so far and has strengthened the collaboration between Central Administration and Cantabria. Nowadays, eight more autonomous communities are willing to sign covenants with the Ministry of the Presidency and hopefully that will happen before summer holidays. These eight Communities are: Andalucía, Aragón, Castilla la Mancha, Castilla y León, Comunidad Valenciana, Extremadura, Madrid y Murcia.

All these initiatives are good proof of the fact that a new time has come in the relation between Administrations in Spain in terms of better regulation.

The Spanish Federation of Municipalities and Provinces (FEMP) joined the group in July 2009 so all Spanish Administrations (central, regional and local) are represented in it.

Regarding municipalities, in February 2009 the Ministry of Presidency signed a Covenant with the FEMP. Within that Covenant there is a pilot project about burden reduction in local entities. 11 cities and towns are part of this project. These towns have answered a very complete questionnaire about the most important procedures in their Administrations. As a result of those questionnaires, the procedures belonged to several areas: taxes, use of public domain, environment, licenses and Administrative authorisation and town planning. Three working groups have been created to study three of those five areas: use of public domain, licenses and Administrative authorisation and town planning. These groups have to present a proposal about how to simplify the procedures related to these areas, trying to reduce burdens and to improve current regulation. New meetings should take place before summer holidays in order to close a deal.

Source: Spanish Government.

Co-ordination on the reduction of administrative burdens

The State driven administrative burden reduction programme and the transposition of the Services Directive appear to be driving a growing level of co-operation. Bilateral co-operation agreements have been signed by the central government and some the ACs, as is the case of Cantabria for the reduction of administrative burdens; and between the central government and local governments, through the Spanish Federation of Municipalities and Provinces. In accordance with that agreement, a pilot project is being developed with eleven municipalities with the goal of identifying, measuring and reducing or eliminating the most costly administrative burdens for companies derived from local legislation.

A mixed Working Group of representatives of the central government, the ACs and the cities has been set up to reduce administrative burdens. The Working Group aims to provide a space for collaboration between administrations to share experiences and best practices, joining forces to achieve the national target of the Action Plan. The government considers that the Working Group is successful. Thanks to the Group, the AGE and the ACs adopted a common method for the measurement of administrative burdens. The AGE intends to circulate a computer application for managing the measurement of the burdens based on this common method among the ACs. For these reasons, discussions are ongoing on the possibility to expand the scope of this working group to include broader administrative simplification initiatives and e-Government.

The state has also established a system of fluid communication with the ACs and municipalities, which allows exchange of information either electronically via e-mail and through specially created processes, or over the phone. Regular meetings are held to monitor the actions carried out by regional and local governments. There is also collaboration through thematic groups to focus on concrete themes that especially affect enterprises and citizens as regards administrative burdens. The central government expects that this will prevent the repetition of mistakes and duplicated efforts, thereby improving the efficiency of public resources and the efficacy of public action.³²

Co-ordination between local governments

Horizontal co-operation between ACs is less formalised than that between ACs and the State, relying often on personal contacts and voluntary initiatives. The OECD peer review meeting with the ACs suggested that some of them are successfully using an informal network for mutual support and advice. Co-operation may take the form of “relationships of special co-operation”, which vary because of historical, cultural or geographical factors. Such relationships are usually reflected in the corresponding statutes. This is the case for example of Andalusia with Ceuta and Melilla; and the Balearic Islands with the ACs in which Catalan is a shared official language. ACs may also sign “agreements” and “co-operation agreements” regarding the management and provision of services, which must be communicated in advance to the General Parliaments of the ACs. Agreements have to be communicated to the Senate and published in the Official Bulletin (Article 8.2, para 2, Law 30/1992). An example of such agreements is the *Comisión de Co-ordinación de las comunidades autónomas con competencias en materia de administración de justicia*, which regroups competent government counsellors of of the ACs of Navarra, the Basque Country, Catalonia, Galicia, Valencia, Andalusia, the Canary Islands, Aragón, Asturias, Cantabria and Madrid.

The responsibility for developing co-ordination among local authorities and its implementation lies with the ACs. Dedicated bodies may be created by law to this end.³³

Notes

1. See: Art. 150 SC.
2. See: Art. 2 SC.
3. See: Art. 2 SC. On this point, see: *www.federalism.ch/files/categories/IntensivkursII/Spaing2.pdf*, p.9-11 (last accessed 13 August 2009)
4. Basque Country, Catalonia, Galicia, Andalucia, and to a lesser extent, Valencia, the Canaries, and Navarra.
5. See: Art. 150 SC.
6. The Basque Country was the first to adopt their autonomous statute in 1979, followed by Catalonia in 1980. Madrid was the last region in 1983. The statutes were ratified by the people in Andalusia, Catalonia, the Basque Country and Galicia. In all other ACs, ratifications occurred through the regional parliaments.
7. See: *www.federalism.ch/files/categories/IntensivkursII/Spaing2.pdf*, p.7 (last accessed 13 August 2009).
8. The seventeen Autonomous Communities are: Andalusia, Aragon, Balearic Islands, Canary Islands, Cantabria, Castile-La Mancha, Castile and Leon, Catalonia, Community of Madrid, Foral Community of Navarre, Valencian Community, Extremadura, Galicia, Basque Country, Principality of Asturias, Region of Murcia and La Rioja.
9. See: Art. 137 SC.
10. For more information, see: *www.congreso.es/consti/constitucion/indice/sinopsis/sinopsis.jsp?art=141&tipo=2* (last accessed on 9 February 2010).
11. See: Spanish Government, *Espana Hoy 2009*, p.68, at *www.la-moncloa.es/docs/pdfs/EspaniaHoy2009/ESP09_03.pdf* (last accessed 13 August 2009).
12. See: Art.119 of Law 7/1985 on “Regulating the Bases of the Local System “(LBRL).
13. See: Art.s 143 to 158 SC.
14. See: :Art.s 147.2, 148.1.2., 152.3, and 156.1 SC, respectively.
15. See: Art. 149.1 SC. The list and allocation of competences is set out in Annex 1. The State’s exclusive competences are: nationality and immigration/emigration; defence and armed forces; international relations; international trade, customs/import duties; competition policy; commercial/penal/penitentiary: rocedural legislation; industrial and intellectual property law; merchant shipping; postal service; domestic retail issues; telecommunications; and social security.
16. The General Administration of the State includes the national ministries and agencies, as well as the State administration in foreign countries (*e.g.* embassies).

17. See: Art. 150 SC.
18. In fact, only one harmonising law has been adopted so far, and was indeed significantly challenged at the Constitutional Court. (see: *Ley Orgánica de Armonización del Proceso Autonómico*, LOAPA, 1982). The final version of that law was not considered either “organic” nor “harmonised”. So-called “basic laws” (*Ley de bases*) are more widely used.
19. See: Art.36 of Law 7/1985 on “Regulating the Bases of the Local System “(LBRL).
20. See: Art.s 140-142 SC.
21. See: Law 7/1985 on “Regulating the Bases of the Local System “(LBRL).
22. See: Art. 27 of Law 7/1985 on “Regulating the Bases of the Local System “(LBRL).
23. Budgeting is regulated by Art. 156-158 of the Constitution, and by the Organic Law 8/1980 on financing the ACs (LOFCA).
24. Reference is made here to the electronic signature certificate for civil servants, an obligation imposed by Law 11/2007 on the electronic access.
25. See: www.mpt.es/ministerio/organos/cnal.html (last accessed on 9 February 2010).
26. See: www.mpt.es/ministerio/organigrama/secretaria_de_estado_coop/coop_local.html (last accessed on 9 February 2010).
27. For example, one-stop shops and the Dependent Care Act 39/2006.
28. See: Law 4/1999 on Reforms of the Common Administrative Procedure.
29. See: www.consumoccu.es/inicio.asp?opcion=0&subopcion=0&mostrar=presentacion.asp (last accessed on 9 February 2010).
30. These projects are based on Law 11/2007 on access to eAdministration and the Action Plan for the Reduction of Administrative Burdens approved by the Spanish Cabinet on 20 June 2008.
31. See: Art. 138 of Law 7/1985 on “Regulating the Bases of the Local System “(LBRL).
32. The budget to develop these collaborative initiatives is the same as the budget allocated to the General Directorate of Administrative Organisation and Procedures, part of the Spanish Cabinet, responsible for leading this project within Central Government.
33. See: Art.s 58 and 59 of Law 7/1985 on “Regulating the Bases of the Local System “(LBRL).