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Developing Administrative Simplification: Selected experiences from recent administrative reforms in EU Institutions and Member States.

By Professor Jacques Ziller, University of Pavia (Italy)

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Jacques Ziller, professor of European Union Law at the University of Pavia, Faculty of Political Science. Formerly professor at the European University Institute, Florence, Université de Paris 1 Panthéon-Sorbonne, and European Institute of Public Administration, Maastricht, and Director of Research and Publications, Institut International d'Administration Publique, Paris. Author of numerous publications in the fields of public administration and comparative law as well as European Union law, former Chief-Editor of the *Revue française d'Administration publique*.

Developing Administrative Simplification: Selected experiences from recent administrative reforms in EU Institutions and Member States.

Professor Jacques Ziller, University of Pavia (Italy)¹

Simplifying public administration is one of the recurring mottoes of administrative reforms. Differently from 'rolling back the state', 'new public management' or 'good governance', which may be perceived by citizens and businesses as too abstract, inward looking or ideologically biased, the discourse of administrative simplification should be well received as it seems to address directly one of the major complaints about bureaucracy, i.e. that it makes life difficult for the ordinary citizen, and generates costs for businesses. This paper does not address the conceptual question of administrative simplification as an appropriate response to the ever growing complexity of society and of the economy. It only gives indications about some recent experiences in the framework of administrative reform in the European Union institutions and Member States. As a caveat it should be indicated that, while administrative simplification is always a political motto in order to require or promote administrative reform, it is usually only part of a series of reforms, which – if comprehensive – might give the impression of a very complex undertaking. Furthermore, some reforms might be considered as true sources of simplification even though they have not been primarily designed in order to induce it.

1. A street level perspective on simplification: reducing forms and contacts with public administration

A number of reforms are designed in order to have immediately perceptible results for citizens and businesses, decreasing the time and resources needed in order to respond to the requirements of public administration in its most classical sense, i.e. when it grants authorisations or certifications and levies taxes or financial remuneration for services. Three examples are offered here as having an immediately perceptible impact.

1.1. Self-certification

Auto-certification (*auto certificazione*) means that whenever a citizen or business needs to give an information (for instance data on one's civil status or registration with different bodies (which is already available in one part of public administration (state administration or decentralised administration), a simple

¹ Prof. Jacques Ziller Ordinario di Diritto dell'Unione Europea, Università di Pavia
Dipartimento "Libero Lenti", Sezione Studi Politico-giuridici
Corso Carlo Alberto, 7 I - 27 100 PAVIA
tel: +39 382 984442, fax: +39 382 984435 jacques.ziller@unipv.it

declaration is sufficient. The burden of evidence lies then with the authority which has requested the information: if it has any reasons to suspect the truth or accuracy of the declaration, the authority should enquire with the relevant public office. In Italy this reform, which has mainly been accomplished by legislation of 1997, has been very popular with the public and has certainly generated a significant decrease in the time and energy spent in dealing with public administration.

In order to be successful this kind of reform needs good information and training of street-level officials and setting up appropriate systems of ex-post control in order to avoid fraud and/or the perception that fraud is increasing to the detriment of honest citizens and businesses.

As such, self-certification is normally reducing direct costs of public administrations. It might however generate considerable indirect costs (anti-fraud measures). These costs should, however, be balanced with the financial and non-financial benefits of the decrease in bureaucracy for society as a whole.

1.2. One-stop offices

In order to reduce the number of steps to be taken, files to be compiled, and contacts to be established in view of setting up a business, getting permits for the extension of buildings or receiving grants, many countries (e.g. France, Germany, the U.K., Italy) have set up one-stop offices (*guichet unique*). These consist of representatives or of a representative of different public administrations which deal with the above-mentioned undertakings, usually located in a single building and possibly at one single counter. This is a way to overcome the consequences of technical specialisation and the diversity of geographical localisation of different public administrations.

In order to be successful, these types of reforms need careful analysis with the recipients of public services, and the involvement of the relevant public administrations and officials at the local level. They also need priorities to be set together with the public concerned and/or their representatives. They are usually generating immediate direct costs to the public administrations involved, which need to be balanced with the financial and non-financial benefits for society as a whole.

1.3. E-government for dealing with the public

One of the most perceptible dimensions of e-government is that it has the potential to considerably reduce the time spent by citizens and businesses in dealing with public offices, especially when it comes to getting information, filling-in forms, getting certificates etc. E-government is conceptually linked to the two above-mentioned types of reforms in that it achieves the same purposes with the help of information technologies.

The use of e-government in dealing with the public requires massive investment in a first period and cost-benefit analysis has to be done on a medium if not a long-term basis. While most appropriate for dealing with businesses and also very suitable for dealing with the part of the general public that is at ease with

technological developments, its relevance varies from country to country and within a country.

The French experience, which has been a huge success with the *Minitel* in the eighties and early nineties, but where the adaptation to the Internet has been slower than in a number of countries that did not have the experience of Minitel, shows that results are never acquired once and for all.

2. “Better regulation” in the European Union: complexity in order to simplify?

As a consequence of the European Commission’s White Book on Good Governance (2000) a comprehensive programme for “better regulation” has been undertaken since 2004 with the aim of reducing the burdens of regulation upon the economy as a whole and especially upon businesses. This programme is amongst others a response to a number of criticisms by governments and parliaments in EU Member States, at central and regional or local level. It has to be seen in the light of the fact that an ever growing part of technical and health regulations, of consumer protecting regulations and to a lesser extent of social regulations are designed at EU level in order to allow for freedom of movement of persons, goods, services and capital between EU member states – and when applicable with associate states.

This programme should have both a direct impact where EU regulations (i.e. *regulations, directives* and other EU law instruments) are relevant, and an indirect impact in generating similar programmes at national level. It is certainly too early to assess both types of impacts, which will anyway be difficult to measure.

The “Better regulation” programme involves a series of elements which all should concur to the reduction of burdens, even though *prima facie* only the first one might seem directly a measure of administrative simplification.

2.1. Reduction in the number of regulations

While it is easy to announce a reduction of the number of regulations, the reality of the phenomenon is difficult to measure, and sometimes to explain: diminishing the number of regulatory acts certainly contributes to simplification, but it might be to some extent limited to codification. The content of sectoral regulation in itself is usually more important than the number regulatory instruments. The decrease in number of regulatory instruments at EU level is undeniable, although its direct link with the “better regulation program” remains to be demonstrated.

2.2. Regulatory impact assessment

The EU has since long acquired experience with tools of impact assessment in the field of environment. More recently, since 2005 it has developed procedures for “regulatory impact assessment” in the framework of the “better regulation” program.

As such, impact assessment might seem not to simplify administrative procedure, as it adds further steps in the preparatory work and may thus slow

down regulatory reform and decision making. Nevertheless, one of the main purposes of regulatory impact assessment is to enable decision makers to base their regulatory choices on a cost-benefit analysis that may be conducted at several levels: local, sectoral and global.

2.3. Ex-ante involvement of addressees

As part of regulatory impact assessment, but also in the absence of a formalized procedure, the preparation of regulations at EU level includes formal and informal involvement of the relevant businesses, consumers and citizens through different ways of direct representation (by unions and other professional associations and interest groups) and indirect representation (by members of member states' administrations and by independent experts).

Here again, this might seem not to simplify administrative procedure, as it adds further steps in the preparatory work and may slow down decision making. Nevertheless, it is a very useful tool in order to enable decision makers to base their regulatory choices on a cost-benefit analyses that take into account different possible consequences of regulations.

2.4. "Notice and comment"

The European Commission has different ways of practicing what is known in the United States as "notice and comment", i.e. a system by which potential addressees of regulations and interest groups are informed of the content of proposed regulations and invited to make observations which are then taken on board in drafting regulations.

"Green books" are thus published in order to expose the issues that the EU wants to address in regulating (or de-regulating) and inviting reactions. This is often done through the use of Internet platforms. "White books" then usually give an outline of the proposed actions, including more specifications about the goals and tools to be used. This again is designed in order to generate reactions from the public that might be taken on board in the decision making procedure that follows, and which involves experts and representatives of member states.

The multiplication of Green books, White books and other preparatory instruments, while usually aiming at better regulation, increases the amount of information that needs to be analyzed by possible addressees. In order to contribute to simplification and not to have the opposite effect, they need important efforts in informing the public, which cannot be achieved without immediate supplementary costs.

3. Codification of administrative procedures

Codification of administrative procedures, if done in an appropriate manner, is one of the most powerful and effective tools of administrative simplification. It might be mainly inward looking (as have been the Spanish codifications of the XIXth century and of 1957, and to a certain extent the Austrian codification of the

1920s) or directed at developing citizen's rights, as the more recent codifications have been doing.

3.1. The general development of laws of administrative procedure in the last quarter of the XXth Century

Codification of administrative procedures, which was already practiced in Spain in the XIXth Century, has had important moments, which may be considered as historical models, in Austria in the 1920s, in the United States of America after World War II (federal *Administrative Procedure Act*, 1946) and in Germany with the *Verwaltungsverfahrensgesetz*, 1976. In the last three decades, this seems to have become a general trend in EU Member states and more generally in OECD Member states.

3.2. The development of codes of good behaviour, ethics etc.

Parallel to, or sometimes in lieu of general laws of administrative procedure, a number of non-legally binding codes of good behavior, ethics etc. have been developed over the last few decades, with the aim and the effect of complementing regulations of administrative procedure. They can be a useful complement, or sometimes a temporary substitute, for a legally binding codification of administrative procedure.

4. The Right to Good Administration in the EU Charter of Fundamental Rights as a foundation for administrative simplification

A very specific development which is part of the trend towards codification of administrative procedure (whether legally binding or not) is the consecration of a "Right to Good Administration" in the EU Charter of Fundamental Rights, proclaimed in December 2000. and of Corollary rights.

While the Right to Good Administration does not formally include administrative simplification, it should be seen as a solid foundation for administrative simplification to the benefit of citizens and businesses. As important as its content is the fact that it is based to a large extent upon existing principles to be found in the EU treaties, legislation and case-law, in an effort to balance subjective rights of individuals and the general interest of society in having an efficient administration embedded in the respect of the rule of Law.

4.1. The Right to Good Administration in Article 41 EU Charter

Article 41

Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.
2. This right includes:
 - the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
 - the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;

– the obligation of the administration to give reasons for its decisions.

3. Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.

4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

4.2. Corollary rights in the EU Charter: access to documents, access to the European Ombudsman and Right to an effective remedy and to a fair trial

Article 42

Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to European Parliament, Council and Commission documents.

Article 43

Ombudsman

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman of the Union cases of maladministration in the activities of the Community institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

Article 47

Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.

As for “better regulation”, the different elements of the “Right to Good Administration” this might seem not to simplify administrative procedure, as it adds further conditions to the legality – and legitimacy – of decision making. It contributes however to simplification in an important degree as it helps in identifying which measures of simplification are taking into account all aspects of citizens (and businesses) rights, and which measures are simply the results of a mechanistic and quantitative approach to simplification which will be counterproductive in the medium or long term.