Better Regulation in Europe

SPAIN



OECD

Better Regulation in Europe: Spain 2010



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ISBN 978-92-64-09506-9 (print)
ISBN 978-92-64-09507-6 (PDF)

Series: *Better Regulation in Europe*
ISSN 2079-035X (print)
ISSN 2079-0368 (online)

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Foreword

The OECD Review of Better Regulation in Spain is one of a series of country reports launched by the OECD in partnership with the European Commission. The objective is to assess regulatory management capacities in the 15 original member states of the European Union (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, United Kingdom). This includes trends in their development, identifying gaps in relation to good practice as defined by the OECD and the EU in their guidelines and policies for Better Regulation.

The project is also an opportunity to discuss the follow-up to the OECD's multidisciplinary reviews, for those countries which were part of this process (Austria, Belgium, Luxembourg and Portugal were not covered by these previous reviews), and to find out what has happened in respect of the recommendations made at the time. The multidisciplinary review of Spain was published in 2000 [OECD (2000), *OECD Regulatory Reform in Spain: Government Capacity to Assure High-quality Regulation*, OECD, Paris].

Spain is part of the second group of countries to be reviewed – the other five are Belgium, Finland, France, Germany and Sweden. The first group of Denmark, the Netherlands, Portugal and the United Kingdom were published in May 2009 and the remaining countries will follow in the second half of 2010.

The completed reviews will form the basis for a synthesis report, which will also take into account the experiences of other OECD countries. This will be an opportunity to put the results of the reviews in a broader international perspective, and to flesh out prospects for the next ten years of regulatory reform.

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Abbreviations and Acronyms

AC	Autonomous Communities
AENOR	Spanish Association for Standardisation and Certification (Asociación Española de Normalización y Certificación)
AEVAL	The National Agency for the Evaluation of Public Policies and Quality of Services
AGE	General State Administration (Administración General del Estado)
AIS	Administrative Information System
ASTIC	The professional association of IT experts and managers
BOE	Official State Gazette (Boletín Oficial del Estado)
CARCE	The Conference for European Affairs (Conferencia para Asuntos Relacionados con las Comunidades Europeas)
CCAA	Autonomous Communities (Comunidades Autónomas)
CEOE-CEPYME	Spanish Confederation of Employers' Organisations - Spanish Confederation of Small and Medium Sized Companies
CDGAE	Government Delegate Commission for Economic Affairs
CGPJ	The General Council of the Judicial Power (Consejo General del Poder Judicial)
CNMV	National Securities Market Commission (Comision Nacional del Mercado de Valores)
CGSYS	The General Commission of General Secretaries and Sub-Secretaries
CNC	The National Competition Commission (Comision National de Competencia)
CMT	Telecommunications Market Commission (Comisión del Mercado de las Telecomunicaciones)
CNE	The National Energy Commission (Comision National de Energia)
EEJ Net	European Extra-judicial Network
ENAC	National Accreditation Association (Empresa Nacional de Acreditation)
ESC	The Spanish Economic and Social Council (Consejo Economico y Social)
ETSI	European Telecommunications Standards Institute

FEMP	Spanish Federation of Municipalities and Provinces
GAN	High-level Group (Grupo de Alto Nivel)
INAP	The National Institute for Public Administration (Instituto Nacional de Administración Pública)
ITU	International Communication Union
REPER	Permanent Representation of Spain to the EU
SCM	Standard Cost Model
SETSI	State Secretariat for Telecommunications and the Information Society
SME	Small to medium sized enterprises
VUE	One-stop shops for businesses (Ventanillas Únicas Empresariales)

Country Profile – Spain



Source: CIA Factbook: *www.cia.gov/library/publications/the-world-factbook/geos/sp.html.*

Country Profile – Spain

The land		
Total Area (1 000km^2):	506	
Cultivated (1 000km^2):	178.4	
Major regions/cities (thousand inhabitants):	Madrid	3 132
	Barcelona	1 595
	Valencia	798
	Seville	699
The people		
Population (thousands):	45 283	
Number of inhabitants per km^2:	89.5	
Net increase (2007/06):	1.8%	
Total labour force (thousands):	22 190	
Unemployment rate (% of civilian labour force):	19.1% (March 2010)	
The economy		
Gross domestic product in USD billion:	1 461.1	
Per capita (PPP in USD):	32 000	
Exports of goods and services (% of GDP):	26.5	
Imports of goods and services (% of GDP):	33.3	
Monetary unit:	Euro	
The government		
System of executive power:	Parliamentary	
Type of legislature:	Bicameral	
Date of last general election:	2008	
Date of next general election:	2012	
State structure:	Unitary	
Date of entry into the EU:	1986	
Composition of the main chamber (Number of Seats in March 2008):	Spanish Labour Socialist Party (PSOE)	169
	Popular Party (PP)	154
	Convergence and Union (CIU)	10
	Republican Left of Cataluna (ERC)	3
	Basque Nationalist Party (PNV)	6
	United Left (IU)	2
	Other	6
	Total	**350**

Note: 2007 Unless otherwise stated.

Sources: OECD Economic Survey of Spain 2008, OECD in Figures 2009, OECD Employment outlook 2009 and OECD Government at a Glance 2009.

Executive Summary

Economic context and drivers of Better Regulation

Since the return to democracy, Spain has enjoyed one of Europe's highest economic growth rates, and developed into the world's 12th largest economy. The Spanish government has implemented a wide range of economic and structural reforms over the last three decades, focusing on deregulation and liberalisation, which has reduced the role of government in the market. These reforms helped the economy to grow steadily at around 3% p.a. The situation changed dramatically in the wake of the global financial crisis. Spain was one of the European countries most affected by the crisis. In 2009, GDP dropped by 3.6%, reversing the healthy pattern experienced between 1994 and 2008. Unemployment is now a major concern, and is expected to peak at nearly 20% in 2010. Actions are needed to tackle labour markets (notably its dual structure of protected and precarious contracts), the fiscal challenge of reducing the large government deficit, the housing market, as well as further structural reforms to develop new sources of growth after the collapse of the housing construction sector. There are underlying issues of weak productivity growth. Although per capita income differences between regions have diminished over the last decades, some areas of Spain remain very poor, especially in the south.

The adoption of the Spanish National Reform Programme in 2005, in fulfilment of the European Lisbon Agenda, provided a focus to work in further support of ensuing effective competition in the goods and services markets; improving and provide greater transparency in sectoral regulation; increasing efficiency and modernising the public administration; and improving the commercial balance, by increasing the competitiveness of companies. This framework applies both to the central and subnational levels of government.

Spain has generally based its Better Regulation agenda on the EU Better Regulation policy. A key driver of Better Regulation over the last few years has thus been the EU. Spain is conscious of a lag in adopting European best practices. This has helped to move Better Regulation further up the government's agenda, as evidenced in recent major initiatives to strengthen programmes for the reduction of administrative burdens on business and the reinforcement of impact assessment for new regulations, as well as actions taken in the regions to strengthen regulatory management. In some areas Spain has set ambitious targets (notably the 30% reduction target for administrative burdens, for all levels of government), which goes beyond that set by the European Union.

Internal drivers are weaker. The economic focus remains relatively muted, and many Better Regulation policies are aimed more broadly at citizens and users of the public administration, although this is partly driven by an understanding that an efficient public administration will contribute to competitiveness. The Ministry of the Presidency is conscious that the crisis should encourage a greater economic awareness of the cost of regulations, especially for SMEs (which account for an especially high proportion of business activity in Spain), and this positive view of Better Regulation is shared by

officials in core ministries. However, despite strong engagement of the business organisations in the burden reduction programmes, the business voice for change is not as strong as in some other European countries. At the political level, the idea that Better Regulation can provide real support for economic recovery needs further reinforcement. Some high-level government declarations that cite Better Regulation as an important aspect of effective economic reform have started to emerge. More are needed. There does not appear to be any significant debate or studies by academics regarding Better Regulation and the links with growth and productivity.

As in several other European countries, e-Government has expanded significantly within the public administration, especially in the national government where nearly 90% of all administrative procedures (equivalent to 98% of case handled) have a fully implemented online version (see Figure 1.1), and in so doing has helped to support aspects of Better Regulation. One clear internal driver is a growing awareness that the government needs to tackle legal complexity, including the complexity arising from decentralisation and the distribution of legislative and administrative competences between levels of government. Overall, however, a sustained commitment to Better Regulation remains fragile and uneven across the administrative and political class.

Public governance context for Better Regulation

Spain has undergone profound transformations over the last decades. Part of this has been the result of accession to the European Union in 1985, which modified the regulatory context and affected legal traditions (as it has done in other EU member states). There have also been major changes from within:

- **Decentralisation**. A process of devolution of powers and competences has transformed Spain into a country with a high-level of decentralisation (see also Box 2.2). The process is ongoing. Devolution has progressed through a succession of stages which started with the approval of a new Constitution in 1978, and were reinforced by decisions of the Constitutional court. The speed and scope of decentralisation has varied, but today all 17 autonomous communities have developed a strong sense of regional and political identity, and they are effectively autonomous in their areas of acquired competence in the framework of the Constitution. Each has established its institutions, administration, and legal and regulatory frameworks. The issue of regional parliamentary representation is being addressed, via debate on the reform of the Senate in relation to its territorial representation.
- **Developments in the public administration.** The public administration has undergone a profound remodelling to fit the new context of democracy and decentralisation.[1] Significant efforts have been engaged by the government since the early 1980s to improve the efficiency of its public sector through professionalisation of the civil service, organisational restructuring, legal rationalisation, and privatisation. There is some way to yet. The corporatist legacy and legal traditions also stand in the way of a more modern approach, especially in terms of improving transparency. Change seems to be slow.[2] Corporatist and legal traditions stand in the way of a more modern approach, especially in terms of improving transparency and instilling a more economically aware perspective into the rule-making process. It is generally accepted that the judicial system is also in need of modernisation. However there is consciousness that the quality and efficiency of the public

administration is important for competitiveness, of the need for change and the importance of broader (economic as well as social) perspectives. Public governance modernisation remains a major focus of government policy, and e-Government is being deployed to good effect to encourage change.

Decentralisation and public administration modernisation remain key areas of further change and development and adjustment. More recently and specifically, a major restructuring of the State executive took place in April 2009.[3] The aim was to streamline the structure and make it more effective,[4] with a view to accelerating implementation of the so-called Plan E (*Plan de Estimulo de la Economia y del Empleo*)[5] launched to counter the economic crisis. Further to these changes, the Prime Minister is now supported by a third Vice-President. The creation of a new Vice-Presidency -the Ministry for Territorial Policy - reflects a decision to structure government action along three main lines: to recover from the economic crisis and create new jobs; to carry out reforms to bring Spain into the 21st century; and to strengthen social and territorial cohesion.[6] To raise the profile of territorial policy. the Ministry of the Presidency has taken over the public governance functions (*Función Pública*) of the former Ministry of Public Administration.

Developments in Better Regulation and main findings of this review

Strategy and policies for Better Regulation

There have been a range of positive developments since the OECD's 2000 report, especially in the recent past. Spain was a relative latecomer to Better Regulation. Overall, awareness of Better Regulation has risen significantly. In some aspects, such as administrative burden reduction, Spain is now setting ambitious targets. The Royal Decree to strengthen impact assessment is less ambitious, but does appear to signal a change of gear, based on a collective decision of the government that action was needed. Other issues are addressed such as EU management and legal access. The OECD peer review team were told that Spain is now "working very hard" to address issues and to make up a perceived lag compared with the rest of Europe, setting the basis for progress in the future.

The political commitment to Better Regulation, and the importance of an effective regulatory policy for economic revival, needs to be brought more to the fore. Political commitment to Better Regulation is starting to take hold, as evidenced by the adoption of the National Action Plan for burden reduction by the Council of Ministers. This constituted a strong impulse forward, but not all actors are yet on board. The process could be encouraged by stimulating further debate on Better Regulation and what it can bring to the economy and society. Elements of this debate are in place. A clear link is made between the administrative burden reduction programme and business competitiveness. There is also a growing awareness of the dangers posed by unrestrained regulatory inflation and complexity.

There is an increasingly important need for a clearer and more integrated Better Regulation strategy. This could be said of several other EU countries, although strategies are increasingly evident. Spain started with a range of separate policies, which in themselves highlight the progress made. The current approach seeks to remedy this situation. The National Action Plan for Burden Reduction is intended to be a comprehensive strategy that links several aspects of the Better Regulation agenda including not only burden reduction, but also impact assessment, co-operation, communication, training and evaluation. The recommendation of the 2000 OECD report for the adoption, at the political level, of a broad policy on regulatory reform that establishes clear objectives and frameworks for implementation remains however relevant, as there is some way to go on integration in practice. The OECD peer review team judged that more work is needed to connect the different elements, notably burden reduction and impact assessment. There is, as yet, no net target for burden reduction which would clearly signal that the

two policies are well joined up. The title of the Action Plan also implies that the main emphasis is the reduction of administrative burdens, whilst a fully rounded regulatory policy is much more than that. The need to encourage economic recovery is an opportunity to explain how a stronger overall strategy would contribute to this. For example, emphasis could be laid not only on the cost cutting aspects of an integrated strategy via administrative burden reduction, but also its capacity to stimulate entrepreneurship, and to increase the efficiency of the public sector.

Some important aspects of an effective Better Regulation strategy are missing, or need reinforcement. These include the need for a clearer policy on public consultation, a modernisation of the approach to enforcement, and a stronger approach to legislative simplification and legal quality. There is also a need to strengthen connections between related processes, for example ensuring that *ex post* burden reduction processes are fully joined up with *ex ante* impact assessment.

Spain faces significant structural challenges for the development of Better Regulation in a decentralised state, an issue which is fully recognised. The central government understands that leadership from the centre is important. In the recent past it has launched a series of promising meetings and structured dialogues to take this forward. It has also taken initiatives through the development of covenants on Better Regulation with the Autonomous Communities (one has been signed with Cantabria and others are expected to follow). It is too early, however, to offer a view on the results, and close monitoring will be necessary to secure firm progress. Decentralisation has developed rapidly and the systems for managing its consequences need to catch up, in a context where there are relatively few institutions that encompass the whole of the country (the judicial system is one notable exception). The central state often cannot impose, but must co-operate with and encourage the ACs. This provides a challenge to the roll out of Better Regulation across levels of government. The unfinished decentralisation process has also meant difficulties in effective management of the regulatory cascade, and the regulatory inflation which has inevitably accompanied the devolution of competences. For progress to be made the approach needs to be firm and bold. The OECD peer review team considered that the disconnection between the central level and what happens at the sub national level is still significant.

Decentralisation also, however, provides opportunities which need to be exploited. The potential advantages include the scope for friendly competition in the development of good Better Regulation practices, which has not yet been fully exploited.

As there is, as yet, no clear strategy on Better Regulation, communication is weak. Without a clear strategy, no clear communication is possible and none was evident. There is significant communication on e-Government initiatives, but not much beyond this. This affects not only external stakeholders who might wish to "buy in" to Better Regulation if they knew about it, but also the different levels of government, and of course ministries. The OECD peer review team heard from a wide range of stakeholders inside and outside government that communication is not strong, and the full picture of what is being done, and by whom, is not clear. There is no significant academic debate on Better Regulation (the focus is more on public policy), which could contribute to raising the profile of Better Regulation. It appears, however, that communication has recently improved, both between ministries through implementation of the burden reduction programme, and between levels of government.

There is a need to plan systematic and objective evaluations of the main Better Regulation policies and programmes. As matters stand the system is self referential, with no clear accountability mechanism (audit office or through the parliament, for example). Evaluation helps to raise standards, awareness and consistency, sustain momentum, and also to pinpoint what is working well and less well. With the change in status of AEVAL, it is not clear which institution could perform this function.

As in some other countries, e-Government is a driver to unlock blockages and introduce change. There is a strong interest in, and support for, the development of e-Government in general. E-Government rests on apparently well rooted and wide ranging policies and programmes, within a strong legal framework. The emphasis is explicitly on improving the transparency, efficiency and quality of the assistance and services provided to citizens and businesses. Online public services have been significantly developed in the recent past. There is extensive use of e-Government to implement the Action Plan on administrative burdens. It was beyond the scope of this review to test the depth of engagement and practical outcomes, however. It is important that the rights established in the 2007 law on citizen access to the administration are translated into concrete realities. Implementation is well advanced, according to the government at the national level. It is also important that the law is implemented at the regional and, especially, local government tiers.

Institutional capacities for Better Regulation

There have been developments since the last OECD report, and the recent expansion of Presidency ministry responsibilities is a positive move. Better Regulation is now fully at the centre of government and should acquire a higher profile as a result of the Presidency changes. The centralisation is still partly nominal, and needs to be translated into practice. The complexity and depth of the reform agenda must now be fully grasped. The establishment of a High-level Group for administrative burdens is another positive move. Institutional structures for the pursuit of e-Government have also been set up.

Institutional capacities for Better Regulation will be helped by further culture change in the public administration. As in many other European countries, Spain's public governance culture is in a process of adaptation and change. A legalistic culture continues to predominate, which stands in the way of transparency and efficiency, as well as the application of a more economic perspective to regulatory management. Laws are regularly quoted in support of an issue, but there is consciousness of the need for change. The challenge is to spread new approaches beyond the small but significant core of ministries and agencies that have already moved a long way. At the political level, greater efforts need to be made to raise awareness. E-Government is being well used to encourage change.

A tradition of autonomous action needs to evolve towards a more collective approach. One of the main challenges facing Spain at this stage is for ministries to switch from being individual actors in regulatory management and (for some) drivers for Better Regulation, to taking a more collective and co-ordinated approach, rallying around the Presidency ministry co-ordinating responsibility. Ministries (as already noted in the 2000 OECD report) are quite autonomous and pursue their own initiatives (for example, the Environment ministry with regard to impact assessment), which partly also reflects the fact that Better Regulation policies have so far been fragmented and incomplete. There is a certain confusion of often un-co-ordinated roles and activities.

There are some promising elements on which to build, to improve Better Regulation capacities, starting with the Presidency ministry unit. Capacities need to be developed to drive the Better Regulation agenda forward and secure its sustainability across the political cycles. Elements of a promising framework are already in place. These include the Presidency ministry unit (the Sub-directorate general for the Improvement of Procedural Regulation) and other champions of effective regulatory management among ministries, including the Ministry of Economics and Financial affairs (SMEs and competition policy, as well as front runner on impact assessment and transposition of the EU services directive), the Trade and Industry ministry (information society) and the Competition authority (development of impact assessment). It can be said that, very informally, an internal motor of officials seems to be taking shape with promising albeit scattered potential. This, however, is often based on the personal commitment of key officials, perhaps less on official ministry policy, and certainly not representative of the overall administration. This means that institutional capacities remain vulnerable and in increasingly urgent need of reinforcement for the long term. Some actors need to be encouraged

into a stronger role. This may the case for example of the Ministry for Territorial Policy which is responsible for collaboration with the Autonomous Communities.

The Council of State and AEVAL are other key players. The Council of State plays a key gatekeeper role in the development of draft regulations on their way to the Council of Ministers, but also as adviser to the government in broader terms. The National Agency for the Evaluation of Public Policies and Quality of Services (AEVAL), which operates at arm's length of the Presidency ministry, has a mandate to enhance the performance of the public service and to improve general understanding of the effects of public policies.

In the first place, the Presidency ministry role as co-ordinator and advocate for Better Regulation needs to be strengthened. The Presidency ministry's expanded responsibilities for Better Regulation appear to have been acquired more by default than design, a core priority of the government reshuffle behind it being an upgrade of territorial policy, rather than Better Regulation as such. The Presidency unit on Better Regulation is small relative to the size of the country and compared with established units in some other European countries. It does not yet match the proposals set out in the 2000 OECD report, for an oversight unit with legal authority to make recommendations to the Council of Ministers, adequate capacities for co-ordination, and enough resources and expertise to provide an independent opinion on regulatory matters. But it does now regroup key Better Regulation portfolios including impact assessment, administrative burden reduction strategy, simplification, and consolidation of e-Government strategy. It has important links to other key functions within the Presidency ministry such as relations with the Parliament and management of the agenda for the Council of Ministers. One small but significant issue is the name of the unit, which does not reflect a forward looking core responsibility for Better Regulation.

Strengthening the Presidency ministry will also require a stronger and more integrated co-ordination network across the central administration. Generally, the Spanish system does not take a systematic approach to the co-ordination of policy and law making, reflecting the autonomous nature of the administration. A small number of high-level committees have been established to co-ordinate policy in some key areas such as economic affairs, and there is a State secretary steering group (CGSYS) for the preparation of meetings of the Council of Ministers. Technical General Secretariats within each ministry oversee legal drafting as well as budget and other resources. For Better Regulation an important development has been the establishment of a High-level Group for the Action Plan on administrative burdens. There is no specific arrangement for impact assessment. The current arrangements are not optimal for raising the profile of Better Regulation and using the energy of the core group of Better Regulation champions. The institutional support framework for administrative burden reduction could be used as inspiration to strengthen other parts of Better Regulation policy. It has a number of strong points: a clearly stated mandate; explicit methodology; a support structure to assist ministries in helping to achieve their aims; and a steering/monitoring mechanism through the High-level Group. This contrasts positively with the institutional governance framework for impact assessment, for example.

Training needs for Better Regulation are being addressed, this is important. Beyond the traditional training to officials in support of the development of regulations, overseen by the Presidency ministry, and the courses run by the well established National Institute for Public Administration (INAP), the Presidency ministry has been developing special training on the reformed impact assessment procedures, which is being unrolled progressively. This is an important part of the work needed to reinforce a change of culture among ministries.

There is no specific external watchdog for Better Regulation, although part of this role is covered by the Council of State and AEVAL. A growing number of countries have either established an autonomous body external to the administration to encourage pressure for change, and publicise developments, or are getting the support of national audit offices for evaluating progress, or both. For example, the Netherlands ACTAL and the United Kingdom National Audit Office have played a

significant role in support of Better Regulation developments. The Council of State is, however, an important external influence.

The role of Parliament in Better Regulation is important and has so far been neglected. Apart from EU matters, Parliament is not yet specifically organised for Better Regulation and there are no structures to address regulatory quality as part of the law making process, as exist in some other European countries. It seems that Parliament still needs to grasp the relevance of the Better Regulation agenda.

Transparency through consultation and communication

Public consultation has traditionally been based on legal requirements and structured processes. A general requirement to consult is enshrined in the Constitution and in the 1997 Government Law, together with specific legal requirements (mainly in respect of secondary regulations). Checks are made as to whether the legal requirements have been met, and failure to do so is judiciable. There is an extensive network of advisory groups, and a formal requirement to consult these. The social partners (which include consumers as well as unions and employers) also play an important role.

The processes for public consultation are quite varied, and transparency has been established as a key principle in recent years. The central government notes that the Good Government Code, approved in 2005, establishes transparency as one of the ethical principles guiding the behaviour of government members, along with integrity and responsibility. A wide range of processes has been deployed for some time, from the consultation with organised groups, to processes targeted directly at interested parties in society, notice and comment procedures, and e-consultation which opens the process to a broad public. Reduce the number of advisory bodies, as already recommended by the 2000 OECD report. Consultation also unfolds on an informal basis.

Nevertheless, it seems that processes and overall transparency could be improved. The OECD peer review team heard from several stakeholders that there was room for improvement. It appears that there can be problems of exclusion, quality of information received, lack of feedback, and consultation that takes place too late and does not allow adequate time for response. It was pointed out that there is no structured approach, with autonomous ministries making their own decisions. There are no guidelines, formal or otherwise, beyond the legal requirement that a consultation must take place, and ministries broadly do as they see fit. As in other countries where ministries are left to determine for themselves what processes they use, there appears to be wide variability in performance. Some ministries appear to be deeply conscious of the potential for e-consultation for example, others not. As already proposed in the 2000 OECD report, a useful improvement would be a clarification of the consultation principles established in the government Law, and encouragement in the use of more open methods alongside the traditional processes.

Public communication on regulations has improved since the 2000 OECD report, and could be even stronger. The 2000 OECD report recommendation for a single authoritative source for regulations to enhance transparency for users and encourage a rationalisation of ministry rules has been implemented. This is a major step forward. Access to legislation remains an issue. Based on the positive experiences of other countries, further steps could be taken such as the establishment of a single portal for accessing the stock and flow of new regulations, and common commencement dates (fixed dates for the entering into force of new legislation).

The development of new regulations

Regulatory production is increasing steadily and this is a cause for considerable concern. A 2009 report suggests that regulatory production has grown tenfold since the early 1980s, much of it accounted for by the Autonomous Communities, linked to the process of decentralisation. The OECD peer review team heard that constant production of regulations is complicating the legal system. Many

rules are obsolete, changes are frequent, and many interviewees said it was critical to prevent unnecessary new burdens. There is a clear link with the need to establish a well functioning impact assessment process for new regulations, which the government has taken on board, as well as the reinforcement of other regulatory policies such as legislative simplification.

Forward planning of new regulations is a weak part of the law making process. The government's general policy programme sets out the broad lines of what can be expected, but there is little beyond this. Information is not made public. Transparency and a more efficient approach to policy and rule making would be supported by a strong forward planning mechanism. A growing number of European countries have this.

The 1997 Government Law was a milestone in establishing important principles for the preparation of regulations. The Law embedded a number of important principles including consultation, and regulatory impact assessment. However, the OECD peer review team heard that the administrative culture remains formal and legalistic, with "internal gold-plating", and there is a need for further public administration reforms to embed good regulatory practices as well as practical support. In particular, there may be a need to back up the 1997 principles with stronger monitoring and support to ministries, to ensure that the principles are embedded in practice. A weakness of the Spanish public governance system would appear to be difficulties and delays in fleshing out laws with implementing regulations and guidelines (it took well over ten years to agree a Royal Decree implementing the 1997 Law's provisions on impact assessment) which means that useful laws are not always translated into practice.

Legal quality appears to be an issue requiring further attention. The 2000 OECD report expressed concern about this aspect of regulatory quality, and the OECD peer review team heard that it was still an issue, although it was beyond the scope of this review to go into any depth. The government set up guidelines in 2005 to standardise approaches to law drafting, but further initiatives may be needed. This is particularly the case for SMEs. Several other European countries are taking substantive steps to secure better legal quality. One aspect is to improve the readability of legal texts by non-experts, through policies to promote plain language. Complex or unclear regulations tend to increase compliance costs, because specialists are required to interpret them. Other aspects relate to legislative simplification (reviewed in Chapter 5). It is unusual that the Justice ministry does not play any role in legal quality, as its perspective is important.

A significant potential boost has been made to the policy on impact assessment. It is widely acknowledged that the previous system was ineffective. A new Royal Decree based on the 1997 Government Law which established impact assessment as a principle was approved in 2009, together with Guidelines issued by the Presidency ministry, aimed at encouraging a more systematic and integrated approach. This is considered by the government to be a flagship new Better Regulation initiative. A wide range of stakeholders told the OECD peer review team that they supported impact assessment and that the new proposals had potential to encourage it to be taken more seriously.

Impact assessment can be expected as a result to have a stronger shape and coherence. The new process has a number of strengths compared with the previous system. It promotes an integrated approach (at least for the mandatory impact assessments) as the new requirements consolidate existing obligations into a single report; the economic impact of regulations is emphasised, beyond financial impacts, and there is a specific link to burden reduction; the institutional centre of gravity is now at the centre of government, with the Presidency ministry; and *ex post* evaluation is covered as well. A system which was largely assessed as informal and *ad hoc* is now set up to work more effectively. The government hopes this decree will be considered as the point of no return in its commitment to Better Regulation.

There is further work to anchor the new system, however, and fill gaps. For this to be a point of no return the new system needs to be strengthened further. The 2000 OECD report made a number of proposals on how to strengthen impact assessment, including public consultation, and the progressive reinforcement of analytical and quantitative skills in the administration. These issues remain valid. The previous approach was criticised for not providing explicit and standardised analytical methods, and guidance on how to develop the assessment. This remains a weakness. Not least the provisions for public consultation are not clear: there is no specific requirement for this. Yet public consultation is important to communicate with stakeholders that efforts are being made and engage in a two way dialogue for strengthening the approach to development of regulation. Parliament should also receive impact assessments on draft laws.

In particular, institutional capacities and processes for culture change need reinforcement and incentives strengthened for the use of impact assessments. The experience of other European countries is that impact assessment requires commitment to change attitudes and overcome resistance over a long period, framed by effective institutional mechanisms and by supporting tools and guidelines. In Spain, as yet, there is no explicit or formal provision for quality control. The institutional support framework is largely based on existing, pre-Royal Decree provisions. Although the centrally placed Presidency ministry is responsible for overseeing the process, it is not clear how this will be done, and resources for effective oversight appear to be limited. The Ministry of the Presidency leverage is political rather than prescriptive. Encouragement and sanctions for ministries to move away from an overly legalistic approach and to make effective assessments are not clear. Beyond some committed parts of the administration, there is no shared culture or toolbox as yet for impact assessment. Effective support for line ministry officials on what they need to do is a related issue. A further option is to set a net target for the reduction of administrative burdens which would require ministries to pay attention to production and quality.

Evaluation of the new system will help to keep it on track to deliver real change. The plan is for the Presidency ministry to prepare an annual report on the quality of the impact assessments and to submit this to the Cabinet. This is a positive initiative, which could be complemented by giving the report a wider audience.

The consideration of alternatives tends to be a formality. A common view is that "most laws are necessary", despite the widespread concern over regulatory inflation. The new impact assessment Guidelines make the justification of a legislative proposal the first stage in the process. But they put less emphasis on the identification and description of the problem. This may imply (as it does in many other countries) a certain bias towards regulatory intervention as the preferred option. On the other hand, the central government notes that the consultation process and stakeholder involvement in the development of regulations can be a helpful counter to the assumption that regulation is necessary.

The management and rationalisation of existing regulations

Some efforts have been made on legislative simplification, more is needed to boost legal access, security and clarity. The issue was raised by a number of stakeholders. It had already been picked up in the 2000 OECD report, which noted the lack of a consolidated code or registry, that revision of regulatory frameworks was not systematic, and that tools such as sun setting or mandatory periodic reviews were absent from the legal tradition. Simplification appears difficult to achieve in the Spanish environment, and this undermines easy access to the legal stock, legal clarity and security. Issues include laws which cover a range of different issues, and not least, the rapid shifts in the distribution of regulatory competences across levels of government, which has increased the complexity of the legislative process with a variable geometry of actors involved, depending on the issue. Although some progress has been made since the 2000 report with consolidated texts and databases, a more

comprehensive policy is needed. A number of European countries (including Portugal, Germany and France) are, for these reasons, taking steps to reinforce provisions for assuring legal quality.

The policy on administrative burdens has been substantially reinforced since the 2000 OECD report. This is especially important in Spain, as administrative burdens on business are estimated to be above the international average. Since 2007, Spain has sought to catch up with other parts of Europe and has established a comprehensive Action Plan aimed at revitalising business and boosting competitiveness. The objective is to reduce administrative burdens on business by 30% by 2012, from a baseline of May 2007, a more ambitious target than the one set by the European Commission. The programme comprises a suite of well defined elements. Good use is made of e-Government in support of simplification measures. Most of the fast track measures use ICT or the introduction of online services.

The institutional support framework appears sound. It is framed by the establishment of a high-level group of secretaries of state, a unit of officials in the Presidency ministry, and contact points in each ministry. This reflects good practice in other European countries.

The structured arrangements for consultation with the business community are also a sound starting point for picking up business views. Spain has opted to work through structured co-operation with key stakeholder representatives (the Higher Council of Chambers of Commerce, the CEOE-Spanish Confederation of Employers' Organisations, and the CEPYME – Spanish Confederation of Small and Medium- Sized Companies), backed up by formal agreements. These organisations are firm supporters of the need to reduce burdens as a priority for boosting competitiveness. In many other countries, consultation with the business community rests at least in part on more direct contact with individual firms in order to confirm real needs. This could be a useful complement to the structured arrangements. The 2000 OECD report proposed strengthening linkages between simplification policy and SME policy, and this implies making sure that the views of SMEs, in particular, are effectively captured.

The principle of a country wide target is commendable, but needs vigorous follow through. Few EU countries have yet gone so far as to extend formal coverage of their administrative burden programmes to all levels of government. Since the majority of burdens on business are considered to derive from regulations issued by the ACs and local levels of government, this is important. The issue is how effectively this is being taken forward in practice. Since the central state cannot dictate to the ACs, it will take action only on national regulations, and a non binding co-operation agreement is in place with the ACs to encourage the latter to apply their own reductions, based on their own measurements and definition of burdens. The OECD peer review team heard from some ACs that further harmonisation of terms and methodologies would be desirable. Communication seems to be an issue. Some of the ACs met by the OECD peer review team seemed to know little about the programme.

Although burdens in new regulations are to be measured, the target is not a net target. Many EU member states now have net targets, in recognition of the fact that it is important to capture the potential burdens in new regulations and avoid a situation where new burdens cancel out the positive effects of dealing with existing burdens. In countries suffering from regulatory inflation, such as Spain, this is all the more important.

Communication of the programme, its objectives and achievements appears to need attention. Communication is woven into the daily work of the officials in the presidency ministry responsible for the simplification policies and there are frequent meetings. Nevertheless, there does not appear to be a clear communication strategy drawing attention to the programme, its objectives and potential benefits (as exists, for example, in the Netherlands). A report will be drawn up every six months by the Presidency ministry on progress with the Action Plan, but this will only go to the Cabinet.

The Action Plan needs to deliver results as soon as possible, in order to sustain momentum. The arrangements in place (such as institutional support, structured consultation) are generally sound in principle but now need to show that they are functioning effectively in practice. Some aspects need fixing now. The reduction target is not divided between ministries, which reduces the incentive to take action. Methodological support for ministries also appears to be an issue, although training courses have been established and are being further developed.

Other actions to support business needs are being taken forward, with mixed success. One-stop shops providing support and information for business start ups have been set up in a number of ACs and the evidence is that they are having a positive impact, for example on company creation. On the other hand, challenges which were already picked up in the 2000 OECD report regarding licences and permits remain.

The government's initiatives for the reduction of administrative burdens generally cover citizens as well as businesses. Many of the projects in the Action Plan also have some effect on citizens. The 2007 Law on electronic access of citizens to public services was an important milestone in defining citizen rights *vis à vis* the administration. However, it was beyond the scope of this review to form a view as to what extent these rights have been translated into practice.

The government does not at this stage have a specific programme for administrative burdens within the administration. The Administrative Information System (AIS) does, however seek to map procedures. The value of a programme to address regulation inside government is that it can release resources for other work, such as front line teaching or policing, by reducing unnecessary burdens and improving productivity. This can also help to drive the ongoing efforts at modernisation of the public service. A study from the business community suggests that business suffers from inefficiencies in the public administration.

Compliance, enforcement, appeals

Compliance rates are not monitored and there may be a compliance issue. As in most other EU countries, Spain does not keep any systematic record of compliance rates. However this may be particularly relevant in the Spanish context. As the 2000 OECD report had already noted, the complexity of the regulatory system may put pressure on the rate of compliance, and the Spanish government has not yet emphasised the need to design compliance friendly regulations. There are also recorded instances of mismanagement and corruption. The OECD peer review team was not able to examine this issue in any depth but it seems that compliance needs attention.

The approach to enforcement varies significantly across the national territory, and risk-based enforcement has some way to go. Variations in approach, due in large part to delegated responsibilities, cause significant variations in quality of services provided, and there are no minimum standards. Efforts have been made to improve enforcement strategies, but these tend to focus on increasing controls (more inspectors, and databases) rather than adopting a more efficient risk-based approach as in some other EU countries (varying the rate of inspection to the risk of non compliance). The OECD peer review team also heard that the State peripheral administration often implements central regulations but has little voice in shaping it, as it is not consulted in the development of legislation.

There is a comprehensive and diversified appeal system, but delays are a major issue, which the Justice ministry is addressing. The situation as recorded in the 2000 OECD report still appears to be valid. Spain's appeal mechanisms are accepted as fair, but also criticised as complex, slow and costly. The citizen is protected against possible abuses by the administration, but it is a difficult process. The main issue is delays, with a slowing up of some procedures over the last ten years. The cost of pending judicial claims has been estimated at EUR 6 billion. Litigation is rising. The Justice ministry has recently established a modernisation plan to address issues and update the framework.

The interface between member states and the EU

The EU is a major driver of Better Regulation in Spain. Implementation of the Services Directive was mentioned by a number of stakeholders as a driver of positive internal change. It is less clear whether the EU is considered a major source of regulations (a point which is often emphasised by other EU countries), with most interviewees expressing greater concern about Spanish production.

The State has overall responsibility for the negotiation and transposition of EU directives, and the system seems to be broadly effective. There is a clear central co-ordination framework for negotiations. In particular, Spain has a good record in transposition, ranking fourth in the EU's latest Internal Market scoreboard. This positive achievement would appear to be based in part on supporting tools and processes, including a centralised database and correlation tables, which have been mandated by the 2009 RIA Guidelines. Unlike in some other EU countries, gold-plating (going beyond the strict requirements of a directive) does not appear to be a major issue. Impact assessment is applied as a matter of course (as for domestic origin legislation) for both the negotiation and the transposition phase, which many other countries do not do.

Spain's decentralisation nevertheless can pose challenges for the efficient implementation of EU policy. Because in many policy areas competences are allocated at different levels, transposition can be complex, and as the OECD peer review team were told, "there is no magic solution" to address the issues arising from a split in responsibilities across the levels of government for the same directive. The institutional mechanisms for bringing the State and the ACs together (Conference of European Affairs and other mechanisms) are not always effective. In some cases, *ad hoc* Committees are created in order to guarantee the correct implementation of directives among all Public Administrations. An example is the "Better Regulation Committee" related to the transposition of the Services Directive. There can be failures to transpose all the provisions of a directive, with the issue ending up in court.

A further strengthening of the framework seems desirable. The Council of State suggests that areas for attention include late participation in the negotiating phase; the lack of a sound basis for negotiations; and internal disconnection between the negotiating and the transposition phase. Among other recommendations, it suggests a more structured forward planning, and enhancing RIA practices applied to EU legislation. The OECD peer review team also heard that public consultation and communication on EU matters can be ineffective and cut short prematurely.

Spain is one of the larger EU member states and its voice needs to be heard in Brussels. It is understandable that Spain's voice has so far been relatively muted, as many of its own Better Regulation policies are only now being strengthened, and there is an issue of resources. However it is not the only country to face resource issues. Making a contribution to the future of regulatory management by the EU institutions would contribute to a stronger domestic regulatory management, given the importance of EU regulations.

The interface between subnational and national levels of government

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.

Key recommendations

Better Regulation strategy and policies	
1.1.	Continue to build on the political commitment and initiatives to promote Better Regulation and why it is important for the recovery of the economy and social welfare. Encourage further debate and the dissemination of information on this issue. Review how the Better Regulation strategy is packaged to avoid the impression that it is only focussed on administrative burdens, as the current name implies. Continue with the central government leadership initiatives to stimulate a closer relationship and co-operation between central government and the Autonomous Communities, and ensure that the initiatives are monitored for their effectiveness.

Institutional capacities for Better Regulation	
2.1.	Strengthen the resources and capacities of the Presidency unit so that it can fully address its new responsibilities, perhaps partly through secondments from the other core ministries for Better Regulation. A change of name for the unit should be considered, to better reflect its real purpose and work.
2.2.	Consider how best to strengthen networks for sharing and overseeing Better Regulation processes, including whether the framework supporting administrative burden policy could be replicated. A specific role could be allocated to the CGSYS to oversee Better Regulation aspects of the dossiers it submits to the Council of Ministers. The Presidency ministry could preside a group of core and interested ministries and agencies, both at political and official level, on impact assessment as well as other elements relevant to the Better Regulation agenda.
2.3.	Continue the work to build up training for officials on Better Regulation processes. This should be a mandatory part of training for new and established officials.
2.4.	Review the role played by different actors external to the administration and consider whether this leaves any gaps. Consider whether an external watchdog to oversee compliance with Better Regulation processes would help.
2.5.	Encourage Parliament to take a closer interest in Better Regulation, for example by sending them individual impact assessments and the planned annual evaluations on impact assessment policy. Consider sending Parliament an annual progress report, in which developments in Better Regulation are linked to progress in economic recovery.

Transparency through public consultation and communication	
3.1.	Establish guidelines for public consultation that flesh out benchmarks of good practice on issues such as timelines and the need for feedback. Use green and white papers to promote debate and encourage feedback at an early stage in the development of policy and law making. Establish, via the Presidency ministry, an arrangement for the exchange of information and best and most appropriate practices among ministries.
3.2.	Consider further steps to enhance access to regulations, such as the establishment of a single portal covering both existing and new regulations, and common commencement dates.

Development of new regulations	
4.1.	Consider establishing a monitoring mechanism within the government on regulatory production, or commission this on a regular basis from an outside source, to raise awareness of the situation.
4.2.	Establish and publish a clear annual forward planning timetable for new primary regulations as well as significant new secondary regulations.
4.3.	Consider a review to assess the current situation regarding legal quality, associating this with policies to strengthen legislative simplification, and involving the Justice ministry.
4.4.	Plan to strengthen the system with more specific guidance and capacity building for analysis (including quantitative) within the administration; and with the integration of public consultation as part of the process.
4.5.	Evaluate institutional capacities to support, monitor and challenge the quality of impact assessments and reinforce these. Ensure that line ministries have adequate support and guidance on the process. Aim to set a net target for the reduction of administrative burdens so that new regulations are assessed as well as the existing stock.
4.6.	Consider a wider dissemination of the planned annual evaluation reports, for example to Parliament.
4.7.	Consider how to further promote the assessment of alternatives to traditional regulation, including a scrutiny of whether regulation is needed at all.

The management and rationalisation of existing regulations	
5.1.	Establish a clear and comprehensive policy to address the challenges of legislative simplification in order to support legal security and clarity.
5.2.	Review the practical arrangements for integrating the levels of government into the Action Plan and take action to remedy weaknesses, such as the need for a common approach, and effective communication.
5.3.	Consider setting the current target as a net target as a next step, to take into account burdens from new regulations.
5.4.	Establish a communication strategy so that businesses (and citizens) are fully informed of plans and developments. Engage the parliament, by sending them a version of the progress report to the Cabinet.
5.5.	Monitor and evaluate the effectiveness of the institutional arrangements and of the co-operation agreements for delivering results that meet the needs of the business community. Allocate the target reduction among ministries in order to encourage ownership of the Action Plan across the government. Ensure that ministries are adequately supported in taking forward their part of the Action Plan. If necessary, take action to complement the consultation arrangements, via direct interaction with firms on their needs.
5.6.	Continue the roll out and reinforcement of the one-stop shop network for businesses. Carry out an evaluation of licensing at the municipal level with a view to addressing problems.
5.7.	Consider whether a specific plan to improve the efficiency of regulations inside government would be helpful.

Compliance, enforcement, appeals	
6.1.	Consider whether to set up a system for monitoring compliance rates, starting with the records that may already be kept.
6.2.	Consider a review of enforcement policy, engaging all relevant actors and addressing the scope for evolving towards a more risk-based approach.

The interface between member states and the EU level	
7.1.	Consider a review of the framework for the management of EU regulations, from negotiation to transposition.

The interface between subnational and national levels of government	
8.1.	Encourage further multilevel co-operation, including the development of friendly competition, 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.

Notes

1. Law 50/1997 *Ley del Gobierno* was an important step in efforts to modernise political and administrative processes in the central administration. The law sets general good practice requirements on ministries for the development of regulations (including on impact assessment and public consultation). The Spanish Administrative Procedure Law of 1958 has been reformed twice in order to increase accountability and transparency across the administration. It modernised decision-making and the functioning of the State.
2. As one interlocutor put it to the OECD peer review team, Spanish society has changed but the modernisation of the public administration has not kept up. Another interviewee put it that "Spaniards are masters in producing laws and then ignore them…".
3. See: Royal Decree 542 of 7 April 2009.
4. See: *www.la-moncloa.es/ActualidadHome/2009/220409Congreso.htm* (last accessed 10 August 2009).
5. See: *www.plane.gob.es.*
6. See: *www.la-moncloa.es/ActualidadHome/2009/070409CambioGob.htm* (last accessed 10 August 2009).

Introduction: Conduct of the review

Peer review and country contributions

The current review of Spain reflects contributions from the Spanish government and discussions at meetings held in Madrid on 18 May and 22-26 June 2009 by an OECD peer review team with Spanish officials and external stakeholders. Major new developments since the mission in May 2009 and May 2010 are referenced but not fully evaluated.

The OECD peer review team combined the OECD secretariat and two peer reviewers from other European countries:

- Caroline Varley, Project Leader for the EU 15 reviews, Regulatory Policy Division of the Public Governance Directorate, OECD.
- Lorenzo Allio, Consultant to the OECD "Better Regulation in Europe" project.
- Jeroen Nijland, Director, Regulatory Reform Group, Ministry of Finance/Economic Affairs, Netherlands.
- Markus Maurer, Director, Federal Ministry of Economics and Technology (BMWi).

The team interviewed representatives from the following organisations:

- Antitrust Commission.
- Autonomous communities (responsible for regional Better Regulation programmes).
- Bank of Spain.
- Chambers of Commerce.
- Consumers Association.
- Directorate for Better regulation, Ministry of the Presidency.
- Employers Association, CEOE.
- Evaluation Agency, AEVAL.
- General Directorate for the promotion of e-Government.
- King Juan Carlos University, Madrid.
- Market Commission.
- Ministry for Environmental affairs.
- Ministry of Gender.
- Ministry of Industry, Tourism and Commerce.
- Ministry of Justice.

- Ministry of Labour.
- Ministry of the Presidency.
- National Agency for the Evaluation of Public Policies and Quality of Services.
- National Competition Commission.
- National Energy Commission.
- National Federation of Municipalities and provinces.
- Spanish Medicines Agency.
- State Secretariat for Parliamentary issues.
- State Secretariat for Public Service, Ministry of the Presidency.
- State Secretariat's Cabinet.
- State Secretary for the Public Administration.
- Telecommunications agency.
- Trade Unions.

Structure of the report

The report is structured into eight chapters. The project baseline is set out at the start of each chapter. This is followed by an assessment and recommendations, and background material.

- **Strategy and policies for Better Regulation.** This chapter first considers the drivers of Better Regulation policies. It seeks to provide a "helicopter view" of Better Regulation strategy and policies. It then considers overall communication to stakeholders on strategy and policies, as a means of encouraging their ongoing support. It reviews the mechanisms in place for the evaluation of strategy and policies aimed at testing their effectiveness. Finally, it (briefly) considers the role of e-Government in support of Better Regulation.

- **Institutional capacities for Better Regulation.** This chapter seeks to map and understand the different and often interlocking roles of the entities involved in regulatory management and the promotion and implementation of Better Regulation policies, against the background of the country's public governance framework. It also examines training and capacity building within government.

- **Transparency through consultation and communication.** This chapter examines how the country secures transparency in the regulatory environment, both through public consultation in the process of rule- making and public communication on regulatory requirements.

- **The development of new regulations.** This chapter considers the processes, which may be interwoven, for the development of new regulations: procedures for the development of new regulations (forward planning; administrative procedures, legal quality); the *ex ante* impact assessment of new regulations; and the consideration of alternatives to regulation.

- **The management and rationalisation of existing regulations.** This chapter looks at regulatory policies focused on the management of the "stock" of regulations. These policies include initiatives to simplify the existing stock of regulations, and initiatives to reduce burdens which administrative requirements impose on businesses, citizens and the administration itself.

- **Compliance, enforcement, appeals.** This chapter considers the processes for ensuring compliance and enforcement of regulations, as well administrative and judicial review procedures available to citizens and businesses for raising issues related to the rules that bind them.

- **The interface between members states and the EU.** This chapter considers the processes that are in place to manage the negotiation of EU regulations, and their transposition into national regulations. It also briefly considers the interface of national Better Regulation policies with Better Regulation policies implemented at EU level.

- **The interface between subnational and national levels of government.** This chapter considers the rule-making and rule-enforcement activities of local/sub federal levels of government, and their interplay with the national/federal level. It reviews the allocation of regulatory responsibilities at the different levels of government, the capacities of the local/sub federal levels to produce quality regulation, and co-ordination mechanisms between the different levels.

Methodology

The starting point for the reviews is a "project baseline" which draws on the initiatives for Better Regulation promoted by both the OECD and the European Commission over the last few years:

- The OECD's 2005 Guiding Principles for Regulatory Quality and Performance set out core principles of effective regulatory management which have been tested and debated in the OECD membership.
- The OECD's multidisciplinary reviews over the last few years of regulatory reform in 11 of the 15 countries to be reviewed in this project included a comprehensive analysis of regulatory management in those countries, and recommendations.
- The OECD/SIGMA regulatory management reviews in the 12 "new" EU member states carried out between 2005 and 2007.
- The 2005 renewed Lisbon Strategy adopted by the European Council which emphasises actions for growth and jobs, enhanced productivity and competitiveness, including measures to improve the regulatory environment for businesses. The Lisbon Agenda includes national reform programmes to be carried out by member states.
- The European Commission's 2006 Better Regulation Strategy, and associated guidelines, which puts special emphasis on businesses and especially small to medium-sized enterprises, drawing attention to the need for a reduction in administrative burdens.
- The European Commission's follow up Action Programme for reducing administrative burdens, endorsed by the European Council in March 2007.

- The European Commission's development of its own strategy and tools for Better Regulation, notably the establishment of an impact assessment process applied to the development of its own regulations.
- The OECD's recent studies of specific aspects of regulatory management, notably on cutting red tape and e-Government, including country reviews on these issues.

The report, which was drafted by the OECD Secretariat, was the subject of comments and contributions from the peer reviewers as well as from colleagues within the OECD Secretariat. It was fact checked by Spain.

The report is also based on material provided by Spain in response to a questionnaire, including relevant documents, as well as relevant recent reports and reviews carried out by the OECD and other international organisations on linked issues such as e-Government and public governance.

Within the OECD Secretariat, the EU 15 project is led by Caroline Varley, supported by Sophie Bismut. Elsa Cruz de Cisneros and Shayne MacLachlan provided administrative and communications support, respectively, for the development and publication of the report.

Regulation: What the term means for this project

The term "regulation" in this project is generally used to cover any instrument by which governments set requirements on citizens and enterprises. It therefore includes all laws (primary and secondary), formal and informal orders, subordinate rules, administrative formalities and rules issued by non-governmental or self-regulatory bodies to whom governments have delegated regulatory powers. The term is not to be confused with EU regulations. These are one of three types of EC binding legal instrument under the Treaties (the other two being directives and decisions).

Chapter 1

Strategy and policies for Better Regulation

Regulatory policy may be defined broadly as an explicit, dynamic, and consistent "whole-of-government" policy to pursue high quality regulation. A key part of the OECD's 2005 Guiding Principles for Regulatory Quality and Performance is that countries adopt broad programmes of regulatory reform that establish principles of "good regulation", as well as a framework for implementation. Experience across the OECD suggests that an effective regulatory policy should be adopted at the highest political levels, contain explicit and measurable regulatory quality standards, and provide for continued regulatory management capacity.

Effective communication to stakeholders is of growing importance to secure ongoing support for regulatory quality work. A key issue relates to stakeholders' perceptions of regulatory achievements (business, for example, may continue to complain about regulatory issues that are better managed than previously).

Governments are accountable for the often significant resources as well as political capital invested in regulatory management systems. There is a growing interest in the systematic evaluation of regulatory management performance – "measuring the gap" between regulatory policies as set out in principle and their efficiency and effectiveness in practice. How do specific institutions, tools and processes perform? What contributes to their effective design? The systematic application of *ex post* evaluation and measurement techniques can provide part of the answer and help to strengthen the framework.

E-Government is an important support tool for Better Regulation. It permeates virtually all aspects of regulatory policy from consultation and communication to stakeholders, to the effective development of strategies addressing administrative burdens, and not least as a means of disseminating Better Regulation policies, best practices, and guidance across government, including local levels. Whilst a full evaluation of this aspect is beyond the scope of this exercise and would be inappropriate, the report makes a few comments that may prove helpful for a more in-depth analysis.

Assessment and recommendations

Development of Better Regulation strategy and policies

There have been a range of positive developments since the OECD's 2000 report, especially in the recent past. Spain was a relative latecomer to Better Regulation. Overall, awareness of Better Regulation has risen significantly. In some aspects, such as administrative burden reduction, Spain is now setting ambitious targets. The Royal Decree to strengthen impact assessment is less ambitious, but does

appear to signal a change of gear, based on a collective decision of the government that action was needed. Other issues are addressed such as EU management and legal access. The OECD peer review team were told that Spain is now "working very hard" to address issues and to make up a perceived lag compared with the rest of Europe, setting the basis for progress in the future.

The political commitment to Better Regulation, and the importance of an effective regulatory policy for economic revival, needs to be brought more to the fore. Political commitment to Better Regulation is starting to take hold, as evidenced by the adoption of the National Action Plan for burden reduction by the Council of Ministers. This constituted a strong impulse forward, but not all actors are yet on board. The process could be encouraged by stimulating further debate on Better Regulation and what it can bring to the economy and society. Elements of this debate are in place. A clear link is made between the administrative burden reduction programme and business competitiveness. There is also a growing awareness of the dangers posed by unrestrained regulatory inflation and complexity.

There is an increasingly important need for a clearer and more integrated Better Regulation strategy. This could be said of several other EU countries, although strategies are increasingly evident. Spain now has started with a range of separate policies, which in themselves highlight the progress made. The current approach seeks to remedy this situation. The National Action Plan for Burden Reduction is intended to be a comprehensive strategy that links several aspects of the Better Regulation agenda including not only burden reduction, but also impact assessment, co-operation, communication, training and evaluation. The recommendation of the 2000 OECD report for the adoption, at the political level, of a broad policy on regulatory reform that establishes clear objectives and frameworks for implementation remains however relevant, as there is some way to go on integration in practice. The OECD peer review team judged that more work is needed to connect the different elements, notably burden reduction and impact assessment. There is, as yet, no net target for burden reduction which would clearly signal that the two policies are well joined up. The title of the Action Plan also implies that the main emphasis is the reduction of administrative burdens, whilst a fully rounded regulatory policy is much more than that. The need to encourage economic recovery is an opportunity to explain how a stronger overall strategy would contribute to this. For example, emphasis could be laid not only on the cost cutting aspects of an integrated strategy via administrative burden reduction, but also its capacity to stimulate entrepreneurship, and to increase the efficiency of the public sector.

Some important aspects of an effective Better Regulation strategy are missing, or need reinforcement. These include the need for a clearer policy on public consultation, a modernisation of the approach to enforcement, and a stronger approach to legislative simplification and legal quality. There is also a need to strengthen connections between related processes, for example ensuring that *ex post* burden reduction processes are fully joined up with *ex ante* impact assessment.

Spain faces significant structural challenges for the development of Better Regulation in a decentralised state, an issue which is fully recognised. The central government understands that leadership from the centre is important. In the recent past it has launched a series of promising meetings and structured dialogues to take this forward. It has also taken initiatives through the development of covenants on Better Regulation with the Autonomous Communities (one has been signed with Cantabria and others are expected to follow). It is too early, however, to offer a view on the results, and close monitoring will be necessary to secure firm progress. Decentralisation has developed rapidly and the systems for managing its consequences need to catch up, in a context where there are relatively few institutions that encompass the whole of the country (the judicial system is one notable exception). The central state often cannot impose, but must co-operate with and encourage the ACs. This provides a challenge to the roll out of Better Regulation across levels of government. The unfinished decentralisation process has also meant difficulties in effective management of the regulatory cascade, and the regulatory inflation which has inevitably accompanied the devolution of competences. For progress to be made the approach needs to be firm and bold. The OECD peer review team considered that the disconnection between the central level and what happens at the sub national level is still significant.

Decentralisation also, however, provides opportunities which need to be exploited. The potential advantages include the scope for friendly competition in the development of good Better Regulation practices, which has not yet been fully exploited.

Recommendation 1.1. Continue to build on the political commitment and initiatives to promote Better Regulation and why it is important for the recovery of the economy and social welfare. Encourage further debate and the dissemination of information on this issue. Review how the Better Regulation strategy is packaged to avoid the impression that it is only focussed on administrative burdens, as the current name implies. Continue with the central government leadership initiatives to stimulate a closer relationship and co-operation between central government and the Autonomous Communities, and ensure that the initiatives are monitored for their effectiveness.

Box 1.1. Recommendation from the 2000 OECD report

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

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

Background comments

Carrying out current policies, as well as launching new policies, requires more effective capacities for implementation. A disconnect exists between the relatively well-developed policies based on deregulation and competition, and the government's less-well-developed capacities to produce the high quality regulatory regimes that are needed. The direction of change, though, is positive. The 1997 reforms to the Government Law moved Spain in the right direction toward more transparent and less discretionary regulatory practices. Today, the Spanish administration has a clear mandate to use regulation more carefully. Regulatory transparency is much better. The government has also recently strengthened administrative simplification policy, which should permit a reduction of the burdensome formalities that are strangling entrepreneurs throughout the economy. New institutions to manage regulations and construct sectoral regulatory regimes are promising.

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

Spain's regulatory reform programme has concentrated on economic regulations. Market openness, deregulation, privatisation, and liberalisation reforms of product, capital, and labour markets have shown positive results. Administrative regulations have also been a focus of reform, though results are not yet apparent. Little consideration has been given to improving the quality of social regulations,

although international estimates suggest social regulations impose costs 3-4 times higher than do economic regulations and that administrative regulations have a disproportionate impact on SMEs.

Remedying six weaknesses would be particularly beneficial:

- **Spain's 1997 policy on regulatory improvement does not provide a clear policy framework for reform.** A strong and articulated commitment is needed if a complex, government-wide, and multi-annual policy is to successfully achieve its ambition.
- **Reform institutions find it difficult to carry out administration-wide reforms.** Difficulties encountered in past reforms indicate that strong opposition to change will slow attempts to strengthen disciplines on regulatory quality. A more rationalised and centralised structure might be needed. The number and the duplication of competencies of inter-ministerial commissions, plans and diverse programmes erode the impact of the regulatory reform policy.
- **The regulatory process leaves excessive discretion to regulators.** Without explicit parameters, mandatory elements of quality control could become mere formalities, not useful to decision-making. The evaluation questionnaire in particular has not achieved its potential because it is not mandatory, it is implemented too late in the process, and it is not made public. Public consultation, too, would be more useful if there were clearer rules about who is consulted, when, and what material is shared. Ministerial orders, which often contain costly requirements, avoid the scrutiny and consultation controls altogether.
- **Transparency has improved significantly across the government.** Yet the Spanish system still falls short of best OECD practices. The consultation process is unsystematic. It is vulnerable to manipulation by ministries and capture by interest groups. The proliferation of regulations at multiple levels adds to the opacity of the legal and regulatory environment, makes it difficult for administrations to enforce the rules, and fosters a propensity for non-compliance by citizens and firms.
- **Administrative simplification policy and competition policy** should be more closely integrated with the policy to improve the quality of new regulations. It is more efficient to redress anti-competitive effects and paperwork burdens before regulations are adopted than trying to repair the damage once the regulations and administrative frameworks are in place.
- **Government actions rely on an excessively legalistic approach as the standard for quality.** A clear preference for legal details and technicalities is still pervasive in the preparation or application of regulations. This modus operandi is not yet balanced with an efficiency test. Lack of attention to cost-effectiveness and benefit-cost ratios is one reason for the undue reliance on control and command regulations instead of market-based or other approaches.

Communication on Better Regulation strategy and policies

As there is, as yet, no clear strategy on Better Regulation, communication is weak. Without a clear strategy, no clear communication is possible and none was evident. There is significant communication on e-Government initiatives, but not much beyond this. This affects not only external stakeholders who might wish to "buy in" to Better Regulation if they knew about it, but also the different levels of government, and of course ministries. The OECD peer review team heard from a wide range of stakeholders inside and outside government that communication is not strong, and the full picture of what is being done, and by whom, is not clear. There is no significant academic debate on Better Regulation (the focus is more on public policy), which could contribute to raising the profile of Better Regulation. It appears, however, that communication has recently improved, both between ministries through implementation of the burden reduction programme, and between levels of government.

Ex post evaluation of Better Regulation strategy and policies

There is a need to plan systematic and objective evaluations of the main Better Regulation policies and programmes. As matters stand the system is self referential, with no clear accountability mechanism (audit office or through the parliament, for example). Evaluation helps to raise standards, awareness and consistency, sustain momentum, and also to pinpoint what is working well and less well. With the change in status of AEVAL, it is not clear which institution could perform this function.

E-Government in support of Better Regulation

As in some other countries, e-Government is a driver to unlock blockages and introduce change. There is a strong interest in, and support for, the development of e-Government in general. E-Government rests on apparently well rooted and wide ranging policies and programmes, within a strong legal framework. The emphasis is explicitly on improving the transparency, efficiency and quality of the assistance and services provided to citizens and businesses. Online public services have been significantly developed in the recent past. There is extensive use of e-Government to implement the Action Plan on administrative burdens. It was beyond the scope of this review to test the depth of engagement and practical outcomes, however. It is important that the rights established in the 2007 law on citizen access to the administration are translated into concrete realities. Implementation is well advanced, according to the government at the national level. It is also important that the law is implemented at the regional and, especially, local government tiers.

Background

Economic context and drivers of Better Regulation

Since the return to democracy, Spain has enjoyed one of Europe's highest economic growth rates, and developed into the world's 12th largest economy. The Spanish government has implemented a wide range of economic and structural reforms over the last three decades, focusing on deregulation and liberalisation, which has reduced the role of government in the market. These reforms helped the economy to grow steadily at around 3% p.a. The situation changed dramatically in the wake of the global financial crisis. Spain was one of the European countries most affected by the crisis. In 2009, GDP dropped by 3.6%, reversing the healthy pattern experienced between 1994 and 2008. Unemployment is now a major concern, and is expected to peak at nearly 20% in 2010. Actions are needed to tackle labour markets (notably its dual structure of protected and precarious contracts), the fiscal challenge of reducing the large government deficit, the housing market, as well as further structural reforms to develop new sources of growth after the collapse of the housing construction sector. There are underlying issues of weak productivity growth. Although per capita income differences between regions have diminished over the last decades, some areas of Spain remain very poor, especially in the south.

The adoption of the Spanish National Reform Programme in 2005, in fulfilment of the European Lisbon Agenda, provided a focus to work in further support of ensuing effective competition in the goods and services markets; improving and provide greater transparency in sectoral regulation; increasing efficiency and modernising the public administration; and improving the commercial balance, by increasing the competitiveness of companies. This framework applies both to the central and subnational levels of government.

Spain has generally based its Better Regulation agenda on the EU Better Regulation policy. A key driver of Better Regulation over the last few years has thus been the EU. Spain is conscious of a lag in adopting European best practices. This has helped to move Better Regulation further up the government's agenda, as evidenced in recent major initiatives to strengthen programmes for the reduction of administrative burdens on business and the reinforcement of impact assessment for new regulations, as well as actions taken in the regions to strengthen regulatory management. In some areas Spain has set

ambitious targets which go beyond international standards (notably the 30% reduction target for administrative burdens, for all levels of government).

Internal drivers are weaker. The economic focus remains relatively muted, and many Better Regulation policies are aimed more broadly at citizens and users of the public administration, although this is partly driven by an understanding that an efficient public administration will contribute to competitiveness. The Ministry of the Presidency is conscious that the crisis should encourage a greater economic awareness of the cost of regulations, especially for SMEs (which account for an especially high proportion of business activity in Spain), and this positive view of Better Regulation is shared by officials in core ministries. However, despite strong engagement of the business organisations in the burden reduction programmes, the business voice for change is not as strong as in some other European countries. At the political level, the idea that Better Regulation can provide real support for economic recovery needs further reinforcement. Some high-level government declarations that cite Better Regulation as an important aspect of effective economic reform have started to emerge. More are needed. There does not appear to be any significant debate or studies by academics regarding Better Regulation and the links with growth and productivity.

As in several other European countries, e-Government has expanded significantly within the public administration, especially in the national government where nearly 90% of all administrative procedures (equivalent to 98% of case handled) have a fully implemented online version (see Figure 1.1), and in so doing has helped to support aspects of Better Regulation. One clear internal driver is a growing awareness that the government needs to tackle legal complexity, including the complexity arising from decentralisation and the distribution of legislative and administrative competences between levels of government. Overall, however, a sustained commitment to Better Regulation remains fragile and uneven across the administrative and political class.

Public governance context for Better Regulation

Spain has undergone profound transformations over the last two three decades. Part of this has been the result of accession to the European Union in 1985, which modified the regulatory context and affected legal traditions (as it has done in other EU member states). There have also been major changes from within:

- **Decentralisation.** A process of devolution of powers and competences has transformed Spain into a country with a high-level of decentralisation (see also Box 2.2). The process is ongoing. Devolution has progressed through a succession of stages which started with the approval of a new Constitution in 1978, and were reinforced by decisions of the Constitutional court. The speed and scope of decentralisation has varied, but today all 17 autonomous communities have developed a strong sense of regional and political identity, and they are effectively autonomous in their areas of acquired competence in the framework of the Constitution. Each has established its institutions, administration, and legal and regulatory frameworks. The issue of regional parliamentary representation is being addressed, via debate on the reform of the Senate in relation to its territorial representation.

- **Developments in the public administration.** The public administration has undergone a profound remodelling to fit the new context of democracy and decentralisation.[1] Significant efforts have been engaged by the government since the early 1980s to improve the efficiency of its public sector through professionalisation of the civil service, organisational restructuring, legal rationalisation, and privatisation. There is some way to yet. The corporatist legacy and legal traditions also stand in the way of a more modern approach, especially in terms of improving transparency. Change seems to be slow.[2] Corporatist and legal traditions stand in the way of a more modern approach, especially in

terms of improving transparency and instilling a more economically aware perspective into the rule-making process. It is generally accepted that the judicial system is also in need of modernisation. However, there is consciousness that the quality and efficiency of the public administration is important for competitiveness, of the need for change and the importance of broader (economic as well as social) perspectives. Public governance modernisation remains a major focus of government policy, and e-Government is being deployed to good effect to encourage change.

Decentralisation and public administration modernisation remain key areas of further change and development and adjustment. More recently and specifically, a major restructuring of the State executive took place in April 2009.[3] The aim was to streamline the structure and make it more effective,[4] with a view to accelerating implementation of the so-called Plan E (*Plan de Estimulo de la Economia y del Empleo*)[5] launched to counter the economic crisis. Further to these changes, the Prime Minister is now supported by a third Vice-President. The creation of a new Vice-Presidency -the Ministry for Territorial Policy - reflects a decision to structure government action along three main lines: to recover from the economic crisis and create new jobs; to carry out reforms to bring Spain into the 21st century; and to strengthen social and territorial cohesion.[6] To raise the profile of territorial policy. the Ministry of the Presidency has taken over the public governance functions (*Función Pública*) of the former Ministry of Public Administration.

Main developments in the Spanish Better Regulation agenda

Spain is a relative late comer to the Better Regulation, starting in the late 1990s with programmes for administrative simplification. Since then, the momentum has grown and a broader range of issues has gradually been tackled, including impact assessment. The different levels of government are now aware of the principles of Better Regulation, and have started to integrate a broadening agenda with a longstanding tradition of administrative simplification.

Table 1.1. Milestones in the development of Better Regulation policies in Spain

1999	Administrative Simplification Plan (led by the Inter-ministerial Commission for Simplification).
2002	Administrative Simplification Plan.
2003	Administrative Simplification Plan.
2004	Administrative Simplification Plan.
2005	National Reform Plan following the 2005 Lisbon Strategy setting overall objectives for reform, within which Better Regulation initiatives have been developed.
2008	– Action Plan for the Reduction of Administrative Burdens. – Two Council of Ministers Agreements on fast track actions to reduce administrative burdens. – Covenant with the Autonomous Community of Cantabria.
2009	– Further Council of Ministers Agreements on fast track actions to reduce administrative burdens. – Covenant with the FEMP. – Covenant with the High Council of Chambers of Commerce, Industry and

	Navigation, and the Spanish Confederation of Enterprises and SMEs (CEOE-CEPYME). – Agreement with the ACs and the municipalities on a common method for SCM implementation. – Royal Decree and Guidelines on RIA, setting up an integrated and mandatory core for *ex ante* impact assessments. – (2010) Finalisation of the measurement of the more than 300 information obligations from the six priority areas included in the Action Plan. – (2010) Renewal of the Covenants with the High Council of Chambers of Commerce, Industry and Navigation, and the Spanish Confederation of Enterprises and SMEs (CEOE-CEPYME).

Guiding principles for the current Better Regulation policy agenda

There is no integrated Better Regulation strategy document as such, as exists in a growing number of other European countries. The government's objective is to promote three perspectives in its Better Regulation agenda:

- a broader approach on administrative burdens, including citizens as well as businesses;
- a closer focus on the subnational levels of administration which are closer to citizens and businesses, especially SMEs; and
- a stronger use of impact assessments to help decision makers.

Main Better Regulation policies

The main policies reflect the government's objectives:

- **Impact assessment.** An improved impact assessment process has recently been put into place, fleshing the commitment in principle of the 1997 government Law. The main objective is to make an integrated memorandum of analysis of regulatory impact mandatory for the central administration. What before were three distinctive elements of the "regulatory dossier" are now mandatory integral parts of a single document.
- **Administrative burden reduction.** Since 2007, the government has reinforced its policies to reduce administrative burdens. The aim is to revitalise Spanish business and boost Spain's international competitiveness. The strategy is mostly aimed at business burdens though there is a small part for citizen burdens. The overall objective is to reduce administrative burdens on companies derived from Spanish regulations by 30% by 2012.
- **Collaboration with the Autonomous Communities and municipalities.** This takes a number of forms such as plenary sessions and specific working group meetings regarding methodological aspects of burden measurement, life events, judicial aspects and uses a range of approaches including conference and videoconferences. A flagship initiative is the establishment of the programme on administrative burden reduction which in principle at least covers regulations at all levels of government.

- **Other aspects of regulatory policy should be noted.** Efforts are being made to address challenging issues concerning legal access, clarity and security. The EU dimension of regulatory policy has also been developed and Spain's transposition record is one of the best.

Communication on the Better Regulation agenda

Communication is currently confined to some aspects of the Better Regulation agenda, notably e-Government initiatives as well as the administrative burden reduction programme. Beyond this, there is little evident, and the OECD peer review team found awareness of Better Regulation initiatives low.

The public is informed via Internet of administrative simplification and the reduction of administrative burdens. Mainly, the government has launched initiatives to publicise and diffuse e-Government programmes and know-how. In October 2008, the Spanish Minister for Industry, Tourism and Trade and the Minister for Public Administrations launched a training programme named "Tele-centres training and revitalisation plan", aimed at promoting the use of e-Government services by the citizens of some 1 500 rural areas of Spain, so as to break the digital divide.[7] In parallel, the Ministry of Public Administration launched the *060.Seek and Find* advertisement campaign, with the aim of making the e-Government portal[8] known to the public. The campaign was mainly run via the Internet, with radio and press support.

Ex post evaluation of Better Regulation strategy and policies

Unusually compared with other European countries which do not have such an institution, *ex post* evaluation is potentially already institutionalised, via AEVAL (the agency for evaluation of public policies). AEVAL picks up broad public policy issues as well as Better Regulation specific processes (impact assessment and burden reduction). However, recent institutional changes have changed the role of AEVAL, integrated it more firmly into the Presidency ministry, and moved it away from a potential role to evaluate Better Regulation from a distance. So far, no structured and integrated *ex post* evaluation of regulatory policies has been carried out.[9] There are, however, plans for an annual monitoring of impact assessment policy (but not of the Action Plan for the Reduction of Administrative Burdens).

E-Government in support of Better Regulation

Spain has made considerable efforts to apply ICT and e-Government to promote the information society and modernise its public administration (see also Annex A). There are well rooted and wide ranging programmes and policies in place, based on a strong legal framework. This is encouraging change, including not least closer co-operation between the Autonomous Communities and the central State.

As in many other European countries, e-Government has expanded significantly within the public administration, especially in the national government where nearly 90% of all administrative procedures (equivalent to 98% of case handled) have a fully implemented online version (see Annex A), and in so doing has helped to support aspects of Better Regulation. One clear internal driver is a growing awareness that the government needs to tackle legal complexity, including the complexity arising from decentralisation and the distribution of legislative and administrative competences between levels of government. Overall, however, a sustained commitment to Better Regulation remains fragile and uneven across the administrative and political class. Institutions to support the further development of e-Government have been deployed.

The 2007 Law on Electronic Access to Public Services for Citizens (which also covers companies) is a major and fundamental milestone.[10] It establishes rights and obligations that are essential for a functioning e-Government. These, however, are abstract and general rights and obligations. In November 2009, the Law was implemented (at least as regards the AGE) via a Royal Decree. Implementation also includes a strategic plan. The OECD peer review team was not able to go into depth on this issue, and was not therefore able to judge the real effect of the Law and recently adopted Royal Decree in practice. What

progress has been made on the ground, and how far are the rights prescribed by legislation now effective in practice? These are especially relevant questions in the Spanish context where the gap between the legal framework and reality can be wide. However, some external studies show progress in closing this gap.[11]

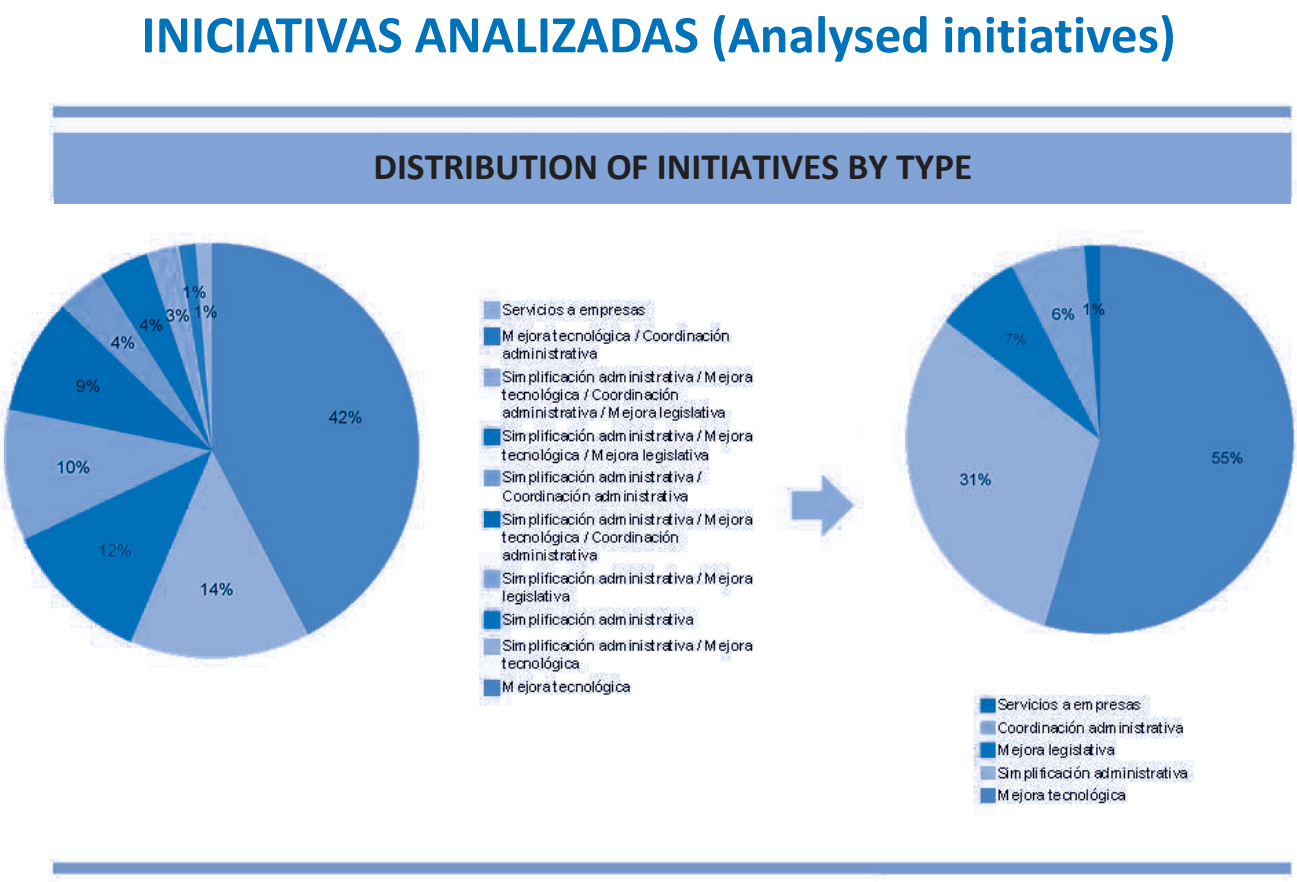
The national e-Government strategy is closely intertwined with the public sector modernisation agenda. It consists of the following programmes:

- *The Action Plan for Compliance with the Law on Citizens' Electronic Access to Public Services*, complementing Law 11/2007, led by the Ministry of the Presidency, with the objective of developing services of the central government (*administracion general del estado*) so that they are available electronically.
- *The Reduction of Administrative Barriers*, led by the Ministry of the Presidency, which aims at reducing the obligations of information/procedures that businesses must transact.
- *eModel*, led by the Ministry of the Presidency, seeking the modernisation of local governments, the simplification of procedures and the improvement of the provision of public services.

Approved by the Council of Ministers on 4 November 2005, *Plan Avanza* is Spain's national strategy for the promotion of the information society. It seeks to deploy ICT and e-Government more fully and effectively in support of economic competitiveness and productivity, social and regional equality, quality of life for citizens and modernisation of the public administration. In 2010, the Plan entered its second phase, *Avanza 2*, which will be active until 2015. Achieving a more efficient public administration through the promotion of innovative processes is one of the aims of the renewed Spanish information society strategy.[12]

The direct link with Better Regulation policies is made especially through the reduction of administrative burden programme. Extensive use is being made of e-Government. Most of the fast-track measures use ICT or the introduction of online services (see Figure 1.1 below). The initiatives are institutionally separate (although both are part of the Presidency ministry). Public consultation may also use ICT.

Figure 1.1. Breakdown of Better Regulation initiatives by type



Source: Ministry of the Presidency.

Notes

1. Law 50/1997 Ley del Gobierno was an important step in efforts to modernise political and administrative processes in the central administration. The law sets general good practice requirements on ministries for the development of regulations (including on impact assessment and public consultation). The Spanish Administrative Procedure Law of 1958 has been reformed twice in order to increase accountability and transparency across the administration. It modernised decision-making and the functioning of the State.
2. As one interlocutor put it to the OECD peer review team, Spanish society has changed but the modernisation of the public administration has not kept up. Another

interviewee put it that "Spaniards are masters in producing laws and then ignore them…".

3. See: Royal Decree 542 of 7 April 2009.
4. See*: www.la-moncloa.es/ActualidadHome/2009/220409Congreso.htm* (last accessed 10 August 2009).
5. See: *www.plane.gob.es.*
6. See: *www.la-moncloa.es/ActualidadHome/2009/070409CambioGob.htm* (last accessed 10 August 2009).
7. See: *www.red.es/articles/detail.action?id=2559.*
8. See: *www.060.es.*
9. In 2007, a working group was set up under the aegis of INAP to assess the public administration has coped with the changes in Spanish society over the past decades. The working group was supposed also to make recommendations in terms of Better Regulation, not least in the light of OECD and international experience. However, the working group report was not finalised and published, and it has not been used for structuring the current reform programme.
10. The implementation of the Law 11/2007 has also a strategic plan: *www.060.es/guia_del_estado/como_trabaja_la_administracion/administracion_electronica/LAECSP_11_2007/plan_estrategico-ides-idweb.html* and a tactical plan: *www.060.es/guia_del_estado/como_trabaja_la_administracion/administracion_electronica/LAECSP_11_2007/common/Plan_de_Actuacion.pdf* which could be worth considering.
11. Chapter 9 of the study eEspana2010, completed by Cap Gemeni on behalf of Orange, shows a steady progress on the implementation of the law in the Regional Governments and a nearly full implementation of the law in the national government. *www.informeeespana.ed/docs/eE2010.pdf.*
12. Plan *Avanza 2* is available at: *www.planavanza.es/InformacionGeneral/Estrategia2011/Documents/Estrategia_2011-2015_PA2.pdf.* The measures foreseen are described in the annex: *www.planavanza.es/InformacionGeneral/Estragegia2011/Documents/Anexos%20Estrategia_2011-2015_PA2.pdf.*

Chapter 2

Institutional capacities for Better Regulation

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

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

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

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

Assessment and recommendations

There have been developments since the last OECD report, and the recent expansion of Presidency ministry responsibilities is a positive move. Better Regulation is now fully at the centre of government and should acquire a higher profile as a result of the Presidency changes. The centralisation is still partly nominal, and needs to be translated into practice. The complexity and depth of the reform agenda must now be fully grasped. The establishment of a high-level group for administrative burdens is another positive move. Institutional structures for the pursuit of e-Government have also been set up.

Institutional capacities for Better Regulation will be helped by further culture change in the public administration. As in many other European countries, Spain's public governance culture is in a process of adaptation and change. A legalistic culture continues to predominate, which stands in the way of transparency and efficiency, as well as the application of a more economic perspective to regulatory management. Laws are regularly quoted in support of an issue, but there is consciousness of the need for change. The challenge is to spread new approaches beyond the small but significant core of ministries and agencies that have already moved a long way. At the political level, greater efforts need to be made to raise awareness. E-Government is being well used to encourage change.

A tradition of autonomous action needs to evolve towards a more collective approach. One of the main challenges facing Spain at this stage is for ministries to switch from being individual actors in regulatory management and (for some) drivers for Better Regulation, to taking a more collective and co-ordinated approach, rallying around the Presidency ministry co-ordinating responsibility. Ministries (as already noted in the 2000 OECD report) are quite autonomous and pursue their own initiatives (for example the Environment ministry with regard to impact assessment), which partly also reflects the fact that Better Regulation policies have so far been fragmented and incomplete. There is a certain confusion of often un-co-ordinated roles and activities.

There are some promising elements on which to build, to improve Better Regulation capacities, starting with the Presidency ministry unit. Capacities need to be developed to drive the Better Regulation agenda forward and secure its sustainability across the political cycles. Elements of a promising framework are already in place. These include the Presidency ministry unit (the Sub-directorate General for the Improvement of Procedural Regulation) and other champions of effective regulatory management among ministries, including the Ministry of Economics and Financial affairs (SMEs and competition policy, as well as front runner on impact assessment and transposition of the EU services directive), the Trade and Industry ministry (information society) and the Competition authority (development of impact assessment). It can be said that, very informally, an internal motor of officials seems to be taking shape with promising albeit scattered potential. This, however, is often based on the personal commitment of key officials, perhaps less on official ministry policy, and certainly not representative of the overall administration. This means that institutional capacities remain vulnerable and in increasingly urgent need of reinforcement for the long term. Some actors need to be encouraged into a stronger role. This may the case for example of the Ministry for Territorial Policy which is responsible for collaboration with the Autonomous Communities.

The Council of State and AEVAL are other key players. The Council of State plays a key gatekeeper role in the development of draft regulations on their way to the Council of Ministers, but also as adviser to the government in broader terms. The National Agency for the Evaluation of Public Policies and Quality of Services (AEVAL), which operates at arm's length of the Presidency ministry, has a mandate to enhance the performance of the public service and to improve general understanding of the effects of public policies.

In the first place, the Presidency ministry role as co-ordinator and advocate for Better Regulation needs to be strengthened. The Presidency ministry's expanded responsibilities for Better Regulation appear to have been acquired more by default than design, a core priority of the government reshuffle behind it being an upgrade of territorial policy, rather than Better Regulation as such. The

Presidency unit on Better Regulation is small relative to the size of the country and compared with established units in some other European countries. It does not yet match the proposals set out in the 2000 OECD report, for an oversight unit with legal authority to make recommendations to the Council of Ministers, adequate capacities for co-ordination, and enough resources and expertise to provide an independent opinion on regulatory matters. But it does now regroup key Better Regulation portfolios including impact assessment, administrative burden reduction strategy, simplification, and consolidation of e-Government strategy. It has important links to other key functions within the Presidency ministry such as relations with the Parliament and management of the agenda for the Council of Ministers. One small but significant issue is the name of the unit, which does not reflect a forward looking core responsibility for Better Regulation.

Recommendation 2.1. Strengthen the resources and capacities of the Presidency unit so that it can fully address its new responsibilities, perhaps partly through secondments from the other core ministries for Better Regulation. A change of name for the unit should be considered, to better reflect its real purpose and work.

Strengthening the Presidency ministry will also require a stronger and more integrated co-ordination network across the central administration. Generally, the Spanish system does not take a systematic approach to the co-ordination of policy and law making, reflecting the autonomous nature of the administration. A small number of high-level committees have been established to co-ordinate policy in some key areas such as economic affairs, and there is a State secretary steering group (CGSYS) for the preparation of meetings of the Council of Ministers. Technical General Secretariats within each ministry oversee legal drafting as well as budget and other resources. For Better Regulation an important development has been the establishment of a High-level Group for the Action Plan on Administrative Burdens. There is no specific arrangement for impact assessment. The current arrangements are not optimal for raising the profile of Better Regulation and using the energy of the core group of Better Regulation champions. The institutional support framework for administrative burden reduction could be used as inspiration to strengthen other parts of Better Regulation policy. It has a number of strong points: a clearly stated mandate; explicit methodology; a support structure to assist ministries in helping to achieve their aims; and a steering/monitoring mechanism through the High-level Group. This contrasts positively with the institutional governance framework for impact assessment, for example.

Recommendation 2.2. Consider how best to strengthen networks for sharing and overseeing Better Regulation processes, including whether the framework supporting administrative burden policy could be replicated. A specific role could be allocated to the CGSYS to oversee Better Regulation aspects of the dossiers it submits to the Council of Ministers. The Presidency ministry could preside a group of core and interested ministries and agencies, both at political and official level, on impact assessment as well as other elements relevant to the Better Regulation agenda.

Training needs for Better Regulation are being addressed, this is important. Beyond the traditional training to officials in support of the development of regulations, overseen by the Presidency ministry, and the courses run by the well established National Institute for Public Administration (INAP), the Presidency ministry has been developing special training on the reformed impact assessment procedures, which is being unrolled progressively. This is an important part of the work needed to reinforce a change of culture among ministries.

Recommendation 2.3. Continue the work to build up training for officials on Better Regulation processes. This should be a mandatory part of training for new and established officials.

There is no specific external watchdog for Better Regulation, although part of this role is covered by the Council of State and AEVAL. A growing number of countries have either established an autonomous body external to the administration to encourage pressure for change, and publicise developments, or are getting the support of national audit offices for evaluating progress, or both. For example the Netherlands ACTAL and the United Kingdom National Audit Office have played a significant role in support of Better Regulation developments. The Council of State is, however, an important external influence. To some extent, the watchdog role also used to be taken by AEVAL. Its mandate has however been downsized in relation to Better Regulation issues.

Recommendation 2.4. Review the role played by different actors external to the administration and consider whether this leaves any gaps. Consider whether an external watchdog to oversee compliance with Better Regulation processes would help.

The role of Parliament in Better Regulation is important and has so far been neglected. Apart from EU matters, Parliament is not yet specifically organised for Better Regulation and there are no structures to address regulatory quality as part of the law making process, as exist in some other European countries. It seems that Parliament still needs to grasp the relevance of the Better Regulation agenda.

Recommendation 2.5. Encourage Parliament to take a closer interest in Better Regulation, for example by sending them individual impact assessments and the planned annual evaluations on impact assessment policy. Consider sending Parliament an annual progress report, in which developments in Better Regulation are linked to progress in economic recovery.

Box 2.1. Comments from the 2000 OECD report

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

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

Such a central oversight unit should have clear responsibility for regulatory quality control across the administration, and should be integrated directly into the rulemaking process. To ensure that it has a broad policy view, it should be close to the Prime Minister or Council of Ministers, rather than in a sectoral or line ministry. For this central unit to deliver expert advice and to co-ordinate, two distinct elements should be strengthened. First, the unit would need a well-resourced secretariat with cross-governmental views. Its personnel should be drawn largely from non-regulatory ministries to enhance its "challenge" function; it should have sufficient financial resources to collect and assess information and buy the expertise of private think-tanks and scholars; and its role in the government's legislative and regulatory procedures should be formalised. Second, the unit would need to assist in designing thematic and sectoral programmes of reforms, co-ordinated across all relevant policy areas.

With the regulatory ministries, the unit would develop performance targets, timelines, and evaluation requirements, and would advise the centre of government on the quality of regulatory and reform proposals from regulatory ministries. The central unit could also assist in reviewing new regulations under a "notice and comment" process. One possible interim solution would be to create a secretariat on regulatory reform reporting directly to the Council of Ministers, or eventually to the *Comision Delegada*. In the longer-term, the government should consider creating a permanent advisory and analysis central unit on regulatory reform that is responsible to the Prime Minister.

Background

The Spanish public governance context

Spain has undergone profound transformations over the last two three decades. Part of this has been the result of accession to the European Union in 1985, which modified the regulatory context and affected legal traditions (as it has done in other EU member states). There have also been major changes from within:

- **Decentralisation.** A process of devolution of powers and competences has transformed Spain into a country with a high-level of decentralisation (see also Box 2.2). The process is ongoing. Devolution has progressed through a succession of stages which started with the approval of a new Constitution in 1978, and were reinforced by decisions of the Constitutional court. The speed and scope of decentralisation has varied, but today all 17 autonomous communities have developed a strong sense of regional and political identity, and they are effectively autonomous in their areas of acquired competence in the framework of the Constitution. Each has established its institutions, administration, and legal and regulatory frameworks. The issue of regional parliamentary representation is being addressed, via debate on the reform of the Senate in relation to its territorial representation.
- **Developments in the public administration. The public admini**stration has undergone a profound remodelling to fit the new context of democracy and decentralisation.[1] Significant effor[t]s have been engaged by the government since the early 1980s to improve the efficiency of its public sector through professionalisation of the civil service, organisational restructuring, legal rationalisation, and privatisation. There is some way to yet. The corporatist legacy and legal traditions also stand in the way of a more modern approach, especially in terms of improving transparency. Change seems to be slow.[2] Corporatist and legal traditions stand in the way of a more modern approach, especially in terms of improving transparency and instilling a more economically aware perspective into the rule-making process. It is generally accepted that the judicial system is also in need of modernisation. However there is consciousness that the quality and efficiency of the public administration is important for competitiveness, of the need for change and the importance of broader (economic as well as social) perspectives. Public governance modernisation remains a major focus of government policy, and e-Government is being deployed to good effect to encourage change.

Decentralisation and public administration modernisation remain key areas of further change and development and adjustment. More recently and specifically, a major restructuring of the State executive took place in April 2009.[3] The aim was to streamline the structure and make it more effective,[4] with a view to accelerating implementation of the so-called Plan E (*Plan de Estimulo de la Economia y del Empleo*)[5] launched to counter the economic crisis. Further to these changes, the Prime Minister is now supported by a third Vice-President. The creation of a new Vice-Presidency -the Ministry for Territorial Policy - reflects a decision to structure government action along three main lines: to recover from the economic crisis and create new jobs; to carry out reforms to bring Spain into the 21st century; and to strengthen social and territorial cohesion.[6] To raise the profile of territorial policy, the Ministry of the Presidency has taken over the public governance functions (*Función Pública*) of the former Ministry of Public Administration.

Institutional framework for the Spanish policy, law-making and law execution process

Spain is a parliamentary democracy, with the monarch as head of State. The Spanish government is regulated by the Constitution and legal provisions. The centre of the executive is based around the Ministry of the Presidency. The Prime Minister is supported by three Vice-Presidents. The Parliament is bicameral. There is a unitary judicial system for the whole territory. There is also a Constitutional Court. Significant decentralisation has taken place with, in particular, the subdivision of the territory into Autonomous Communities.

Box 2.2. Institutional framework for the Spanish policy, law making and law execution process (State level)

The Head of State

The monarch is Head of State. The Constitution states that the monarch is "the symbol of the unity and permanence [of the State]. King Juan Carlos I has been Head of State since 1975. He arbitrates and moderates the regular working of the institutions of State, assumes the highest representation of the Spanish State in international relations".[7] The King approves and promulgates the laws; summons and dissolves the *Cortes Generales*; calls elections under the terms provided in the Constitution; and proposes a candidate for President of the Government and, as the case may be, appoints him or removes him from office, as provided in the Constitution. He also plays an important role as moderator in institutional life. He must express the State's assent to entering into international commitments through treaties, in conformity with the Constitution and the law. The King also exercises supreme command of the Armed Forces, declares war and makes peace, following authorisation by the *Cortes Generales*.

The executive

The Spanish government is regulated both by constitutional and legal provisions.[8] The centre of the executive consists of the Premiership and the Ministry of Presidency, also known together as "*La Moncloa*" from the name of the official residence of the Prime Minister in Madrid. A Secretariat, a Private Office and an Economic Office make up the Premiership. The Premiership and the Ministry of the Presidency are effectively merged, from a functional perspective.

All Spanish governments since 1977 have been formed by a single party, supported by a relative or absolute majority in the legislature. All five Prime Ministers since 1978 have also been at the head of their party. The Prime Minister heads the government, has formal supremacy over line ministries, and has significant powers. S/he can decide the size and structure of the Council of Ministers; appoints the ministers and has the exclusive power of their dismissal. The Prime Minister can also dissolve the parliament.

The Prime Minister (President of the Government) is supported by three Vice-Presidencies:

- **Ministry of the Presidency** (*Ministerio de la Presidencia*). This is the first Vice-Presidency. It supports the government politically and technically. In particular, it determines the agenda of the Council of Ministers. The first Vice-Minister chairs the Commission of Secretaries of State and Sub-Secretaries, which meets weekly to co-ordinate and manage the items to be discussed by the Cabinet. In addition, the Ministry of the Presidency is responsible for the co-ordination of the overall policy activity of the executive. The portfolio includes tasks related to the public administration and the civil service. In particular, it includes the main Better Regulation structures. The Ministry manages the relations of the executive with the parliament (through the *Secretaría de Estado de Asuntos Constitucionales y Parlamentarios*). It also heads the so-called "peripheral administration" (direction and oversight of all the central administration and its public organism services in the respective Autonomous Communities (art. 22.1 Law 6/1997)), dealing with the co-ordination and support of the delegations of the General State Administration (*Administracion General del Estado* - AGE*)* in the Spanish territory. Finally, the First Vice-Minister is also the Prime Minister's spokesperson. A number of autonomous bodies are attached to the Ministry of Presidency, including the Official State Gazette (*Boletin Oficial de Estado*)[9] and the national Centre of Political and Constitutional Studies.[10]

- **The Ministry for the Treasury** (*Ministerio de economia y hacienda*). It holds the second Vice-Presidency. The Ministry is responsible for proposing and executing the general directives and measures supporting the economic policy of the government and, especially, policy relating to the inland revenue, budgets and expenditure, and public companies.

- **The Ministry for Territorial Policy** (*Ministerio de Politica Territorial*). It includes the core functions of the former Ministry for Public Administration, covering issues related to co-ordination between the AGE and the ACs (essentially regional policy).[11]

The current government is made up of 17 ministers, including the three vice-presidents, supported by state secretaries. State secretaries are political appointees but may also have a professional side. The civil service is politically neutral up to the level of deputy director-general. Higher posts may be held either by career civil servants or political appointees.

The State central administration together with attached regulatory agencies and bodies, and the so called peripheral administration (State officials working in the subnational levels of government) is collectively known as the General State Administration (*Administracion General del Estado* – AGE). The AGE also includes the State administration in foreign countries, such as embassies and consulates.

The legislature

The legislative branch is a bicameral system composed of a Senate (*Senado*) and a Congress of Deputies (*Congreso de los Diputados*). Together, they form the *Cortes Generales*. The parliament elects the Prime Minister. Both represent the electorate of the national territory and participate in the legislative procedure.

The Congress is the more significant player. The Constitution of 1978 endowed the Congress with a series of duties and powers that underpin its supremacy.[12] Besides approving legislation and the State budget, the Congress authorises the formation of the government, may adopt motions of censure and questions of confidence, is the first to know about bills and draft budgets, and must confirm or reject amendments or vetoes that the Senate may approve concerning these legislative texts. There are 350 deputies, elected for four years from closed party lists in individual constituencies (provinces). Members of Congress represent their electoral constituency as well as the Spanish people.

The Senate is in principle the chamber of territorial representation in Spain,[13] and its main activities are related to territorial integration and regional development. Besides its legislative functions, the Senate exercises control over government actions, (through questions, interpellations, motions, etc.) and participates in the ratification of international treaties. Of its 259 members, 208 are directly elected while 51 senators are appointed as regional (AC) representatives. In a number of important tasks, the powers of the Senate equal those of the Congress. They are the approval of co-operative agreements between ACs; the allocation, distribution and regulation of the Inter-territorial Compensation Fund; the adoption of measure to compel the ACs to comply with their constitutional and legal obligations or curb their activities when the interest of Spain is seriously undermined; and the assessment of the need to legislate on the harmonisation of the regulations of the Autonomous Communities.

The General Commission of the Autonomous Communities (*Comisión General de las Comunidades Autónomas*) plays an important role in the participation of ACs in the national legislative process. The General Commission regroups Senators, as well as representatives of the national government and of the governments of the ACs. The Commission produces reports that are an official channel for the ACs to express their position during the legislative process.

The judiciary

Judicial power is unitary. There is one judicial structure covering the whole of Spain and all matters including the public administration,[14] the only exception being the person of the King.[15] The ACs use the State courts (apart from appeals on administrative decisions relating to their own powers and competences). Special courts are forbidden (for example, there is no longer a separate military jurisdiction).

The General Council of the Judiciary (*Consejo General del Poder Judicial (CGPJ)* is responsible for overseeing and ensuring the autonomy and independence of judicial power, including all the courts.[16] As such, it is not a judicial but an administrative body. It is enshrined in the Constitution, and therefore enjoys the same status as the other institutions mentioned in the latter, such as the government, the Congress and the Senate, and the Constitutional Court.

Justice is administered at various levels by a range of independent courts. Each territorial unit has specific courts. From the lowest to the highest rank, the system consists of:

- **Municipalities and judicial districts**.[17] Courts of peace (*juzgados de paz*), courts of first instance and examining courts (*juzgados de primera instancia y instrucción*).
- **Provinces. Provincial courts** (*audiencias provincials*).
- **Autonomous Communities.** Higher Courts of Justice (*Tribunales Superiores de Justicia*) as the highest appeal court for administrative and legal acts in their jurisdiction.
- **National level.** The national court (*audiencia nacional*), and the Supreme Court (*Tribunal Supremo*) have national jurisdiction.

The Supreme Court is the highest judicial institution for all types of law (apart from constitutional affairs). It is the ultimate appeal court for civil, criminal, administrative, social and military matters. It deals with administrative appeals on, and disputes about, acts issued by the Council of Ministers, government commissions, the Congress and the Senate, the Constitutional Court, the Court of Auditors and the Ombudsman (*Defensor del Pueblo*). The President of the *Tribunal Supremo* is appointed by the King.

The Constitutional Court

The Constitutional Court (*Tribunal Constitutional de España*) is the supreme institution interpreting the Constitution; controlling the constitutionality of legal acts and international agreements; as well as settling disputes on constitutional issues and allocation of competences between levels of government. It also ensures the respect of fundamental rights and freedoms.[18] It is not a part of the court system, but an independent institution with its own rules and rights.[19] It is made up of twelve judges appointed by the King, four of whom are nominated by the Congress by a three-fifths majority vote of its members, four nominated by the Senate by an identical majority vote, two nominated by the government and two by the General Council of the Judiciary.

The Constitutional Court may be appealed on the following main issues:

- **Unconstitutionality.** The "appeal of unconstitutionality" (*recurso de inconstitucionalidad)* is an appeal alleging unconstitutionality of acts and statutes having the force of an act. An "issue of unconstitutionality" (*cuestion de inconstitucionalidad*) starts if a judicial body appeals to the Court because it considers that a regulation with the force of an act may be contrary to the Constitution.
- **Conflicts of competence between the State and one or more ACs**; **or between two or more ACs; or between constitutional bodies of the State.** Conflicts may be positive or negative. The former refer to controversial regulations without legal status relating to the constitutional and statutory distribution of competences between the State and the ACs. Such cases may be filed by the State or the ACs. Negative conflicts, by contrast, aim to attribute the ownership of a competence where none is considered to be competent. Such cases may be promoted by individuals and by the State Government. Conflicts between constitutional bodies of the State relate to conflicts between the State Government, the Congress, the Senate and the General Council for Judiciary Power on their respective competences.
- **Defence of the local autonomy**, in accordance with Chapter IV of Title IV of the Organic Law on the Constitutional Court.

Regulatory agencies

There are some 300 so-called "public bodies" (*organismos públicos*), regulated by law.[20] They exist in all sectors of activity and take various shapes:

- autonomous bodies (o*rganismos autónomos*);
- public business entities (*entidades públicas empresariales*);

- state agencies (*agencias estatales*); and
- other bodies with specific regulations.

The first law to regulate public organisations in 1997 established that they each have "a different legal status, their own resources and treasury, as well as administrative autonomy"; they also have "the administrative powers to fulfill their objectives…with the exception of the power of expropriation". Broadly speaking they have operational autonomy whilst reporting to a parent ministry. Their degree of independence varies, reflected in a different intensity of relationship with their parent ministry.

The law on State agencies of 2006 for the improvement of public services seeks to consolidate a shared framework for regulatory agencies. Agencies "are public law entities, with a public legal status, their own resources, administration autonomy and powers to exercise administrative authorisations, which are created by the government to fulfil the programmes corresponding to public policies which are developed by the General State Administration in the sphere of its competences".[21] The complexity of the public organisation framework and resistance to change means, however, that so far only 20 out of the 300 relevant bodies have been adapted to the new provisions.

The pluri-annual management contract (*Contrato de gestión*) is a key instrument of accountability and control for ministries. It is approved by an order jointly adopted by the parent ministry, the Ministry of the Presidency and the Ministry of Economy and Finance, and it includes objectives and results to be obtained as well as related plans and resources to be made available. It is refined into annual action plans. Agency funding depends on performance, giving them an incentive to implement their action plans.

National regulatory agencies are well established in certain sectors such as finance, the infrastructure industries and health.

Subnational levels of government

Spain is divided into 17 Autonomous Communities (ACs)[22] and two Autonomous Cities (*Ciudades con Estatuto de Autonomía, Ceuta y Melilla*). Each AC 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.

General policy co-ordination and the role of the Moncloa

The Premiership has formal supremacy over line ministries but as in many other European countries, it plays more of a co-ordination than a leadership role. The Prime Minister has significant powers but in practice line ministries are also strong and exercise significant autonomy over their affairs. The General Commission of General Secretaries and Sub Secretaries (CGSYS) plays a key role in the preparation of Cabinet meetings, and a small number of high-level committees play an important role is some areas, such as e-Government. The Cabinet has delegated significant powers over economic policy to a high-level commission.

Box 2.3. Policy management and co-ordination at state level

The role of the *Moncloa*

It has several key functions in the policy making process:

- **Co-ordination.** The Minister of the Presidency is formally in charge of internal co-ordination. S/he chairs the preparatory committee in which all draft bills are discussed before a meeting of the Council of Ministers. It co-ordinates legislative timing, collecting or circulating documents and overseeing the ministerial proposals that it will include in the agenda of the Council of Ministers.

- **Policy evaluation.** The *Moncloa* is not directly involved in the development of policy. However, the Private Office and the Economic Office of the Prime Minister are responsible for evaluating the initiatives of line ministries. Through mirror units, they oversee the flow of policy information addressed to the Prime Minister; provide advice; and assess the activity of the AGE (AEVAL also carries out evaluations as part of its Annual Work Programme).

- **Gatekeeping.** The formal supremacy of the Prime Minister over line ministers means that the *Moncloa* acts as gatekeeper for government business. It can return ministries' drafts, bills or other proposals for further work on the basis of policy considerations. However, the *Moncloa* is a political structure, not an administrative entity. The Prime Minister is briefed regularly only on the most important and topical dossiers. The General Commission of General Secretaries and Sub-secretaries (CGSYS) is the key filter for determining what goes into the agenda of the Council of Ministers for discussion, together with the Delegated Commission for Economic Affairs regarding economic issues (see below).

The preparatory process for Council of Ministers meetings: The role of the CGSYS

The General Commission of General Secretaries and Sub Secretaries (CGSYS) plays a key role in the preparation of Cabinet meetings. It filters out or settles most issues so that the Council of Ministers can focus on strategic policy debates. It may send problematic proposals back to the relevant ministry. It is composed of top officials of the line ministries. It meets every Wednesday and draws up a provisional agenda of the Council of Ministers (the so called "black index") in the week previous to the Council of Ministers' weekly Friday meetings. The Prime Minister's Private Office then assesses the relative importance of agenda items on the black index and identifies where there are likely to be divergent positions.

Inter-ministerial co-ordination

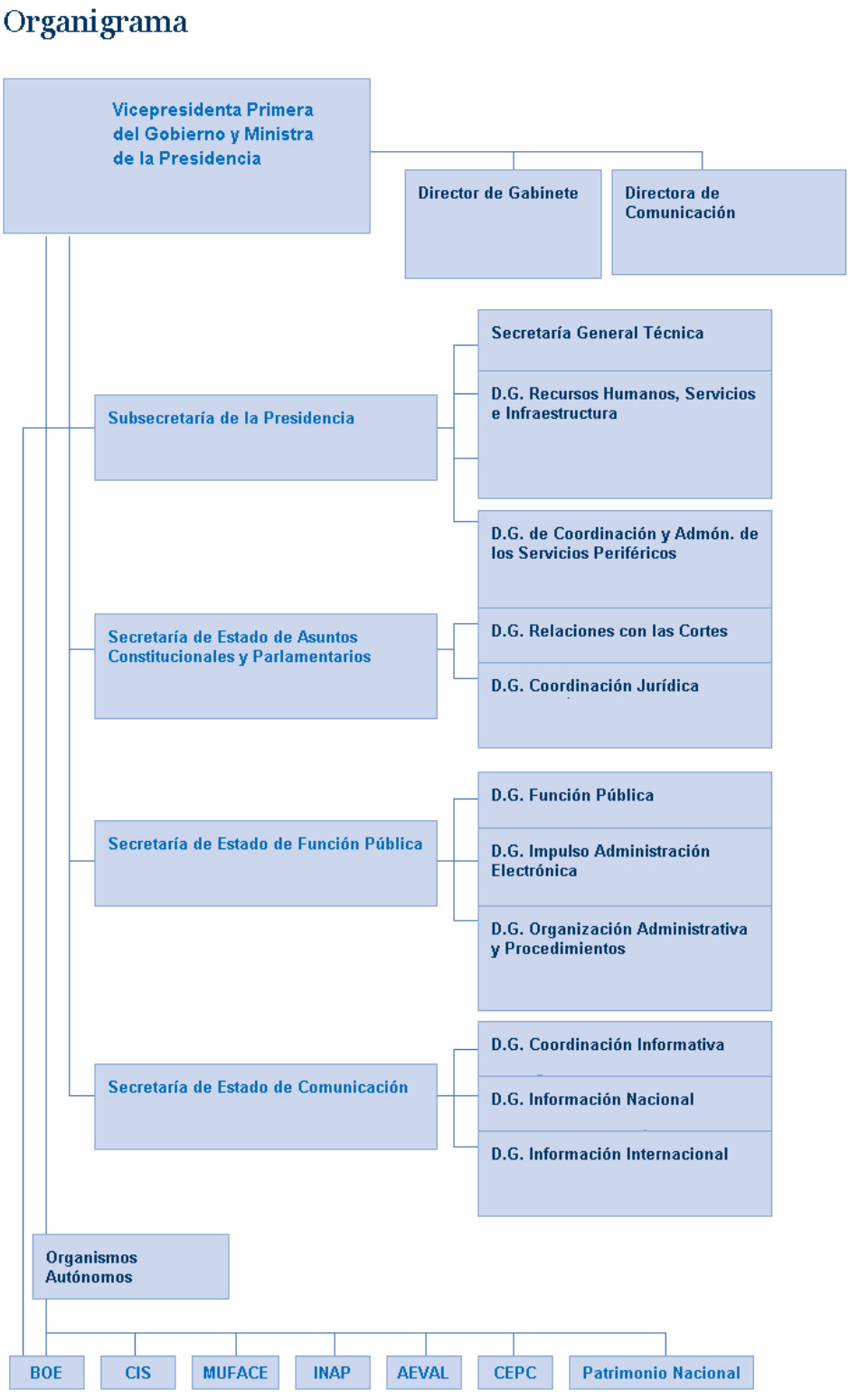
Cabinet committees at ministerial level are political entities that cover the following issues: Crisis Situations, Autonomous Regions Policy, Scientific Research and Technology Affairs, and Intelligence Affairs. However, none meets on a regular basis nor helps prepare the meetings of the Council of Ministers.[23] Additionally, administrative ministerial Committees for Electronic Administration were created in 2005 and are overseen by an inter-ministerial *Consejo Superior de Administración Electrónica*. The Committees co-ordinate e-Government developments within the central ministries. Similar other bodies exist at ministerial and inter-ministerial level, for instance on public procurement, gender equality, etc.

The Delegated Commission of the Government for Economic Affairs (*Comision Delegada del Gobierno para Asuntos Económicos*) has significant delegated power from the Council of Ministers to deal with economic issues of political relevance. The Commission was responsible for initiating, developing and supervising most of the structural reforms and economic liberalisation measures since the 1990s. It normally meets on Thursdays and filters out or settles economic issues the day before the meeting of the Council of Ministers. It is chaired by the Minister of Economy and Finance, who is the second Vice-Prime Minister. The Secretary of State of Economy provides the secretariat with the technical assistance of the Directorate General for Economic Policy and Defence of Competition. Members of the Commission are nine ministers whose portfolio is related to economic and budgetary policies, as well as the directors of the Prime Minister's Secretariat and its Economic Office.

Beyond these structures and issues, systematic inter-ministerial co-ordination, either between ministers or at official level, is rare. Many administrative committees exist formally and facilitate the exchange of information, but in practice they do not co-ordinate the drafting of policy proposals or decision-making between ministries. Inter-ministerial co-operation is generally carried out informally between officials or more rarely, in specialised *ad hoc* working groups.[24] There is an inter-ministry Intranet system for discussions/exchanges, in which other ministries can comment on a lead ministry's proposals for new policy/legislation.

The Technical General Secretariats within each ministry are also relevant. Besides managing budgetary and other resources, they oversee legal drafting quality within their ministry.

Figure 2.1. Ministry of the Presidency Organisation chart



Source: Official website of the Ministry of the Presidency.

Developments in State Better Regulation institutions

A unit for the development of more effective regulatory management as part of the modernisation of the administration has been in place within the centre of government for the last ten years or so. Over this period it has remained attached to the State Secretariat for Public Service but the name of the unit has changed, and some of its functions have been relocated (and then moved back again). Most importantly, the unit has recently moved from the former Ministry of Public Administration to the Ministry of the Presidency, and its State Secretary (the State Secretary for Public Service) now reports to the first Vice-President. The unit's relocation to the Ministry of the Presidency, even if it was part of a broader strategy not specifically related to Better Regulation, is important in terms of putting Better Regulation functions at the heart of the government, linked through the Ministry to other core functions such as relations with the parliament and management of the agenda of the Council of Ministers.[25]

Table 2.1. Milestones in the development of Better Regulation institutions in Spain's central administration

1999	Inter-ministerial Commission for Simplification (sets up administrative simplification plan).
2000	Directorate General for Inspection, Simplification and Quality of Services established within the State Secretariat for Public Services, part of the State Secretariat for Public Service within the Ministry of Public Administration.
2004	Directorate General for Administrative Modernisation established, for the promotion of electronic administration, includes the Administrative Simplification sub-directorate. Directorate General for Inspection, Evaluation and Quality of Services, includes the Division for Analysis of Regulatory Impact with the aim of developing proposals, methodologies and training for the gradual introduction of regulation management techniques in the regulatory preparation and decision-making process; responsible for issuing reports and systematic analysis of regulation management and the evaluation of impact in this area.
2005	Creation of the e-Government High Council (CSAE).
2007	Establishment of National Agency for the Evaluation of Public Policies and Quality of Service (AEVAL), responsible for evaluation of public policy programmes, which also takes over the functions of the Division for Analysis of Regulatory Impact, and is given responsibilities regarding administrative burden reduction. Creation of Directorate General for Organisation and Inspection of Services. Sub-Directorate General for the Improvement and Simplification of Procedural Regulation created at the same time, depends directly on the Secretary-General for Public Administration. Creation of High-level Group (*Grupo de Alto Nivel, GAN*) to prepare an Action Plan for the Reduction of Administrative Burdens.
2008	Secretary-General becomes Secretary of State and Sub-directorate integrates the now named DG for Administrative Organisation and Procedures.
2009	Major government re-organisation, as part of which the Sub-Directorate General for the Improvement and Simplification of Procedural Regulation is moved to the Ministry of the Presidency (Ministry of Public Administration is disbanded). AEVAL functions as regards Analysis of Regulatory Impact move (back) to the State Secretariat for Public Service within the Ministry of the Presidency.

Key institutional players for Better Regulation policy at the national level

The executive centre of government

The most important player is the Ministry of the Presidency. However there are other Better Regulation champions (or potential champions). These include the Ministry for Territorial Policy, the Ministry of Economics and Finance, the Ministry of Industry, Tourism and Trade, and the Environment Ministry. The Ministry of Equality is also significant in terms of its role in impact assessment (Chapter 4).

The Ministry for Territorial Policy was created in 2009, further to the general re-shuffle which sought to enhance the rationality and efficiency of overall governmental action.[26] Through its internal bodies, the Ministry's mandate focuses on stimulating collaboration between the ACs, in its different aspects. Moreover, the Ministry performs the legal monitoring of the compatibility of the government and regional proposals with the constitutional provisions related to the allocation of competences. Its *Comisión de Seguimiento de Disposiciones y Actos de las Comunidades Autónomas* monitors, in association with the Ministry of the Presidency, the implementation of technical legal measures to improve the adequacy of State regulation projects to the constitutional distribution of powers.[27]

The Ministry of Economics and Financial Affairs is the parent ministry for the competition authority (National Competition Commission), and it has also been responsible since 1996 for SME policy. *Plan Avanza* is managed at the central level by the Secretary of State for Telecommunications and the Information Society (SETSI) within the Ministry of Trade, Tourism, Industry, and Energy, as the competent authority for Information Society Development. The Environment ministry has run an important pilot project for administrative burden reduction (this pilot project was included in the Action Plan for Burden Reduction and developed through coordination between the Environment ministry and the Presidency ministry.

Ministry of the Presidency

The Sub-Directorate General for the Improvement and Simplification of Procedural Regulation (*Subdirección General de Mejora y Simplificación de la Regulación Procedimental*), within the General Directorate for Administrative Organisation and Procedures at the State Secretariat for Public Service (*Secretaria de Estado para la Función Pública*), and now located in the Ministry of the Presidency, has been the focus for regulatory management and development over the last few years. Prior to the April 2009 reorganisation, the Sub-Directorate was located in the former Ministry of Public Administration. According to the 2009 Royal Decree which frames its work, the Sub-Directorate "promotes the simplification of regulatory procedures through inter-administrative co-operation, and identifies and proposes actions aimed at ensuring their proportionate and efficient application".[28]

The Sub-Directorate now leads and co-ordinates the main Better Regulation initiatives: [29]

- Regulatory Impact Assessment and its upgrading.
- Administrative burdens reduction strategy implementation.
- Simplification of administrative procedures.

The unit, headed by the deputy-director, currently has a team of two co-ordinators, one for burden reduction and one for ex-ante analysis of regulation; five senior advisers (international relations, enterprises, local and regional powers, burden reduction, RIA), three technical advisors (support, especially computing and budget) and three auxiliary staff.

Co-ordination across central government on Better Regulation

Co-ordination on Better Regulation has grown up around the promotion of impact assessment following the 2009 Royal Decree, and the establishment of the Action Plan for the Reduction of

Administrative Burdens. Both co-ordination activities are now centred under the Ministry of the Presidency:

- Since April 2009, the Ministry of the Presidency leads the oversight and promotion of RIA and prepares an annual report to the Council of Ministers on progress. Its activities include the development of training for RIA across the administration.
- A High-level Group (*Grupo de Alto Nivel, GAN*) drew up the Action Plan on administrative burdens in 2007 and continues to lead the process. It is chaired by the Ministry of the Presidency and comprises the Secretary of State for the Economy, the Secretary of State for the EU, the Director of the Prime Minister's Economics Office and the Undersecretary of the Ministry of Trade, Industry and Tourism. The Labour, Health and Environmental ministries are also present. Each ministry has also designated a point of contact for the work.

Regulatory agencies and Better Regulation

Regulatory agencies generally follow the lead of their parent ministry as regards the application of Better Regulation tools and processes, within the framework of the statute which set them up and their action plan. It is unusual for them to develop their own Better Regulation agenda.[30]

The National Competition Commission (*Comisión National de Competencia*, CNC) has been especially active as a champion of Better Regulation and improved impact assessments. Its mandate covers the whole national territory. It has issued a number of reports, including a guide for enhancing impact analysis in the preparatory phase, and promoting the use of alternatives to regulation (see chapter four). The CNC reports on Better Regulation cover all the public administrations in Spain, with nonetheless more emphasis on the AGE.

Other agencies which are active in the field of Better Regulation include:

- The National Energy Commission (*Comisión National de Energia,* CNE) is about to adopt an internal Strategic Plan aiming at promoting Better Regulation in the sectoral regulatory framework.
- National Securities Market Commission (*Comision Nacional del Mercado de Valores,* CNMV) seeks the opinion of the CNMV Advisory Committee on all its draft regulations and puts them online for public consultation as often as possible.
- The Telecommunications Market Commission (*Comisión del Mercado de las Telecomunicaciones,* CMT) enjoys functional independence, *i.e.* it is not subject to control by the government in exercising its functions, but only to economic and financial control as defined in the General Budget Act.[31] While not establishing a comprehensive regulatory reform agenda, a number of CMT internal resolutions commit the Commission to apply Better Regulation principles and tools. The CMT has for instance established a control system about the duration of its procedures in order to provide rapid and effective responses to market players.

Agencies can impose additional burdens in their implementation work (for example, they issue subsidiary regulations such as circulars) so need to be brought into Better Regulation policy. One way is to include Better Regulation in their contracts with parent ministry. The progressive implementation of the 2006 law on State agencies, and in particular the development of management contracts (*Contratos de gestión*) is an opportunity to introduce Better Regulation into agencies.

There were suggestions that agencies are not always consulted by their parent ministries on framework legislation that affects them (Bank of Spain) and they are affected by an "impressive body" of regulations (Health Agency).

The legislature and Better Regulation

A unit in the Presidency ministry (the Directorate-General for relations with parliament, overseen by a State Secretary for Constitutional/Political Affairs) is responsible for dialogue with the Parliament. During the development of legislation it serves as a bridge between the executive and the legislature to ensure co-ordination. The Directorate-General is tasked with channelling policy ideas between the two branches; explaining the government's draft bills so to avoid difficulties with the allocation of competences between levels of government; mediating between the State and the ACs on politically sensitive dossiers; and providing opinions in case of appeals on the ground of wrong allocation of competences.

Parliament is not currently specifically organised for Better Regulation. There are no specific committees (apart from an EU committee, see Chapter 7), procedures, and instruments to improve the quality of decision-making in the legislature and to react to impact assessments, as exist in some other EU countries. Awareness of the issues appears to be growing, however. Political debate on Better Regulation is now becoming more informed and systematic (a process that can be observed across a growing number of EU member states). There is greater awareness among parliamentarians of the relevance of some Better Regulation initiatives, such as the reduction of administrative burdens and e-Government. RIAs are reported to be increasingly considered during parliamentary discussions.

The Senate is in principle the chamber of territorial representation in Spain,[32] and its main activities are related to territorial integration and regional development. Of its 259 members, 51 are appointed as regional (AC) representatives. In a number of important tasks, the powers of the Senate equal those of the Congress. They are the approval of co-operative agreements between ACs; the allocation, distribution and regulation of the Inter-territorial Compensation Fund; the adoption of measure to compel the ACs to comply with their constitutional and legal obligations or curb their activities when the interest of Spain is seriously undermined; and the assessment of the need to legislate on the harmonisation of the regulations of the Autonomous Communities.

The General Commission of the Autonomous Communities (*Comisión General de las Comunidades Autónomas*) plays an important role in the participation of ACs in the national legislative process. The General Commission regroups Senators, as well as representatives of the national government and of the governments of the ACs. The Commission draws up reports that are an official channel for the ACs to express their position during the legislative process.

The judiciary and Better Regulation

There is one judicial structure covering the whole of Spain and all matters including the public administration, the only exception being the person of the King. The ACs use the State courts (apart from appeals on administrative decisions relating to their own powers and competences). The General Council of the Judiciary (*Consejo General del Poder Judicial, CGPJ*) is responsible for overseeing and ensuring the autonomy and independence of judicial power, including all the courts.[33] As such, it is not a judicial but an administrative body. It is enshrined in the Constitution, and therefore enjoys the same status as the other institutions mentioned in the latter, such as the government, the Congress and the Senate, and the Constitutional Court.

Three issues stand out as relevant to Better Regulation:

- The growing involvement of the Supreme Court in the settlement of disputes related to failure of the central and subnational levels to agree on issues important to business and citizens, for example the application of harmonising provisions for the EU internal market. Where the competence for a policy issue is shared between the two levels, it can happen that the autonomous communities may refuse to take action, and the issue then goes to court.

- A process of unification of doctrine which is being carried out by the Supreme Court to establish a single interpretation of a rule when two or more courts have made different interpretations. Other important players.
- Concurrent legislation by the different levels of government giving rise to unnecessary regulatory duplications.

Other important players

National Agency for the Evaluation of Public Policies and Quality of Services

The National Agency for the Evaluation of Public Policies and Quality of Services (AEVAL) operates to enhance the performance of the public service and improve general understanding of the effects of public policies and programmes; to promote a more rational public spending and allocation of resources; and to enhance transparency, accountability to citizens, and their participation.[34] It operates within the Ministry of the Presidency but on an independent basis (see Box 2.4). One of its responsibilities is to support the government's strategy to reduce administrative burdens (see Chapter 5). Until 2009, it was also responsible for oversight of regulatory impact assessments, a task that is now with the Sub-Directorate General for the Improvement and Simplification of Procedural Regulation (the Better Regulation Unit within the Ministry of the Presidency), although AEVAL retains a role in the annual evaluation of impact assessment policy alongside the Sub-Directorate General for the Improvement and Simplification of Procedural Regulation.

Box 2.4. AEVAL

The National Agency for the Evaluation of Public Policies and Quality of Services (AEVAL) was established in 2007[35] to enhance the performance of the public service and improve general understanding of the effects of public policies and programmes; to promote a more rational public spending and allocation of resources; and to enhance transparency, accountability to citizens, and their participation. By contributing to the strategy to reduce administrative burdens, AEVAL supports the government's efforts to boost the competitiveness of the Spanish economy.

AEVAL is an agency attached to the Ministry of the Presidency. It is operationally independent and manages itself autonomously and flexibly. These conditions are guaranteed by law. Its work is framed by a management contract with the Ministry of the Presidency, its parent ministry.

The Agency works on a multi-disciplinary basis. Three teams for a total of 12 staff prepare reports on the evaluation of public programmes, their results, impact and use. In addition, AEVAL's mandate is to prepare, promote, adapt and diffuse guidelines, methodological action protocols, management and excellence models, self-evaluation guides and methodological guides for public policy evaluation, in the sphere of its competence.[36]

While originally included in its mandate, since the entering into force of Royal decree 1083/2009 on AEVAL's activities, it no longer covers the evaluation of regulatory impact assessments produced by the government. This function has been moved to the Sub-Directorate General for the Improvement and Simplification of Procedural Regulation, in the Ministry of the Presidency.

Council of State

The Council of State (*Consejo de Estado*)[37] plays a key gatekeeper role in the development of draft regulations on their way to the Council of Ministers, from a judicial as well as a wider perspective concerning the appropriateness of a proposal. It is the highest advisory body to the government (see Box 2.5). The Council of State's annual reports have a wide scope, provide overall analysis, proposals and guidance to the government on issues related to the legal environment (such as management of EU issues, reform of the Senate) as well as legal quality.

Box 2.5. The Council of State

One of Spain's oldest institutions (its predecessors were the Royal Councils of the 16th century), the current Council of State was established in 1980, as foreseen by the Constitution of 1978.

It applies controls to the legislative process in six main ways:[38]

- **The legality control** verifies the constitutionality of the proposed measure and its conformity with the general legal framework. In particular, it checks whether the authority has the legal power to regulate and to sanction and if so, whether the appropriate level of regulation is proposed (a law versus a subordinate regulation).
- **The control of competencies** checks the correct distribution of competencies between the State and the ACs.
- **The control of convenience** verifies the compatibility of a measure with EC and international law, notably the conformity of the transposition of EU Directives into State and/or regional law.
- **The control of the process to produce laws and regulations** focuses on whether all of the mandatory procedural stages were followed and the reports and opinions provided.
- **The control of the quality of the legal drafting** concentrates on the legal techniques used (terminology, coherence of the parts, etc.) as well as on the readability and user friendliness of the text.
- **General advice on administrative matters.** The Council may offer a (non-binding) "opportunity" (appropriateness) assessment of the proposed measure. In a few cases, the Council has recommended not issuing the measure.

The Council must be consulted in the cases provided by in the Organic Law of the State Council[39] and other laws, notably in relation to proposal of subordinate regulations (royal decrees and administrative regulations). Consultation is optional in all other cases. The ruling of the Council of State is the last piece of advice gathered by the government before it adopts a proposal. The Council's rulings are not binding but the government must indicate explicitly any divergent opinion expressed by the Council in the preamble of the regulation. The Council of Ministers generally follows its advice but if not, the policy adopted must show clearly that its advice was considered. The Council's opinions are made public.

The Prime Minister, ministers, as well as the Presidents of the ACs can ask the Council for a ruling. The government can also ask the Council for studies and reports. Since 2004, the Council of State has been entrusted with the possibility of issuing White Papers, *i.e.* advisory reports on topics that have never been addressed before. Examples of such new areas are pirate fishery, marine bio-diversity, and the derogation procedure. In such instances, the Council may express, upon invitation of the government, its opinion on whether the policy is to be implemented by the State, and how. The Council may issue such reports on its own initiative. However, this has not yet occurred because of lack of resources.

Economic and Social Council

The Spanish Economic and Social Council (*Consejo Economico y Social, ESC*) is a government advisory body made up of employees' organisations, trade unions and other representatives of public interest. It is provided for in the Constitution of 1978 and was established in 1991.[40] The ESC is a forum for reaching compromise and understanding between the social and economic partners.

Box 2.6. The Economic and Social Council

The Spanish Economic and Social Council (ESC) issues opinions, on a mandatory basis, on bills drawn up by central government and draft legislative royal decrees regulating socio-economic and employment matters, and also on draft royal decrees that the government considers of particular

importance in regulating these fields.

In addition, and at the request of the government or members thereof or on its own initiative, the Council draws up surveys and reports relating to a wide range of issues of socio-economic interests.[41]

The Council's opinions are not binding on the government. They are issued in individual documents setting out the relevant background and the Council's judgment and conclusions, with the President's endorsement, plus any dissenting opinions. Moreover, every year, the ESC submits to the government a report assessing Spain's socio-economic and employment situation.

The ESC has independent legal status, full capacity and organisational and functional autonomy. It is organised in a Standing Committee and a number of permanent sectoral Working Committees (*comisiones de trabajo).* It is divided into three groups.[42] Apart from extraordinary sessions, the Council meets in plenary at least once a month. Plenary sessions are public. The sixty members of the Council operate with funds allocated from Spain's national budget.

Institutional support for the e-Government strategy

The e-Government policy has triggered significant supporting institutional developments (see also Annex A). Since April 2009, the Ministry of the Presidency has become responsible for steering the development and implementation of e-Government in Spain, taking over from the former Ministry of Public Administration. Within the State Secretariat for Public Service, the Directorate General for the Promotion of e-Government promotes e-Government by conducting relevant studies; planning and setting up action programmes; disseminating good practices; ensuring co-operation among all levels of government; and raising awareness on the necessary tools for developing e-Government. The Directorate General also assesses ongoing e-Government actions and makes the necessary recommendations within the framework set by the Higher Council for Electronic Administration (an inter-ministerial committee) and the Sectoral Committee of e-Government.[43]

Resources and training in the AGE

Resources

To date, there are about 100 people in the central government directly involved in the management and co-ordination of measures aimed at fulfilling the Better Regulation objectives (the number includes legal drafters). It is complicated to provide an exact number of civil servants dedicated to Better Regulation tasks in the ACs and at the local level, as it depends on the internal distribution of responsibilities of each level of government.

Some agencies deploy significant numbers of staff on regulatory management, reflecting their regulatory responsibilities. For example, the *Comisión del Mercado de las Telecomunicaciones* (CMT) has fourteen officials directly involved in Better Regulation co-ordination and management, representing 9.6% of staff (146 persons). In other words, for every ten CMT officials there is one directly responsible for carrying out Better Regulation policy.[44]

Training

The National Institute for Public Administration (*Instituto Nacional de Administración Pública, INAP*)[45] is an autonomous institute responsible for the selection and training of civil servants and public managers. In addition, INAP issues studies and reports on the public administration, and it sustains relationships with equivalent national and international institutes. Training for public officials is standard practice through INAP.

Training in relation to the development of regulations forms part of the training plans that the Ministry of the Presidency approves annually. Seminars (in the form of both classroom and online sessions) are also given in selective courses for civil servants who have passed access examinations to higher bodies of the State civil service.[46] Seminars on regulatory production, regulatory simplification and impact assessment

have been included in the training of public executives since 2005. Efforts are being made (including by the Presidency ministry) to set up more focused training on line and through summer schools.

Specific training on the reformed impact assessment procedures is under development by the Ministry of the Presidency and will be provided progressively from 2010. Training on administrative burden reduction is also the subject of special attention. Various training activities have been developed. They include talks from ministry representatives, as well as representatives of the companies and associations who signed co-operation agreements in 2008. The University of Santander organises 2-day seminars on the topic. The subject that has been added to the selection courses for future public sector employees.

Several INAP courses have been planned since 2009 on regulatory reform for officials belonging to the A1 public administration sub-group; public employees in management and administrative support tasks; local administration officials; and officials in a training period who take part in selective courses. E-learning training will also be provided on "Better regulation" for public employees belonging to the A1 Public Administration Sub-group.

Training covers:

- regulations and report drafting;
- reduction of administrative burdens, including a Spanish simplified method for the measurement of administrative burdens, and a methodological guide;
- software application for the measurement of the reduction of administrative burdens at all government levels;
- Better Regulation;
- the Guidelines on RIA; and
- three day conference on Better Regulation for Technical General Secretariats, other State officials with competencies on this subject, and local entities.

It is estimated that 621 officials will receive training in Better Regulation.[47] In 2009, some 30 public employees belonging to the A1 Public Administration Sub-group have also received receive e-learning training on "Better Regulation" as a part of the same training scheme.

Training on Community Law is provided as a complement to Constitutional Law by the Judiciary School of the General Council of Judiciary Power, which is responsible for the initial and on-going training of judges.

Online courses related to the reduction of administrative burdens are being prepared.

Notes

1. Law 50/1997 *Ley del Gobierno* was an important step in efforts to modernise political and administrative processes in the central administration. The law sets general good practice requirements on ministries for the development of regulations (including on impact assessment and public consultation). The Spanish Administrative Procedure Law of 1958 has been reformed twice in order to increase accountability and transparency across the administration. It modernised decision-making and the functioning of the State.

2. As one interlocutor put it to the OECD peer review team, Spanish society has changed but the modernisation of the public administration has not kept up. Another interviewee put it that "Spaniards are masters in producing laws and then ignore them…".

3. See: Royal Decree 542 of 7 April 2009.

4. See: *www.la-moncloa.es/ActualidadHome/2009/220409Congreso.htm* (last accessed 10 August 2009).

5. See: *www.plane.gob.es.*

6. See: *www.la-moncloa.es/ActualidadHome/2009/070409CambioGob.htm* (last accessed 10 August 2009).

7. See: Art. 56 SC.

8. See: Title IV (Art. 97-107) of SC and Law 50/1997 (*Ley del Gobierno*) and Law 6/1997, which set the general framework for the organisation of the central executive.

9. See: *www.boe.es.*

10. See: *www.cepc.es.*

11. See: Royal Decree 1040/2009.

12. Sometime the system is therefore characterised as "imperfect bicameralism".

13. See: *www.senado.es/caract_territ/index.html* (last accessed 23 February 2010). The reform of the Senate in relation to its territorial representation has been the subject of political and academic discussions for many years. On the issue, see: the Report by the Council of State on Modifications of the Spanish Constitution (2006), pp.222ff, at: *www.consejo-estado.es/pdf/MODIFICACIONES%20CONSTITUCION%20ESP.pdf* (last accessed 23 February 2010).

14. See: Art. 56.3 SC.

15. See: Arts. 117.5; 149.1.5 of the SC, and Art. 3.1 Organic Law 6/1985 (*Ley Organica del Poder Judicial, LOPJ*).

16. The Council (*www.poderjudicial.es*) is regulated by the Judiciary Act 6/1985.

17. The "judicial district" is a 19th century concept that warrants that disperse populations will have close access to justice. Such districts normally include several municipalities. Nowadays, courts (*juzgados*) are created based on the burden of cases to be judged, in all or several of the different jurisdictions (civil, criminal, administrative, social-labour).

18. As per Art. 53.2 SC.

19. Enshrined in the Organic Law 2/1979. See: *www.tribunalconstitucional.es.*

20. See: Law 6/1997 on the organisation and functions of the General State Administration (LOFAGE). See also 2006 law on State Agencies.

21. See: Art. 2 of Law 28/2006.

22. 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.

23. Information drawn from *www.sgi-network.org/pdf/SGI09_Spain.pdf*, p.28 (last accessed 17 August 2009).

24. Ibid., p.29 (last accessed 17 August 2009).

25. See: *www.mpr.es/Ministerio+de+la+Presidencia/ministerio.htm* (last accessed 10 August 2009).

26. See: Royal Decrees 542 and 640 of 2009.

27. See: Art. 4 of Royal Decree 1040/2009, at: *www.060.es/te_ayudamos_a/legislacion/disposiciones/45154_LEG-ides-idimp.html* (last accessed 25 February 2010.

28. See: Royal Decree 1039/2009.

29. The General-Directorate for the Promotion of e-Government has oversight of e-Government.

30. A few have shown initiative and commitment (in the Bank's case, data reuse, and attacking internal bureaucratic procedures, in the Health Agency's case, setting up a "virtual office" for processing authorisations). Such initiatives and tools are usually communicated on their websites and at public workshops. The

telecoms regulator CMT has passed resolutions to apply Better Regulation in support of transparency, speed of procedures,, EU engagement etc.

31. See: Art. 48.16 of the Spanish Telecom Act.

32. See: *www.senado.es/caract_territ/index.html* (last accessed 23 February 2010). The reform of the Senate in relation to its territorial representation has been the subject of political and academic discussions for many years. On the issue, see the Report by the Council of State on Modifications of the Spanish Constitution (2006), pp.222ff, at: *www.consejo-estado.es/pdf/MODIFICACIONES%20CONSTITUCION%20ESP.pdf* (last accessed 23 February 2010).

33. The Council (*www.poderjudicial.es*) is regulated by the Judiciary Act 6/1985.

34. AEVAL's remit is similar to that of the Australian Productivity Commission, which has played, and continues to play, a significant role in the promotion of Australian regulatory reforms.

35. The Agency is one of the government bodies created by Central Government Agencies Act 2006 (Law 28/2006). See: *www.aeval.es/en/index.html* (last accessed 21 October 2009).

36. The tasks of AEVAL are set out in its Statute approved by Royal Decree 1418/2006.

37. See: *www.consejo-estado.es.*

38. Further to ruling 304/1992 of the Constitutional Court, the Council of State can address its opinion only about national legislation and about regional legislation, if no equivalent institution exists in the relevant AC. In all ACs but Cantabria there is an advisory council or commission. ACs can therefore ask the Council for an opinion, but this occurs seldom.

39. See: Art.s Art. 21 and 22 thereof.

40. See: Art. 131.2 SC. Its website is: *www.ces.es.*

41. The areas covered range from labour, taxation, labour relations, employment and social security, social affairs, to agriculture and fisheries; education and culture; health and consumption; the environment; transport and communications; industry and energy; housing; regional development; the single European market, and co-operation for development.

42. The Spanish ESC consists of 61 members, appointed by the government. Besides its President, a First Group of twenty members is designated by the most representative trade unions, in proportion to their membership (Art.s 6.2 and 7.1 of Organic Law 11/1985). The Second Group, also of twenty members, is designated by the most representative employers' organisations, in proportion to their membership (6th additional provision of Law 8/1980, in the revised wording given by Law 32/1984). The Third Group also comprises twenty

members. Six of them are experts appointed by central government and proposed jointly by the Labour and Social Affairs and Finance and Treasury Ministers, after consultation with the organisations represented on the Council. The remaining fourteen are proposed respectively by the following organisations and associations: a) three by the professional farming associations; b) three by the fishermen's organisations; c) four by the Council of Consumers and Users; and d) four by associations of co-operatives and worker-owned companies, on behalf of the social economy. The Council members carry out their functions with full autonomy and independence. All members, including the President, are given a mandate of four years, renewable for periods of the same length. The mandate of Council members appointed to occupy early vacancies expires at the same time as that of the other members. See: *www.ces.es/composicion.jsp* (last accessed 10 February 2010).

43. For further details on the institutional setting related to e-Government in the Spanish government, see: Annex A.

44. The 14 persons in charge of implementing the policy are: the President, the Vice-President, the Secretary, as well as 2 General Directors (Instruction Division; Resources and Services Division) and 9 Directors (President's Cabinet, International Bureau, Legal Department, Administration, Operator Regulation Bureau, Economic and Markets Analysis Bureau, Technical Bureau, Studies, Statistics and Documentary Resources Bureau and Information Systems Bureau).

45. See: *www.inap.map.es.*

46. As well as officials from Latin American countries.

47. They are distributed as follows:

- Public Employees belonging to the A1 Public Administration Sub-group: 75;
- Public Employees in management and administrative support tasks: 25;
- Local Administration officials: 355; and
- Officials in training period who take part in selective courses: 166.

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

Public consultation has traditionally been based on legal requirements and structured processes. A general requirement to consult is enshrined in the Constitution and in the 1997 government Law, together with specific legal requirements (mainly in respect of secondary regulations). Checks are made as to whether the legal requirements have been met, and failure to do so is judiciable. There is an extensive network of advisory groups, and a formal requirement to consult these. The social partners (which include consumers as well as unions and employers) also play an important role.

The processes for public consultation are quite varied, and transparency has been established as a key principle in recent years. The central government notes that the Good Government Code, approved in 2005, establishes transparency as one of the ethical principles guiding the behaviour of government members, along with integrity and responsibility. A wide range of processes has been deployed for some time, from the consultation with organised groups, to processes targeted directly at interested parties in society, notice and comment procedures, and e-consultation which opens the process to a broad public. Reduce the number of advisory bodies, as already recommended by the 2000 report. Consultation also unfolds on an informal basis.

Nevertheless, it seems that processes and overall transparency could be improved. The OECD peer review team heard from several stakeholders that there was room for improvement. It appears that

there can be problems of exclusion, quality of information received, lack of feedback, and consultation that takes place too late and does not allow adequate time for response. It was pointed out that there is no structured approach, with autonomous ministries making their own decisions. There are no guidelines, formal or otherwise, beyond the legal requirement that a consultation must take place, and ministries broadly do as they see fit. As in other countries where ministries are left to determine for themselves what processes they use, there appears to be wide variability in performance. Some ministries appear to be deeply conscious of the potential for e-consultation for example, others not. As already proposed in the 2000 OECD report, a useful improvement would be a clarification of the consultation principles established in the Government Law, and encouragement in the use of more open methods alongside the traditional processes.

Recommendation 3.1. Establish guidelines for public consultation that flesh out benchmarks of good practice on issues such as timelines and the need for feedback. Use green and white papers to promote debate and encourage feedback at an early stage in the development of policy and law making. Establish, via the Presidency ministry, an arrangement for the exchange of information and best and most appropriate practices among ministries.

Box 3.1. Recommendation from the 2000 OECD report

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

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

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

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

Although the 1997 reform increased the minimum time for sending comments during a consultation from 10 to 15 working days, this period is short for a thorough and widely-based consultation. In particular, representative organisations may experience difficulties in consulting their members and responding within this timeframe. The consultation becomes even more difficult if the 7 working days consultation period for exceptional cases is used.

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

Public communication on regulations

Public communication on regulations has improved since the 2000 OECD report, and could be even stronger. The 2000 OECD report recommendation for a single authoritative source for regulations to enhance transparency for users and encourage a rationalisation of ministry rules has been implemented. This is a major step forward. Access to legislation remains an issue. Based on the positive experiences of other countries, further steps could be taken such as the establishment of a single portal for accessing the stock and flow of new regulations, and common commencement dates (fixed dates for the entering into force of new legislation).

Recommendation 3.2. Consider further steps to enhance access to regulations, such as the establishment of a single portal covering both existing and new regulations, and common commencement dates.

Box 3.2. Comments from the 2000 OECD report

Establish a centralised registry of all regulatory requirements with positive security

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

Spain is among the few OECD countries that have adopted an indicative registry for administrative procedures. Based on this experience, the government should pursue its effort into two directions. First, it should seek to give positive security to the registry. Additionally, the government could implement a certification process consistent with good quality standards to be renewed every five years, together with a logo delivered on completion, for all formats. More ambitious, Spain could… use a "guillotine" mechanism whereby any regulations that have not been registered by a certain date are nullified.

Background

General Context

The Spanish government underlines that transparency has become a key principle for public authorities in recent years:

- The Good Government Code, approved in 2005, sets transparency as an ethical principle for the members of the government, together with integrity and responsibility.

- Article 35 of Law 30/1992 recognises citizens' rights in their relationship with the Public Administration. Among these rights (35.h) it is recognised that the "Access to records and archives of the government is provided in the Constitution and other laws". This right is developed in a further article of the same law, the article 37, but the citizen is required to have legitimate interest.
- Article 6 of Law of Citizen´s Electronic Access to Public Services (Ley 11/2007) "recognises to the citizens the right to communicate with government using electronic means for the exercise of rights defined in Article 35 of Law 30/1992". As a consequence, citizens not only have access to public records and archives, but they also have the right to access to them using electronic means if they wish.
- Law 27/ 2006, that regulates the right to access to information, public participation and access to justice in the field of environment; Law 11/ 2007 (see above), on electronic access for citizens to public sector information; and Law 37/ 2007, on reuse of information in the public sector.

The government is preparing a bill about transparency and access to information for citizens. This bill establishes a general framework for the access to information for, with no exceptions. Access is considered a right for citizens. Citizens can have access to information regardless of their conditions and circumstances without having to justify their requests. The term public information is considered in a wide sense, including all information kept by public authorities. Access to information can be denied, with justification, in certain cases based on the principle of proportionality. The government notes that with this bill, Spain will be adapting its regulation on this matter to the Covenant of the Council of Europe about access to public documents. It considers that the bill will put it on the same level as the most advanced countries in the European Union in terms of access to public information.

Public consultation on regulations

Policy on public consultation by the State[2]

Policy is based on legal requirements (mainly in respect of secondary regulations), supported by longstanding structures and practices, as well as recent developments in the use of e-consultation. There are no guidelines or consultation code, as exist in some other EU countries.

Public consultation on laws

There is no general explicit legal requirement to consult on legislative proposals and other government programmes, although it has been done through electronic means for certain cases as the Law 11/2007. It is for the Council of Ministers to decide upon the extent of public consultation or expertise needed on laws, and what should be the appropriate timeline for this.[3] In a few sectors, consultation of affected parties is explicitly required by laws. This is the case for instance of the consumer protection and telecommunication general laws.

Public consultation on secondary regulations

The obligation to consult is enshrined in the Constitution[4] and is backed up by Law 50/1997 (*Ley del Gobierno*) which frames the functioning of the State. The Law (Article 24) specifies that a public hearing (*audiencia*) should take place on a regulatory instrument (*reglamento*), once the text is elaborated, and when it is expected to have a general impact on citizens. The lead departments must prepare a mandatory written statement summarising the consultation rounds they followed. It specifies[5] that administrations must allow "a reasonable period and no less than fifteen working days" for stakeholders and citizens to participate in the hearing. This process may be abbreviated up to a minimum of seven working days when justified by duly motivated reasons. This process may only be omitted on serious grounds of public

interest, which must be specified. The decision on the procedure chosen for hearing the affected parties shall be duly reasoned in the record by the body that approves the opening of the hearing process. When advisable by the nature of the provision, it shall be submitted to public information during the period indicated.

The Council of State checks that these legal requirements have been met (see also chapter four). It reports on the accuracy and appropriateness of the consultation carried out. In particular, it assesses whether the consultation round was not a mere bureaucratic exercise, and whether stakeholders were provided with sufficient and adequate background documentation. Appeals can be filed if consultation was not done, as the lack of consultation is considered an essential fault in administrative justice.

Despite the formal requirements and checks, the OECD peer review team heard that processes can be applied rather irregularly. Specific arrangements for comment by stakeholders on proposals is generally left to the discretion and the culture of individual ministries. The stage at which consultation is launched, and the period allowed for responses vary considerably, depending on the administration in charge of the dossier, the type of measure consulted upon, as well as the general political climate. Consultation contributions are generally not published, unless stakeholders voluntarily do so on their websites (this is the case for instance of the social partners, the Chambers of Commerce, and some professional associations). Feedback is generally not provided to participants. Stakeholders are informed of the results only upon publication of the adopted text in the State Gazette (BOE). Stakeholders also reported a certain resistance by the public administration to engage in a true dialogue, and that the text of proposals is rarely significantly modified further to the consultation. Again, such appraisal varies from case to case, depending on ministries.

Specific processes for public consultation

A wide range of processes are used, including consultation with relevant official consultative councils (of which there are more than 450 in total); consultation with interested parties known to the relevant ministries; use of the Spanish Economic and Social Council; notice and comment; e-consultation; and informal channels.

Box 3.3. Processes for public consultation

Consultation with organised groups (*audiencia corporativa*)

This is the most structured and frequent form of consultation by the State. Two mechanisms exist that may be used separately or jointly. First, the proponent ministry consults bilaterally or multilaterally with representative groups deemed to be stakeholders in the regulated issues. In addition, and depending on the subject or if a law mandates it, a consultation is organised with some of the 473 official consultative councils. The size, influence and scope of each consultative body vary greatly. Some have permanent staff, while others are *ad hoc*. A number of them are partially or totally subsidised by the State or the ACs. It is not infrequent that a law creates a consultative council with a mandate to review future subordinate regulations. Very often, Chambers of Commerce and Industry or unions appoint members to these bodies. Increasingly, other organised interest groups, such as environmental NGOs, are involved. Unless otherwise specified, the councils are subject to internal procedures regulated by the Administrative Procedure Law.

Consultation with interested parties (*audiencia a los interesados*)

The proposed regulation is sent to selected groups or individuals believed to be affected. For instance, the Ministry of Environment organised a consultation to identify and inform lumberjacks in the north of Spain when preparing a new forestry law. The Ministry of Justice is experimenting with a new consultation procedure based on the Internet. New electronic procedures hold the promise of opening up these consultations to a wider range of interests.

The Spanish Economic and Social Council

The Spanish Economic and Social Council (ESC) is the main body for institutionalised consultation on both legislative and regulatory proposals related to economic, social, and labour matters (see also Chapter 2). Through a strict procedure, specialised committees and working bodies prepare reports on proposed regulations and laws that are discussed and approved. Minority opinions may accompany the report. The media and parliament often use these reports as a basis for debate. The Council has a permanent research staff and an annual budget of nearly EUR 6 million. In addition to its reports on regulations, the ESC studies topics of interest to its members.

Notice and comment (*informacion publica*)

This procedure is also used in Spain. For some types of rules, like land use or municipal rulings, notice and comments are mandatory, for others it is a suggested alternative to be used by the sponsor of the regulation. However, this type of procedure is less frequently used than the other consultation procedures. In part, this is due to scepticism surrounding the method and the poor results of the consultation obtained.

E-consultation

The central government makes increasing use of this method. A portal lists all the projects subject to e-consultation and offers the possibility of joining online forums on specific dossiers, with the intention of fostering citizens' involvement in public affairs. Examples of the relevance of this open approach for the preparation of recent laws are the law approving the Basic Civil Service Statute, Law of Citizens' Electronic Access to Public Services and the Competition Law. A further example of e-consultation is the initiative by the then Ministry of Public Administration in March 2009 to launch on its website a two-week public consultation on a draft Royal decree implementing partially the provisions of the law on electronic access to public services. Experience so far has been mixed, with only partially useful inputs.

Informal channels

To a great extent, consultation also unfolds on an informal basis. Personal and direct unofficial contacts are often preferred by both the public administration and the relevant associations to get their message across speedily and effectively.

Public communication on regulations

Adopted regulations are made public through a series of channels. Since February 2008, the Official State Gazette (*Boletín Oficial del Estado*, BOE) has been the official medium for the publication of laws, provisions and decrees subject to compulsory insertion, and the BOE paper-based version has been eliminated.[6] Texts are inserted in specific sections based on the official body that issued them, and are classified within each section based on the hierarchy of the norm. For publicity purposes, the laws adopted by the ACs are also published in the BOE. Provisions issued by ACs are entered in accordance with the official publication order of their Statutes of Autonomy. Laws, royal decree-laws, and legislative royal decrees, once ratified by the King and published in Spanish in the Official State Gazette, may also be published in the official languages of the Autonomous Communities. In exceptional circumstances, the Council of Ministers may also agree to publish official reports, documents and official communications, deemed of general interest.

In addition, each ministerial department of the central government and each regional government publish new regulations that have been adopted on their websites. An online search engine allows the database to be searched.[7]

There are no arrangements to inform specific categories of stakeholder, beyond these general provisions.

Accessing legislation is not necessarily simple due to issues around the codification and consolidation of the legal stock (see Chapter 5).

Notes

1. Procedures for rule-making (Chapter 4); codification (Chapter 5); appeals (Chapter 6).
2. Public consultation by the ACs in respect of their own regulations is covered in Chapter 8.
3. See: OECD Review of Spain, 2000, p. 19-21.
4. Art. 105 SC of the Constitution.
5. Article 24c.
6. See: Royal Decree 181/2008 (*Ordenación del diario oficial "Boletín Oficial del Estado"*), further to Law 11/2007. Also: *www.boe.es.*
7. See: *www.060.es/te_ayudamos_a/legislacion/index-ides-idweb.html* (last accessed 14 August 2009).

Chapter 4

The development of new regulations

Predictable and systematic procedures for making regulations improve the transparency of the regulatory system and the quality of decisions. These include forward planning (the periodic listing of forthcoming regulations), administrative procedures for the management of rule-making, and procedures to secure the legal quality of new regulations (including training and guidance for legal drafting, plain language drafting, and oversight by expert bodies).

Ex ante impact assessment of new regulations is one of the most important regulatory tools available to governments. Its aim is to assist policy makers in adopting the most efficient and effective regulatory options (including the "no regulation" option), using evidence-based techniques to justify the best option and identify the trade-offs involved when pursuing different policy objectives. The costs of regulations should not exceed their benefits, and alternatives should also be examined. However, the deployment of impact assessment is often resisted or poorly applied, for a variety of reasons, ranging from a political concern that it may substitute for policy making (not true – impact assessment is a tool that helps to ensure a policy which has already been identified and agreed is supported by effective regulations, if they are needed), to the demands that it makes on already hard pressed officials. There is no single remedy to these issues. However experience around the OECD shows that a strong and coherent focal point with adequate resourcing helps to ensure that impact assessment finds an appropriate and timely place in the policy and rule-making process, and helps to raise the quality of assessments.

Effective consultation needs to be an integral part of impact assessment. Impact assessment processes have – or should have – a close link with general consultation processes for the development of new regulations. There is also an important potential link with the measurement of administrative burdens (use of the Standard Cost Model technique can contribute to the benefit-cost analysis for an effective impact assessment).

The use of a wide range of mechanisms, not just traditional "command and control" regulation, for meeting policy goals helps to ensure that the most efficient and effective approaches are used. Experience shows that governments must lead strongly on this to overcome inbuilt inertia and risk aversion. The first response to a problem is often still to regulate. The range of alternative approaches is broad, from voluntary agreements, standardisation, conformity assessment, to self regulation in sectors such as corporate governance, financial markets and professional services such as accounting. At the same time care must be taken when deciding to use "soft" approaches such as self regulation, to ensure that regulatory quality is maintained.

An issue that is attracting increasing attention for the development of new regulations is risk management. Regulation is a fundamental tool for managing the risks present in society and the economy, and can help to reduce the incidence of hazardous events and their severity. A few countries have started to explore how rule-making can better reflect the need to assess and manage risks appropriately.

Assessment and recommendations

Trends in the production of new regulations

Regulatory production is increasing steadily and this is a cause for considerable concern. A 2009 report suggests that regulatory production has grown tenfold since the early 1980s, much of it accounted for by the Autonomous Communities, linked to the process of decentralisation. The OECD peer review team heard that constant production of regulations is complicating the legal system. Many rules are obsolete, changes are frequent, and many interviewees said it was critical to prevent unnecessary new burdens. There is a clear link with the need to establish a well functioning impact assessment process for new regulations, which the government has taken on board, as well as the reinforcement of other regulatory policies such as legislative simplification.

Recommendation 4.1. Consider establishing a monitoring mechanism within the government on regulatory production, or commission this on a regular basis from an outside source, to raise awareness of the situation.

Procedures for making new regulations

Forward planning of new regulations is a weak part of the law making process. The government's general policy programme sets out the broad lines of what can be expected, but there is little beyond this. Information is not made public. Transparency and a more efficient approach to policy and rule making would be supported by a strong forward planning mechanism. A growing number of European countries have this.

Recommendation 4.2. Establish and publish a clear annual forward planning timetable for new primary regulations as well as significant new secondary regulations.

The 1997 Government Law was a milestone in establishing important principles for the preparation of regulations. The Law embedded a number of important principles including consultation, and regulatory impact assessment. However, the OECD peer review team heard that the administrative culture remains formal and legalistic, with "internal gold-plating", and there is a need for further public administration reforms to embed good regulatory practices as well as practical support. In particular, there may be a need to back up the 1997 principles with stronger monitoring and support to ministries, to ensure that the principles are embedded in practice. A weakness of the Spanish public governance system would appear to be difficulties and delays in fleshing out laws with implementing regulations and guidelines (it took well over ten years to agree a Royal Decree implementing the 1997 Law's provisions on impact assessment) which means that useful laws are not always translated into practice.

Legal quality appears to be an issue requiring further attention. The 2000 OECD report expressed concern about this aspect of regulatory quality, and the OECD peer review team heard that it was still an issue, although it was beyond the scope of this review to go into any depth. The government set up guidelines in 2005 to standardise approaches to law drafting, but further initiatives may be needed. This is particularly the case for SMEs. Several other European countries are taking substantive steps to secure better legal quality. One aspect is to improve the readability of legal texts by non-experts, through policies to promote plain language. Complex or unclear regulations tend to increase compliance costs, because specialists are required to interpret them. Other aspects relate to legislative simplification (reviewed in Chapter 5). It is unusual that the Justice ministry does not play any role in legal quality, as its perspective is important.

Recommendation 4.3. Consider a review to assess the current situation regarding legal quality, associating this with policies to strengthen legislative simplification, and involving the Justice ministry.

Box 4.1. Comments from the 2000 OECD report on legal quality

The 1997 Government Law

The 1997 reform contains two weaknesses:

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

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

Training

Spain has developed training programmes on drafting techniques. The National Institute of Public Administration has trained more than 260 administrators in drafting skills. A legal think-tank (GRETEL) formed by public administrators and university professors, has also been active in improving and disseminating better legal techniques. Recently, the Council of State, ultimate guardian of legal quality, published a series of recommendations stating that what is important is that the addressees of the regulation clearly understand the rights and duties. In particular, it has advocated that regulations be clear, complete and easy to use.[1] Further, MAP has published manuals for administrators on style and accessibility. These include the Style Manual and the Manual of Administrative Documents published in the early 1990s. Currently, MAP is working on an ambitious effort to harmonise the design of all government documents, including formats based on principles of legibility and user-friendliness.

Lack of a consolidated code

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

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

- First, matters are regulated by an array of laws on distinct matters. This is a more or less recent phenomenon identified by the Council of State as "legal mixture" which appeared in the 1980s,[2] and which was recently exacerbated by coalition governments. This trend is mostly

manifested by annual enactment of the *Ley de Acompañamiento*, a special law similar to the US Omnibus Law, which is voted at the same time as the budget, and which includes dozens of modifications to other laws. Because the reforms are negotiated in the Parliament, they do not follow the procedures described in the previous subsections.

- Second, regulators (including the Parliament) have complied with difficulty with the obligation to have at the end of new laws or regulations an exhaustive list of articles and laws being abrogated by the new measure.[3] By law, a table (*tabla de vigencias*) summing up which articles have been derogated should accompany each new measure (either creating or reforming a regulation). Yet, according to the *Consejo de Estado*, more and more new laws and regulations tend to use a general formula indicating that "all previous rules which are contrary to the one being enacted are henceforth repealed".

- Finally, legal security and overall transparency of the regulatory environment have decreased due to rapid shifts in the distribution of regulatory competencies across levels of government.

- European, national, and subnational.

Ex ante impact assessment of new regulations

A significant potential boost has been made to the policy on impact assessment. It is widely acknowledged that the previous system was ineffective. A new Royal Decree based on the 1997 Government Law which established impact assessment as a principle was approved in 2009, together with Guidelines issued by the Presidency ministry, aimed at encouraging a more systematic and integrated approach. This is considered by the government to be a flagship new Better Regulation initiative. A wide range of stakeholders told the OECD peer review team that they supported impact assessment and that the new proposals had potential to encourage it to be taken more seriously.

Impact assessment can be expected as a result to have a stronger shape and coherence. The new process has a number of strengths compared with the previous system. It promotes an integrated approach (at least for the mandatory impact assessments) as the new requirements consolidate existing obligations into a single report; the economic impact of regulations is emphasised, beyond financial impacts, and there is a specific link to burden reduction; the institutional centre of gravity is now at the centre of government, with the Presidency ministry; and *ex post* evaluation is covered as well. A system which was largely assessed as informal and *ad hoc* is now set up to work more effectively. The government hopes this decree will be considered as the point of no return in its commitment to Better Regulation

There is further work to anchor the new system, however, and fill gaps. For this to be a point of no return the new system needs to be strengthened further. The 2000 OECD report made a number of proposals on how to strengthen impact assessment, including public consultation, and the progressive reinforcement of analytical and quantitative skills in the administration. These issues remain valid. The previous approach was criticised for not providing explicit and standardised analytical methods, and guidance on how to develop the assessment. This remains a weakness. Not least the provisions for public consultation are not clear: there is no specific requirement for this. Yet public consultation is important to communicate with stakeholders that efforts are being made and engage in a two way dialogue for strengthening the approach to development of regulation. Parliament should also receive impact assessments on draft laws.

Recommendation 4.4. Plan to strengthen the system with more specific guidance and capacity building for analysis (including quantitative) within the administration; and with the integration of public consultation as part of the process.

In particular, institutional capacities and processes for culture change need reinforcement and incentives strengthened for the use of impact assessments. The experience of other European countries is that impact assessment requires commitment to change attitudes and overcome resistance over a long period, framed by effective institutional mechanisms and by supporting tools and guidelines. In Spain, as yet, there is no explicit or formal provision for quality control. The institutional support framework is largely based on existing, pre Royal Decree provisions. Although the centrally placed Presidency ministry is responsible for overseeing the process, it is not clear how this will be done, and resources for effective oversight appear to be limited. The Ministry of the Presidency leverage is political rather than prescriptive. Encouragement and sanctions for ministries to move away from an overly legalistic approach and to make effective assessments are not clear. Beyond some committed parts of the administration, there is no shared culture or toolbox as yet for impact assessment. Effective support for line ministry officials on what they need to do is a related issue. A further option is to set a net target for the reduction of administrative burdens which would require ministries to pay attention to production and quality.

Recommendation 4.5. Evaluate institutional capacities to support, monitor and challenge the quality of impact assessments and reinforce these. Ensure that line ministries have adequate support and guidance on the process. Aim to set a net target for the reduction of administrative burdens so that new regulations are assessed as well as the existing stock.

Evaluation of the new system will help to keep it on track to deliver real change. The plan is for the Presidency ministry to prepare an annual report on the quality of the impact assessments and to submit this to the Cabinet. This is a positive initiative, which could be complemented by giving the report a wider audience.

Recommendation 4.6. Consider a wider dissemination of the planned annual evaluation reports, for example to Parliament.

Box 4.2. Recommendation from the 2000 OECD report

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

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

However, more effort is needed to operationalise good regulatory practices in the "culture" of the public administration. As noted, the current process lacks the explicit disciplines and uniform parameters needed to enable regulators to consistently judge if a regulation is necessary or if there are better alternatives. A key step to improve regulatory quality is to improve the analysis of social and economic impacts. Three-quarters of OECD countries now use RIA and the direction of change is universally toward refining, strengthening and extending the use of RIA disciplines. RIA can be a powerful tool, especially if integrated with notice and comment procedures, to boost regulatory quality by giving policy officials better information on the impacts of regulation on the economy. While benefit-cost analysis may be a long-term goal, interim steps feasible with current administrative skills, such as user panels and

surveys, could be implemented quickly. OECD's best practice principles should be the basis for a RIA programme, overseen by an appropriate quality control body with analytical expertise at the centre of government. To make this RIA operational as soon as possible, a training programme and support capacities should be implemented.

Alternatives to regulations

The consideration of alternatives tends to be a formality. A common view is that "most laws are necessary", despite the widespread concern over regulatory inflation. The new impact assessment Guidelines make the justification of a legislative proposal the first stage in the process. But they put less emphasis on the identification and description of the problem. This may imply (as it does in many other countries) a certain bias towards regulatory intervention as the preferred option. On the other hand, the central government notes that the consultation process and stakeholder involvement in the development of regulations can be a helpful counter to the assumption that regulation is necessary.

Recommendation 4.7. Consider how to further promote the assessment of alternatives to traditional regulation, including a scrutiny of whether regulation is needed at all.

Background

General context

The structure of regulations in Spain

The Spanish legal system is a civil law system. For historical reasons the Spanish Civil Code, not the Constitution, regulates the sources of law. The law is understood as any written rule of law created by the State or the ACs, and which is subject to judicial scrutiny. This is the pre-eminent source, while other sources such as customary rules and general principles of law are subsidiary. No applicable rule can be drawn from legal doctrine, which only provides an interpretation or clarification about the sources of law.

However, case law issued by the Supreme Court is a complementary source of interpretation and application of the law.

Box 4.3. The structure of regulations in Spain

General hierarchy

The Spanish legal system is hierarchical. Laws of lower status cannot conflict with laws of a higher status. With regard to the State legal regime, the hierarchy is as follows:

- *The Spanish Constitution (Constitucion,* SC*)* is the supreme rule of the legal system, without prejudice of the principle of supremacy of Community law. Similarly, the Constitution states that any international treaty which contains stipulations contrary to the Constitution shall require a prior constitutional revision. International treaties become internal laws once they have been signed, ratified and published in the Official State Gazette (*Boletin Oficial del Estado*).

- *Organic law (ley organica).* Organic laws differ from ordinary laws as to the matter regulated. As provided for by the SC, they cover the exercise of fundamental rights and freedoms, as well as matters related to the popular initiative, the Ombudsman, the Council of State and the Constitutional Court. They also lay down the Statutes of the Autonomous Communities and the general electoral system. Organic laws also differ from ordinary laws as to the modalities of their adoption, revision and repeal. Organic laws require an absolute majority of the Congress in a final vote of the entire bill.

- Other laws:
  - Ordinary law (ley). Laws require a simple majority in both the Senate and the Congress, with the latter having the last word on their adoption.
  - *Decree law (decreto-ley).* This is a provisional legislative decision with the rank of a law that the government may issue in cases of emergency or urgency. Decree-laws may not affect basic institutions of the State; rights, duties and liberties of the citizen regulated in Title I of the SC; the system of the ACs; or the general electoral law. Within a period of 30 days they must be ratified by the Congress.
  - *Legislative decree (decreto legislativo).* Also ranking as laws, legislative decrees are dispositions of the government containing delegated legislation. Such delegation must be granted to the government in an express form, for a concrete matter and establishing a period of time for its exercise by a basic law (*ley basica*) when its objective is the formation of articled texts or by an ordinary law when is a matter of arranging several legal texts in to a single one.
- Regulation *(reglamento).*
  - These are within the sole competence of government and are of lower status than laws. They must generally be based on a law and are used to implement a law.
  - Regulations may create or modify rights and duties of the citizens or simply organise administration activities affecting only the citizen who is an special relationship with the administration. Forms of regulation include Royal decrees (*decretos*) from the Council of Ministers; orders (*ordenes*) from the Ministers or Delegate Commissions; and instructions (*Instrucciones*) and orders of regulation (*circulares*) from inferior authorities and members of public administration.

Guidelines. They are usually no more than orientation documents, but sometimes they develop and qualify as a regulation (*e.g.* the RIA guidelines).

Autonomous Community and municipality regulations

The ACs have legislative powers, and they can adopt either laws or regulations. The municipalities do not have legislative powers. They nonetheless can enact a form of regulation called *Ordenanzas* and *Bandos*, where the Mayor of the council establishes rules that are compulsory for citizens.

Source: www.llrx.com/features/spain.htm#state, and Spanish government.

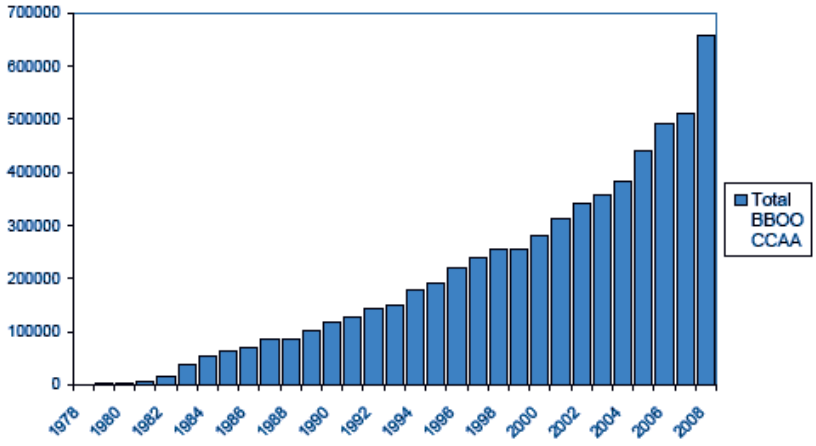
Trends in the production of new regulations

A report published in 2009 indicated that regulatory activity in Spain has steadily increased. Between 1983 and 2008, the legislation of the State cumulated with that of the ACs has multiplied by ten. The growth has nonetheless been uneven, with the ACs legislating almost 18 times more in the past 15 years, while State activity increased by "only" 1.5 times. Compared to 2007, regulatory activity in the ACs has increased by 25%, while that of the State has decreased by almost 3%. Such evidence confirms the continued decentralisation of the regulatory model in Spain, as decentralisation implies acquisition of competences and legislative activity to match. Whilst in 1978, State legislation represented some 97% of the entire regulatory activity, in 2008 the situation was reversed with almost 93% of the share related to regional activity.[4]

Figure 4.1. Number of laws in force at the start of each year

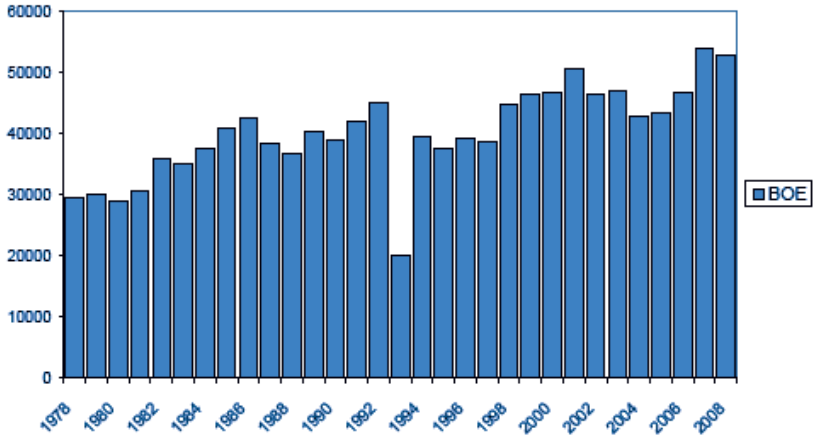
General Progress of Regulatory Activities

Progress of Regulatory Activities in the Autonomous Communities



Progress of regulatory activities in the Autonomous Communities: From 1983 (when all the Autonomous Communities already published their own Official Gazettes) to 2008 the volume of autonomous regulatory activities has multiplied by 18.

Progress of Regulatory Activities of the State



Progress of regulatory activities of the State: In the same period, State regulatory activities multiplied by 1.5.

Source: ECONLAW report, p.8.

Procedures for making new regulations at the State level

The law making process

The Constitution grants legislative initiative, or the right to initiate procedures conducive to the approval of laws, to the government, Congress (a parliamentary group), Senate (at least 25 senators), and the legislative assemblies of the ACs. It also allows the popular initiative, if the signatures of at least

500 000 citizens are collected. The legislative initiative is exercised before Congress, which as a rule is the first institution to have knowledge of bills and non-governmental proposals.

In practice, most of the legislative action is initiated by the central government (Box 4.4). Non-governmental initiatives occur very seldom.[5] When proposals originate outside the government, they must be submitted to the government with the aim of ensuring the respect of and conformity with procedural criteria, as well as assessing related budgetary impacts. If the government fails to give a reasoned response within thirty days, the non-governmental bill will be included in the regular agenda.

Box 4.4. The process for developing and enacting state legislation and regulations

Preparation in the executive

The procedure for the preparation of laws and regulations is included in the law regulating the government (*Ley del Gobierno* 50/1997).

Drafting a law

Each ministry is responsible for initiating a bill (*anteproyecto*), and develop the necessary related reports and studies, falling under their respective portfolios. The following main stages can be identified:

- *Obligatory assessments.* For each legislative proposal, the proponent directorate-general must produce at least three reports, so-called *memorias*, which are the justification of the proposal itself; an assessment of the budgetary impacts; and an opportunity (*i.e.* timeliness and appropriateness) and gender analysis. These reports have been formalised into a new RIA template in 2009 (see below).

- *Validation.* The Technical Secretariat General (*Secreteria General Technica*) of the ministry proposing the bill must validate the proposal. All Technical Secretariats General rely on the legal drafting guidelines (*Directivas de technical normativa*) of 2005. The Secretariat also takes over the responsibility for managing the subsequent stages of the proposal.

- *Internal co-ordination and consultation.* The lead ministry is responsible for seeking the opinion of the other ministries to ensure that their competences are not affected. An intranet is at the disposal of the ministerial departments for comments. It is not mandatory however for the lead ministry to include the comments received. The Council of Ministers must be informed of the proposal, so that it can determine whether additional reports are needed and what kind of consultation is adequate. In certain cases, a report from bodies such as the General Council of the Judiciary (see Box 2.2, Chapter 2) and the Economic and Social Council is necessary. The lead ministry must produce a written statement of such consultations. Draft bills may be posted on the web pages of the lead ministries for public consultation.

- *Co-ordination between the executive and the legislature.* During the preparation phase, the Directorate-General for relations with parliament, which is located in the Ministry of the Presidency, serves as a bridge between the executive and the legislature to ensure co-ordination, also in the realm of Better Regulation. The Directorate-General is tasked with channeling policy ideas between the two branches; explaining the government's draft bills so to avoid difficulties with the allocation of competences between levels of government; mediating between the State and the ACs on politically sensitive dossiers; and providing opinions in case of appeals on the ground of wrong allocation of competences.

Obligatory opinions. A number of opinions must be obtained during or further to the preparation of all draft bills. These are:

- the opinion of the Ministry of Territorial Policy, which assesses the likely impacts of the proposal on the ACs and the local level; its opinion is also necessary if the proposed act affects the distribution of competences between the State and the ACs;
- the report of the Ministry of the Presidency on compliance with Better Regulation requirements (including administrative burden reduction); on whether a new administrative procedure is

created, and whether it has effects on civil service management policy; and, finally

- the ruling of the Council of State, controlling the legality and constitutionality of the provisions of the bill.

Submission to the Council of Ministers. Once the stages above are completed, the Technical Secretariat General authorises submission to the Council of Ministers, and transmits the legislative proposal and the related memorias to the CGSYS for consideration. An Evaluation Questionnaire for Norms (*Cuestionario de Evaluacion de Proyectos Normativos*), which summarises the above reports, may be produced on a voluntary basis. If the CGSYS agrees, the proposal is submitted to the Council of Ministers for adoption and then transmitted as a bill to the Congress. In cases of urgency, the Council of Ministers may adopt a proposal without the consultation rounds described above.

Drafting a secondary regulation

The preparation and adoption of regulatory acts (*reglamentos*) unfolds along similar lines, with the exception of external consultation, which is in this case obligatory. A minimum of fifteen days (reducible to seven in case of urgency) is set to allow citizens and "associations recognised by law" directly affected to provide comments on the draft.

In case of decrees only, an opinion of the National Competition Commission (CNC) is mandatory, although it is not binding.

Debate and enactment by the parliament

Presentation of first amendments and first debate in the Congress plenary

The parliamentary procedure with regard to all legislative texts starts in the Congress. As a preliminary filter, non-governmental bills are subject to initial approval procedures (a debate and a vote on its appropriateness and principles) within Congress. Excluded from these proceedings are government bills and non-governmental bills that are received from the Senate.

Upon publication of a bill, or through its taking into consideration by Congress, parliamentary groups are allowed fifteen days to present amendments. A plenary debate takes place on amendments to the whole bill. If an amendment to the whole bill is approved, the bill is understood to be rejected. If the amendment is rejected, which is the normal case, the bill is submitted to the relevant committee to continue its procedural treatment.

Deliberation in Committees of the Congress

The responsible committee may designate a reporting sub-committee (*Ponencia*), which is a reduced body that meets behind closed doors in order to study the different amendments formulated and issues a preliminary report. This is then discussed by the committee in meetings not open to the public. Registered journalists are nonetheless allowed to attend. The outcome of the committee deliberation is a report containing the proposed legislative text to be submitted to the plenary session.

Debate and voting in the Congress plenary

The plenary debate usually begins with the introduction of the text by a member of the government (if it belongs to his initiative), and an intervention by a member of the responsible committee. The debate in plenary is often omitted and the so-called "full legislative committee authority" procedure applied. In such cases, the bill is sent directly to the Senate after its approval by the committee. This seeks to relieve the workload of the plenary, allowing it to be focused on matters considered of major political interest. The procedure is not allowed in case of constitutional reform, international affairs, the adoption of organic and basics acts, and the State budget.

Debate, amendments and vote in the Senate

The Senate can pass the legislative text sent to it by the Congress, adopt amendments, or propose a veto. The veto must be adopted by absolute majority, and the amendments by single majority. The Senate deliberates on the texts already passed by the Congress in a short period of time compared to the unlimited time allowed to Congress: normally two months, or twenty days in the case of urgency.

Congress final plenary reading

In the case of a veto of the draft bill by the Senate, the Congress may ratify its original text by absolute majority, or by single majority within two months of the veto. The Congress may accept or reject the amendments of the Senate by single majority.

Enactment

Once the law is passed, it is submitted to the monarch for royal assent and promulgation. Laws come into force twenty days after their publication in full in the Official State Gazette (BOE), unless otherwise stated in the laws themselves.

Authorisation by Congress

In addition to the adoption of legislation, Congress also ratifies and repeals Royal decree-law (*Real decreto-ley*) dictated by the government for reasons of extraordinary and urgent necessity. This must be done directly by the plenary within thirty days following the promulgation of the decree. The Permanent Deputation may nonetheless take over that function if Congress is dissolved or its term has expired.

Sources: *www.congreso.es/portal/page/portal/Congreso/Congreso/Informacion/Funci/Funcion%20legislativa;* and *www.senado.es/procedimientos_i/index.html* (last accessed 11 August 2009).

Forward planning

Within the AGE, there is no systematic, structured and centrally managed forward planning. The general programme presented by the Prime Minister at the beginning of his/her mandate outlines the broad policy dossiers that are considered a priority for the government, but does not enter into any further details on expected regulatory activities.

A list of the regulations that are expected to be passed during the legislature is informally drawn up in each ministerial department. This is an internal exercise. The government does not make public the regulatory priorities of the ministries for each year, nor does it publish any other list of planned regulations.

Administrative procedures

A key document organising the legislative and administrative processes of the central government and the AGE in Spain is Law 50/1997 (see Box 4.5). The Law was an important step in efforts to modernise political and administrative processes in the central administration. It sought to clarify the powers of the central executive. The political level was redefined and separated from the administration throughout the State administration.[6] The law also regulated the role of co-ordination bodies within the government. It set general good practice requirements on ministries for the development of regulations. The law included provisions for the organisation of hearings with the ACs and municipalities, as well as stakeholders. Some of its provisions (regarding impact assessment and public consultation) are of special interest for Better Regulation. Some elements of the regulatory dossier were made mandatory under Law 50/1997 – the report on the impact of measures contained in a law or regulatory instrument (*reglamento*) on gender, and the economic memorandum containing an estimate of costs incurred.

Box 4.5. Law 50/1997 (*Ley del Gobierno*) on the organisation, jurisdiction and functioning of the state

Title 5 of the Law contains rules on the form and the competent body for legislative initiatives at the State level, as well as on the regulatory power and the control of acts of the government. It sets standards for submitting legal and subordinate regulations to the Council of Ministers (the "regulatory dossier"). Some of these standards existed already since 1991, in the form of *Directrices sobre la Forma y Estructura de los Anteproyectos de Ley.*

The Law contains two elements of special interest for Better Regulation:

- *Regulatory Impact Assessment.* A novel part of the Law was to make some of the elements of the regulatory dossier mandatory for the first time. This was the case for the report on the impact of the measures contained in a law or regulatory instrument on gender, and for the economic memorandum making an estimate of the costs incurred.

- *Public consultation.* The Law specifies that public consultation (*audiencia*) should take place on a regulatory instrument (*reglamento*), once the text is elaborated, and when it is expected to have a general impact on citizens. By contrast, it is up to the Council of Ministers to decide upon the extent of public consultation or expertise needed on laws, and what should be the appropriate timeline for this.[7]

The Law covered considerable and necessary ground for the modernisation of government. However, the 2000 OECD report criticised the Law on two counts. There was little capacity to oversee compliance with its requirements, and the Law was not reinforced by further principles, implementing regulations, definitions or guidance to drafters. The Council of State was also critical.[8] Some of these criticisms appear still valid today.

The Spanish Administrative Procedure Law of 1958 is another anchor. It has been reformed twice in order to increase accountability and transparency across the administration. A first revision took place in 1992.[9] The legal regime of the procedures connecting citizens with the administration was revamped, and the response time in the delivery of public services reduced.

Legal quality

Legal quality is monitored by a combination of the Presidency ministry, Council of State, individual ministries (specialised staff in the Technical Secretariats General of each ministry) and the directorate for parliamentary affairs in the Presidency ministry. At the end of the drafting process, the Council of State reports on the legality and constitutionality of the general provisions of bills, treaties and acts subject to consultation and assessment. The Justice ministry plays no role in this regard, which is unusual in the EU.

Recommendations on accessible language and for improving the technical and linguistic quality of the rules drafted at the government's initiative, are included in the Regulatory Drafting Guidelines of the Under-Secretariat of the ministry of the Presidency. The Guidelines were approved by the Council of Ministers in July 2005.[10] The Technical General Secretariats might ensure that the guidelines are applied by drafters. These guidelines ensure the standardisation and homogenisation of the contents of government proposals (agreements, decrees, legislative decrees and draft laws). Their application relies on the collaboration of the Technical General Secretariats, which scrutinise compliance of departmental drafts with the guidelines.

In the past, some important concerns have been expressed about a deterioration in legal quality.[11] It was beyond the scope of this review to examine the issue, but it is of importance for legal security and accessibility. As the 2000 OECD report noted, it is especially important for legal security that the system should work effectively, in the context of a civil law system which is based on an exhaustive and explicit set of rules.

Ex ante impact assessment of new regulations

Policy on Impact Assessment

Early policy

The production of some forms of impact assessment has been enshrined in the legal system of the AGE for a number of years. The system covered legislative and secondary regulatory proposals.[12] Law 50/1997 (*Ley del Gobierno* – see above) regulating the government set out that the development of legislative and regulatory proposals should include so-called *memorias*:

- a report or studies on the need and appropriateness of the proposal (commonly known as "explanatory report");

- an economic report with the estimated costs (introduced in 2003); and
- a report on the gender impact of the measures. This covers every type of discrimination (not only on women) and is considered to cover an important dimension of regulation.

The *memorias* did not, however, represent a fully fledged impact assessment process. For instance, there were no explicit and standard analytical methods, such as a benefit/cost test. More generally, the legal requirement to produce the reports was just that: nothing had been added to specify what exactly the impact should include, and how it should be assessed. The Law was not fleshed out. It was left to the discretion of each ministerial department how analysis should be conducted and results presented.[13] As a result, impact assessments on national initiatives have not been produced systematically, generally not until the very last stages of the drafting process, and with a varying degree of quality and completeness. *Memorias* were not subject to public consultation and were not published. It was broadly acknowledged within the administration that RIA was not working, not least because ministries were not clear how to tackle impact assessments and needed help (there was no clear model or template, no examples, no technical or methodological support etc).

Recent reform

In 2005, the Council of Ministers agreed that the system needed a significant boost, leading to the adoption of Royal Decree 1083/2009 (*memoria del análisis de impacto normativo*) in July 2009.[14] According to its introduction, the Royal Decree is motivated by a strong Better Regulation rationale, contributing to the pursuit of sustainable development, competitiveness and job creation. The government considers it to be a sign of its commitment to an enhanced RIA system, and "a point of no return" for developing its overall Better Regulation policy. The Decree is also seen as a key lever for the Ministry of the Presidency to trigger action on RIA in line ministries.

The main objective is to make an integrated memorandum of analysis of regulatory impact mandatory for the central administration. What before were three distinctive elements of the "regulatory dossier" are now mandatory integral parts of a single document. The Decree specifies that the RIA report must be produced in parallel with the drafting of the proposal.

The new system entered into force on 11 December 2009, when the new, related operational Guidelines on RIA (*Guía metodologica para la elaboración de la memoria del análisis de impact normativo*) were officially adopted and posted on line[15] (see below).

There was some hesitation in bringing forward a revised and more comprehensive impact assessment. A number of factors have been put forward for delays in the reform, including insufficient political leadership and commitment; the predominantly legalistic culture of the AGE; and, not least, weak pressure from stakeholders. The latter are now beginning to pay more attention, albeit mainly in relation to reducing administrative burdens.[16] The change in government in 2008 helped to bring the issue back to the forefront, although the OECD peer review team heard some concerns about whether high-level political commitment is deep and sustainable.

The Royal Decree and associated guidelines represent a significant potential reinforcement of the previous regime in a number of respects:

- They promote an integrated approach, at least as regards the mandatory impact assessments.
- The economic impact of regulations is emphasised for the first time, and a specific link has been established with the Plan for the Reduction of Administrative Burdens.
- The institutional centre of gravity is now placed at the centre of government, with the Presidency Ministry co-ordinating, promoting and monitoring developments.

- The guidelines, backed up by the promise of a substantial training programme and other measures to be promoted by the Presidency Ministry at the centre of government, are an important step in the direction of more substantive monitoring and support for officials carrying out the assessments.

- They set the basis for a more systematic recourse to *ex post* evaluation.

The OECD peer review team nevertheless heard concerns that the new approach could easily fall short of delivering real and practical change within the administration in their implementation of RIAs. A particular weakness is that there is no explicit or formal provision for quality control and effective support for officials on what they need to do, a major reason why the previous system largely failed to deliver results. If monitoring and quality control prove inadequate, then major aspects which have been generally neglected in the past such as the need to start RIAs as early in the policy and rule making process as possible, and to tackle the process on the basis of a genuinely common understanding of its purpose, will not improve. Overall resources for the task are reported to have been very small in the past and it is not clear that anything has changed in this respect either. As in many other European countries, culture change across the administration is needed, and must be vigorously pursued if the new system is to meet expectations of real change.

The official opinion of the Council of State is included in a recent report.[17] It considers that simply regrouping the existing three *memorias* into a single document template does not mean creating a fully-fledged RIA process; it is a juxtaposition of individual, partial analyses which do not facilitate the identification of trade-offs and synergies. The Council also stresses the need for a more in-depth approach on cost benefit analysis, as well stronger co-ordination with AEVAL. The decree addresses mainly formal aspects of the procedure. RIA remains relatively narrow, for instance by not requiring environmental impacts or wider social and economic impacts that go beyond the gender and the competition and financial dimensions.

Institutional framework

The institutional support framework following adoption of the decree and guidelines is largely based on existing, pre decree provisions. All AGE bodies and institutions are required to apply the guidelines on every legislative and regulatory initiative, albeit in a "flexible and proportionate manner".[18] As before, and in line with practice in other countries, the lead ministry has responsibility for developing RIA and for keeping its content up to date when significant new facts and issues arise in the course of a proposal's development. As well, the competition law provides for the National Competition Commission (CNC) to contribute to the preparatory stage of RIAs by submitting reports on regulatory projects that affect competition, and presenting proposals for amending or eliminating restrictions on the market.[19] In particular, the CNC prepares opinions on proposals issued by the Ministry of Economy and Finance. This process continues to be applied. The government notes that expert support continues to be provided through the different consultative committees and bodies, and from experts across the administration. Once adopted by the Council of Ministers, a legislative proposal is transmitted to parliament together with the *memorias*.

The key development which holds some promise of real change concerns the role of the Ministry of the Presidency. Until the re-organisation of the government in April 2009, no central unit within the Spanish government oversaw the RIA system. Quality control of draft regulations was mainly legal and procedural, and was exercised through a range of processes including the Technical General Secretariats embedded in each ministry (mainly a legal check); inter ministry consultation; the CGSYS (which prepares the weekly meetings of the Council of the Ministers); and the Council of State. Since April 2009, the Ministry of the Presidency leads the oversight and promotion of RIA.

As part of the changes, the Ministry has also taken on most of the responsibilities of the government's central evaluation agency AEVAL in respect of RIA (see also Chapter 2). Prior to the reform AEVAL's mandate was, *inter alia,* to elaborate and promote methodological guidelines for impact analysis, as well as to evaluate the quality of the reports produced.[20] AEVAL produced an introductory internal report on RIA in 2008, explaining its role and benefits in changing the regulatory environment. The report also outlined key features of RIA international practice, and made a number of recommendations on how to strengthen RIA in Spain.[21] Although technically there was no issue, it seems that AEVAL did not have the necessary political power to exercise its RIA functions effectively, and its reports were not always used appropriately. The OECD peer review team heard that some parts of the administration were surprised at the development. AEVAL will, however, continue to play a role. Each year the Ministry of the Presidency in conjunction with AEVAL will prepare a report on the quality of the *memorias*. The evaluation will be submitted to the Council of Ministers.

Guidance and training

The 2009 Guidelines set out the essential content of the new integrated impact assessments (Box 4.6). The Presidency pooled current sources of expertise to draft them, seeking the highest quality input possible and at the same time trying to ensure buy in and shared ownership. Reflecting these aims, they were drafted by a working group co-ordinated by the Ministry of the Presidency and consisting of experts from the Ministry of Economy, the National Competition Commission, the Ministry of Budget, the Ministry for Equality, the Ministry for Territorial Policy, and the Ministry of Justice.

The Guidelines consolidate and upgrade existing guidance material (without wholly displacing it – see below), and constitute the reference document for the entire AGE. They broaden the spectrum of issues that must be covered.

Box 4.6. 2009 RIA Guidelines

The Guidelines specify that each integrated *memoria* should include at least:

- the rationale and opportunity of the proposal (is the proposal timely and opportune?), its motives and objectives;
- a description of the contents of the proposal;
- the alternatives considered (including the "no action" option);
- a legal analysis, which includes the detailed list of all abrogated rules as a consequence of the entry into force of the new rule;
- a summary of the procedural steps followed, including consultation and hearings, as well as the observation that were taken into account as a result;
- the analysis of the adjustment of the proposed rule to the order of the distribution of powers (*i.e.* the effect of a rule on competences across the levels of government);
- the need to consider EU law;
- the economic and budgetary impacts, including the impact on the sectors, groups or stakeholders affected by the rule, and the effect on competition as well as the detection and measurement of administrative burdens;[22] and
- the gender impact assessment.

This list is not exclusive. The memorandum should also contain any other parts which are deemed relevant by the proposing authority – with special attention to social and environmental impacts and to impacts which refer to equality of opportunities, non-discrimination and universal access of disabled persons. The proposing administration has complete discretion in deciding whether and what to include under this section.

The Decree includes the possibility of issuing a shorter report (*memoria abreviada*), when the impacts of a proposal are not deemed to be substantive. The Guidelines specify the need to justify why recourse is made to the short assessment, and indicate what essential information must in any case be presented.

The annexes provide additional guidance on specific aspects.

The Guidelines stop short of providing in depth methodological and other support for officials on the front line of drafting regulations. They are vague, for example, on methodologies to be applied and data collection. Nor do they specify responsibilities and the stages of the process. In this respect, they are of relatively little practical assistance for desk officers. The reason for this, as explained by the government, is that it is difficult to put too much detail into the guidelines, as this runs the risk of procedural challenge before the courts for infringement of the Guidelines, which would hinder the implementation of new legislation.[23] The intention is to make good this gap through the organisation of training and systematic dissemination of information and advice across the administration. The aim is to extend these processes beyond the centre to the ACs and local levels, with a view to pooling the central initiatives with the RIA projects that have already been launched by some ACs, and to encourage others.

The Guidelines do not explain who does what and when in the preparation of a RIA, and the different stages through which the RIA and the proposal have to go before reaching the Council of Ministers.

As before, three sets of more specific guidelines are also available to officials:

- an extensive tailored guide issued by the Ministry of Equality in 2005, for the evaluation of gender equality aspects;[24]
- a Ministry of Economy guide; and
- a "Guide to the preparation of Competition Assessment Reports" published by the CNC in January 2009 (Box 4.7).

The essential parts of these guidelines have been included in the 2009 Guidelines on RIA. In particular, the competition guidelines have been included as an annex. The full versions of the former guidelines will be used as orientation material and a basis for training. Recourse may also be made to international texts, for instance the RIA guidelines issued by the Committee of European Insurance and Occupational Pensions Supervisors (*3L3 Guidelines*) used by the Bank of Spain.

Box 4.7. Better understanding competition impacts: The CNC guide

Inspired by international good practices including the OECD guide, the *Guía para la elaboración de Memorias de Competencia* prepared by the National Competition Commission (CNC) aims to operationalise the principles outlined in the CNC 2008 Report on "Recommendations to Public Authorities for More Efficient and Pro-competitive Market Regulation". The Guide offers a procedure for analysing and assessing the implications of a legislative development or administrative action, from the point of view of competition policy.

The approach has been made deliberately simple and straightforward, and is organised into three steps:

- Identification of the possible negative effects on competition that may be generated by the projected law or action. This is based on applying a checklist of key questions that help the user to "think" from the competition perspective and identify potential problems. If no potential

competition problems are identified in the proposal, the reasons for this conclusion must be described in the Competition Assessment Report before the procedure can be considered completed. If, on the other hand, the proposal is found to include provisions or mechanisms capable of restricting competition, then the next steps in the analysis will have to be carried out.

- Justification of the identified restrictions on competition. This involves analysing the objective pursued by the regulation in order to evaluate how necessary those anti-competitive constraints are for achieving that purpose and their proportionality. If the proposed anti-competitive restriction cannot be justified, then the proposal will have to be modified accordingly. If, on the other hand, justification can be found for the restriction's necessity and proportionality, then it must be considered whether the measure is properly designed or if there is a regulatory alternative with less anti-competitive effects. This is an essential task and the purpose of the next step.

- Analysis of the regulatory alternatives. This involves determining whether there is an alternative mechanism that allows the same objective to be achieved but without constraining competition or, at least, restricting it to a lesser degree. If a less restrictive regulatory alternative is identified, then it should be adopted.

These steps are not binding. The CNC is nonetheless encouraging all administrations to use the guide in the preparation of their regulatory proposals, although there is no legal rule that expressly requires it to be followed. Some thousand copies of the guide have been distributed in five months, and is circulated to all new civil servant embarking on a careers in the AGE.

The CNC principles and general approach have been included in the 2009 RIA Guidelines as an specific annex on assessing competition impacts.

The role of observatories

Some ministries rely on external bodies for policy evaluation and monitoring, which also contributes to the development of impact assessment (Box 4.8).

Box 4.8. The role of observatories for evaluation: The case of the Ministry of Industry, Trade and Tourism

A number of Observatories are attached or related to the Ministry of industry, Trade and Tourism (MITYC) and are directly involved in the evaluation of sectors. These include in particular:

- since 2004, eight industrial observatories have been set up related to key industrial sectors. They are permanent platforms and aim to become an active industrial policy instrument to promote sectoral modernisation;

- since 2005, a SME Observatory facilitates the relationship of these important economic operators with MITYC;

- the Industrial Technological Prospective Observatory generates knowledge on technological trends, carries out research, and co-operates on R&D and innovation policies with the ACs; and

- the internationalisation Observatory provides guidance and analysis on international business and economic developments.

Equivalent observatories exist in the sector of tourism and telecommunications.

Before the adoption of the Royal Decree and the Guidelines on RIA, training was provided in a relatively loose way. Most of the improvements in collecting data and applying methodologies occurred through a form of "learning by doing". Officials, for example, acquired skills in producing the *memorias*

through their interaction with the CGSYS, gatekeeper to the Cabinet. The Ministry of the Presidency leads on the design and organisation of training, although there are no explicit provisions to this effect in the Royal Decree. Training seminars and courses on the new RIA system are planned throughout 2010 for all administrations. Regional and local authorities will be involved with the aim of sharing existing practices and encouraging new developments where appropriate. Specifically, a number of conferences are taking place or are planned under the aegis of the National Institute for Public Administration (NIPA) on the methodological guide for RIA. These are mainly for officials of the AGE. For the ACs, a conference took place in June 2010.

Process and methodology

The main development relates to economic impacts and administrative burdens. The analysis of the economic impact is now expected to be much broader. Law 50/1997 only required an estimate of the cost of a regulatory project. This was generally taken as an estimate of the budgetary cost. The decree makes it clear that impact analysis now also has to address the economic impacts on business and citizens.[25]

The decree also takes into account the requirement of the Plan for the Reduction of Administrative Burdens and Better Regulation of June 2008, which establishes that the administrative impacts of new regulations on companies and citizens will be measured systematically on all regulations approved after 1 January 2009. The Presidency Ministry has elaborated, together with the ACs and FEMP, a method for calculating administrative burdens, which will allow developments to be measured, on the same basis across all administrations. This is included in the RIA guidelines and is mandatory for the central administration. ACs and municipalities will use software proposed by the central administration, in order to have a common basis for the measurements.

Although the decree requires an update of the memorandum when new facts arise, the emphasis is on the final document.

Public consultation and communication

Public consultation in the framework of the RIA procedure in practice appears in the past to have been rare, on a purely voluntary basis, and on the initiative of the lead ministry. The general form, scope, and deadline for public consultations, whether or not related to RIAs, varies from case to case (see Chapter 3). The Royal Decree specifies that the final version of the RIA report must include a reference to the consultations carried out during the hearing procedure, especially with the ACs (which is internal not public consultation). It should also include other reports or position-papers, if required by the legal procedure followed. The Royal Decree states explicitly that this is to reflect the manner in which the remarks expressed have been taken into consideration by the proposing organ.[26]

There is no specific requirement, however, for public consultation in respect of RIA, either in the Royal Decree or in the related Guidelines. RIAs are not posted on line and the general public does not have access to them.[27] The OECD peer review team heard that some stakeholders were “not aware” of any RIA policy and practice by the government. Issues appear to be a lack of pro activity on the part of the administration; poor communication; and lack of interest from the stakeholders themselves.

There is no specific provision for public communication of RIA developments. The report prepared by the Ministry of the Presidency and AEVAL will go to the Cabinet only.

Alternatives to regulation

The *Ley del Gobierno* of 1997 (Box 4.5) requires that legislative and regulatory proposals include a report on the need and appropriateness of the proposal itself.[28] Although this provision does not determine the minimum obligatory contents of such a report, it is considered the legal basis for considering alternatives to regulation. In practice, this is considered as no more than an invitation to ministries to “think

outside the box", and ministerial departments approach it with differing levels of interest and commitment. There are no other formal requirements for the government to check out alternatives to regulation.

The CNC Guide for the Drafting of Regulatory proposals (Box 4.7) includes a section expressly devoted to the consideration of alternatives prior to tackling a regulatory proposal.

Experience in the AGE with alternatives to regulation

Agreements and self regulation

Since the early 1990s, State public administrations may enter into agreements, pacts or contracts with individuals in public and private law.[29] By virtue of this provision, administrations may foster certain conducts through agreements instead of having to turn to regulation. This type of instrument has been used in various sectors, in particular in environmental policy.

Box 4.9. Alternatives to regulation in the environmental domain

As in many other OECD countries, a series of voluntary agreements have been issued to protect the environment. In 2008, voluntary tools have been applied to regulate environmental risk analysis and the setting of standards.[30] Self-regulation is another form frequently used when it is proved that the private sector has the capacity of guarantee the proper functioning of the system. Examples of self-regulatory regimes are in the voluntary food-quality certification of products. Administrative processes are increasingly transformed into voluntary self-certification in this sector.

Further examples refer to the accumulated and positive experience in the management of packaging and packaging waste through *Ecoembes*.[31] This is a not-for-profit trading company operating under the legislation on packaging and packaging waste.[32] It is involved in the design of an Integrated Management System for packaging waste, aimed at its recycling and evaluation. At present, more than 12 000 companies in the packaging production sector use this system.

Beyond the environmental domain, voluntary accreditation programmes in Spain are fostered via private accreditation companies. The *Asociación Española de Normalización y Certificación* (AENOR)[33] heads the process of implementation and widespread use of ISO standards or management systems. AENOR is a company dedicated to the development of Standardisation and Certification (S+C) in all industrial sectors and services (environmental, employment, construction etc.). It aims to contribute to improving the quality and competitiveness of companies, and protecting the environment. This company also offers a valuable system of publications and training courses for companies, which undoubtedly raises standards of environmental awareness and quality, which indirectly reduces the need to have recourse to regulatory instruments.

In the audiovisual and advertising sector, self-regulation is widely used by the Association for the Self-Regulation of Commercial Communication, called *Autocontrol*.[34] Self-regulation systems are the industry's own response to society's demand for trust and credibility guarantees in advertising. They may take the form of co-regulation in certain cases. *Autocontrol*'s activity is divided into three different fields:

- processing claims presented by consumers, consumer associations and companies;
- preparing professional codes of ethics and their application by the Advertising Board; and
- providing prior consultation service or Copy Advice on the ethical and legal correction of campaigns prior to their launch.

In the audiovisual sector, the consumer benefit from self-regulation is the guarantee of responsible advertising through a free system of claims; and the rapidity and efficiency in solving disputes by a board made up of independent experts. The industry also benefits by reducing unfair competition.

Autocontrol's system of resolving controversies is the Spanish private body that has been recognised by the European Commission for fulfilling the requirements and principles of independence, transparency, contradiction, effectiveness, legality, freedom of choice and right to representation.[35] In 2000, *Autocontrol* was incorporated into the Commission's European Extra-judicial Network (EEJ Net).

Delegated regulation

A number of certification systems, notably in relation to EU norms, foresee the delegation by the government to authorised bodies. It is the case for instance of the declaration of conformity with the brand "CE", of telecommunications sets and devices, and in the automotive sector. Some examples of delegation to issue certificates and carry out inspections are the ones entrusted to AENOR, the *Asociacion Española para la Calidad* (AEC) and the *Empresa Nacional de Acreditation* (ENAC), as well as, for the telecommunications sector, the International Communication Union (ITU), the European Telecommunications Standards Institute (ETSI), and AENOR.

Risk-based approaches

Risk analysis to inform the upstream development of new regulations is not yet in the mainstream of Spanish thinking. In this respect, Spain is no different from most other countries. A few ministries and agencies emphasised the need for a more robust *ex ante* analysis of the law in this respect.[36]

Notes

1. Consejo de Estado (1993), Cuestiones de Tecnica Normativa, Memoria del Consejo de Estado, Madrid, p. 146.
2. Communication of the Consejo de Estado (1999).
3. This rule was first established in the General Tax Law of 1963.
4. All data from ECONLAW Strategic Consulting, Evaluacion de la actividad regulatoria en España 1978-2008: Descentralization y Communidades Autonomas, Madrid, January 2009, at: *www.econlaw.es/ingles/pdf/Informe%20EconLaw%20Regulación%20Autonómica%202009.pdf* (last accessed 28 September 2009).
5. Only nine popular initiatives have so far reached Parliament since 1978 and only one of them was approved (a modification of *Ley de Propiedad Horizontal*, about common property on buildings).
6. See: Law 6/1997.
7. See: OECD Review of Spain, 2000, p. 19-21.
8. Council of State, 1992, quoted in the 2000 OECD report.
9. See: Law 30/1992.
10. See: *www.boe.es/boe/dias/2005/07/29/pdfs/A26878-26890.pdf* (last accessed 20 August 2009).

11. The Council of State in 1992 noted that the complexity and quality of Spanish regulation may have worsened in the 1990s as Spain absorbed a number of changes following the adoption of the 1975 Constitution and entry into the EU. The annual number of pages of the Official Gazette grew from 2 663 pages in 1970, to 9498 pages by 1990. This was accompanied by a « degradation of laws », that is, a reduction in the rigour and overall quality of laws and regulations. This could be seen in the use of fragmented legislation and the lack of a systematic and rigorous abrogation of old rules (OECD, 2000).

12. As per Art. 22 and 24 of Law 50/1997.

13. See: Carmen Balsa Pascual, *Better Regulation*, Papeles 1/2006, Papeles de Evaluación, AEVAL, MAP, p.18, at: *www.mpt.es/publicaciones/centro_de_publicaciones_de_la_sgt/Monografias/parrafo/0112/text_es_files/file/Papeles_de_Evaluacion_nx1.pdf* (last accessed 26 August 2009).

14. The introduction to the Decree expressly quotes the Communication of the European Commission to the European Parliament of 16th March 2005 on Better Regulation.

15. See: *www.mpr.es/Documentos/guiaAIN.htm* (last accessed 16 February 2010).

16. Part of this long labour is explained also by the internal contradiction of the text of the mandate of the Council of Ministers, which specifies that the implementation of RIA will draw from the justification of the adoption of the norms. It has been argued that such contradiction well illustrates the delay of the Spanish government to understand RIA as an integral part of the decision-making process. This point was made by an internal AEVAL paper which is not available publicly.

17. Report 429 of 16 April 2009.

18. See: RIA Guidelines, p.4.

19. See: Law 15/2007.

20. See: the AEVAL statute, as per Art. 6.2.j of Royal Decree 1418/2006.

21. Rafael Pinilla, *Qué es y para qué sirve la evaluación de impacto normativo*, Papeles 8/2008, Papeles de evaluación, AEVAL, MAP, p.12, at *www.mpt.es/publicaciones/Agencia_estatal_de_evaluacion_de_las_politicas_publicas/periodicas/parrafo/07/text_es_files/file/PAPELES%208.pdf* (last accessed 26 August 2009 – no longer there). The report was never published.

22. To this end, the Guidelines include a methodology for calculating administrative costs that was agreed with the ACs and the FEMP. The common methodology, which is obligatory for the AGE, is believed to harmonise reduction programmes, and measure the progress made across all Spanish administrations.

23. Remarks from the Ministry of the Presidency.

24. See: *Guía de aplicación practica, para la elaboracion de informes de impacto de genero de las dispsiciones normativas que elabore el Gobierno, de acurdo a la Ley 30/2003*, at: *www.migualdad.es/igualdad/principios_estrategias.html#evaluacion* (last

accessed 14 August 2009). The guide is not binding but represents an effort to educate officials when they consider the impact of new provisions.

26. See: Art. 2.3 of Royal Decree 1083/2009.

27. The Spanish Constitution only refers to the publication of laws and regulations, not to the publication of the administrative file or documents accompanying them. These files are public but not publicised in most cases.

28. See: Art.s 22 and 24 of Law 50/1997.

29. See: Art. 88 of Law 30/1992 on the legal system of the public administrations and the common administrative procedure.

30. See: Royal Decree 2090 of 22 December 2008.

31. See: *www.ecoembes.com.*

32. See: Law 11/1997.

33. See: *www.aenor.com.*

34. See: *www.autocontrol.es.*

35. As established in Recommendation 98/257/EC.

36. The Labour ministry for example, in relation to fraud and risk for workers in the work place (security and health). The Medicines agency was relatively satisfied with the use of scientific evidence in the national legislative process. This might be explained by the kind of regulatory initiatives undertaken by the agency, which are technical and specific (*e.g.* implementation of European standards), and do not require political debate.

Chapter 5

The management and rationalisation of existing regulations

This chapter covers two areas of regulatory policy. The first is simplification of regulations. The large stock of regulations and administrative formalities accumulated over time needs regular review and updating to remove obsolete or inefficient material. Approaches vary from consolidation, codification, recasting, repeal, *ad hoc* reviews of the regulations covering specific sectors, and sun setting mechanisms for the automatic review or cancellation of regulations past a certain date.

The second area concerns the reduction of administrative burdens and has gained considerable momentum over the last few years. Government formalities are important tools to support public policies, and can help businesses by setting a level playing field for commercial activity. But they may also represent an administrative burden as well as an irritation factor for business and citizens, and one which tends to grow over time. Difficult areas include employment regulations, environmental standards, tax regulations, and planning regulations. Permits and licences can also be a major potential burden on businesses, especially SMEs. A lack of clear information about the sources of and extent of administrative burdens is the first issue for most countries. Burden measurement has been improved with the application by a growing number of countries of variants on the standard cost model (SCM) analysis to information obligations imposed by laws, which also helps to sustain political momentum for regulatory reform by quantifying the burden.

A number of governments have started to consider the issue of administrative burdens inside government, with the aim of improving the quality and efficiency of internal regulation in order to reduce costs and free up resources for improved public service delivery. Regulation inside government refers to the regulations imposed by the state on its own administrators and public service providers (for example, government agencies or local government service providers). Fiscal restraints may preclude the allocation of increased resources to the bureaucracy, and a better approach is to improve the efficiency and effectiveness of the regulations imposed on administrators and public service providers.

The effective deployment of e-Government is of increasing importance as a tool for reducing the costs and burdens of regulation on businesses and citizens, as well as inside government.

Assessment and recommendations

Simplification of regulations

Some efforts have been made on legislative simplification, more is needed to boost legal access, security and clarity. The issue was raised by a number of stakeholders. It had already been picked up in the 2000 OECD report, which noted the lack of a consolidated code or registry, that revision of regulatory

frameworks was not systematic, and that tools such as sun-setting or mandatory periodic reviews were absent from the legal tradition. Simplification appears difficult to achieve in the Spanish environment, and this undermines easy access to the legal stock, legal clarity and security. Issues include laws which cover a range of different issues, and not least, the rapid shifts in the distribution of regulatory competences across levels of government, which has increased the complexity of the legislative process with a variable geometry of actors involved, depending on the issue. Although some progress has been made since the 2000 report with consolidated texts and databases, a more comprehensive policy is needed. A number of European countries (including Portugal, Germany and France) are, for these reasons, taking steps to reinforce provisions for assuring legal quality.

Recommendation 5.1. Establish a clear and comprehensive policy to address the challenges of legislative simplification in order to support legal security and clarity.

Box 5.1. Comments from the 2000 OECD report

The revision (of regulatory frameworks) has not been systematic. Ministries have been responsible for updating and adapting their laws and regulations. Moreover, no centrally organised programme has taken place. Tools like sun-setting or mandatory periodic reviews are absent from the legal tradition. As a result, there is a risk that damaging regulatory rigidities will be durable, and that the costs will grow over time as regulations become increasingly ill suited to changing conditions.

Administrative burden reduction for businesses

The policy on administrative burdens has been substantially reinforced since the 2000 OECD report. This is especially important in Spain, as administrative burdens on business are estimated to be above the international average. Since 2007, Spain has sought to catch up with other parts of Europe and has established a comprehensive Action Plan aimed at revitalising business and boosting competitiveness. The objective is to reduce administrative burdens on business by 30% by 2012, from a baseline of May 2007, a more ambitious target than the one set by the European Commission. The programme comprises a suite of well defined elements. Good use is made of e-Government in support of simplification measures. Most of the fast track measures use ICT or the introduction of online services.

The institutional support framework appears sound. It is framed by the establishment of a high-level Group of secretaries of state, a unit of officials in the Presidency ministry, and contact points in each ministry. This reflects good practice in other European countries.

The structured arrangements for consultation with the business community are also a sound starting point for picking up business views. Spain has opted to work through structured co-operation with key stakeholder representatives (the Higher Council of Chambers of Commerce, the CEOE - Spanish Confederation of Employers' Organisations, and the CEPYME – Spanish Confederation of Small and Medium-Sized Companies), backed up by formal agreements. These organisations are firm supporters of the need to reduce burdens as a priority for boosting competitiveness. In many other countries, consultation with the business community rests at least in part on more direct contact with individual firms in order to confirm real needs. This could be a useful complement to the structured arrangements. The 2000 OECD report proposed strengthening linkages between simplification policy and SME policy, and this implies making sure that the views of SMEs, in particular, are effectively captured.

The principle of a country wide target is commendable, but needs vigorous follow through. Few EU countries have yet gone so far as to extend formal coverage of their administrative burden programmes to all levels of government. Since the majority of burdens on business are considered to derive from regulations issued by the ACs and local levels of government, this is important. The issue is how effectively this is being taken forward in practice. Since the central state cannot dictate to the ACs, it will

take action only on national regulations, and a non binding co-operation agreement is in place with the ACs to encourage the latter to apply their own reductions, based on their own measurements and definition of burdens. The OECD peer review team heard from some ACs that further harmonisation of terms and methodologies would be desirable. Communication seems to be an issue. Some of the ACs met by the OECD peer review team seemed to know little about the programme.

Recommendation 5.2. Review the practical arrangements for integrating the levels of government into the Action Plan and take action to remedy weaknesses, such as the need for a common approach, and effective communication.

Although burdens in new regulations are to be measured, the target is not a net target. Many EU member states now have net targets, in recognition of the fact that it is important to capture the potential burdens in new regulations and avoid a situation where new burdens cancel out the positive effects of dealing with existing burdens. In countries suffering from regulatory inflation, such as Spain, this is all the more important.

Recommendation 5.3. Consider setting the current target as a net target as a next step, to take into account burdens from new regulations.

Communication of the programme, its objectives and achievements appears to need attention. Communication is woven into the daily work of the officials in the presidency ministry responsible for the simplification policies and there are frequent meetings. Nevertheless, there does not appear to be a clear communication strategy drawing attention to the programme, its objectives and potential benefits (as exists, for example, in the Netherlands). A report will be drawn up every six months by the Presidency ministry on progress with the Action Plan, but this will only go to the Cabinet.

Recommendation 5.4. Establish a communication strategy so that businesses (and citizens) are fully informed of plans and developments. Engage the parliament, by sending them a version of the progress report to the Cabinet.

The Action Plan needs to deliver results as soon as possible, in order to sustain momentum. The arrangements in place (such as institutional support, structured consultation) are generally sound in principle but now need to show that they are functioning effectively in practice. Some aspects need fixing now. The reduction target is not divided between ministries, which reduces the incentive to take action. Methodological support for ministries also appears to be an issue, although training courses have been established and are being further developed.

Recommendation 5.5. Monitor and evaluate the effectiveness of the institutional arrangements and of the co-operation agreements for delivering results that meet the needs of the business community. Allocate the target reduction among ministries in order to encourage ownership of the Action Plan across the government. Ensure that ministries are adequately supported in taking forward their part of the Action Plan. If necessary, take action to complement the consultation arrangements, via direct interaction with firms on their needs.

Other actions to support business needs are being taken forward, with mixed success. One-stop shops providing support and information for business start ups have been set up in a number of ACs and the evidence is that they are having a positive impact, for example on company creation. On the other hand, challenges which were already picked up in the 2000 OECD report regarding licences and permits remain.

Recommendation 5.6. Continue the roll out and reinforcement of the one-stop shop network for businesses. Carry out an evaluation of licensing at the municipal level with a view to addressing problems.

Box 5.2. Recommendation from the 2000 OECD report

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

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

Administrative burden reduction for citizens

The government's initiatives for the reduction of administrative burdens generally cover citizens as well as businesses. Many of the projects in the Action Plan also have some effect on citizens. The 2007 Law on electronic access of citizens to public services was an important milestone in defining citizen rights *vis à vis* the administration. However, it was beyond the scope of this review to form a view as to what extent these rights have been translated into practice.

Administrative burden reduction for the administration

The government does not at this stage have a specific programme for administrative burdens within the administration. The Administrative Information System (AIS) does, however seek to map procedures. The value of a programme to address regulation inside government is that it can release resources for other work, such as front line teaching or policing, by reducing unnecessary burdens and improving productivity. This can also help to drive the ongoing efforts at modernisation of the public service. A study from the business community suggests that business suffers from inefficiencies in the public administration.

Recommendation 5.7. Consider whether a specific plan to improve the efficiency of regulations inside government would be helpful.

Background

Simplification of national regulations

Simplification of national legislation usually occurs through the delegation of powers from parliament to the executive. Such authorisation may be granted in two ways, either by using a reworked text (*texto refundido*), unifying several amendments and reforms of a law; or through an articulated text (*texto articulado*), in which the government may fill some parts that were not covered previously or were insufficient or obsolete. In the recent past, the former option has been preferred. Both kinds of text are called *Real decreto legislativo.* From 2000 to 2007, parliament adopted 17 such legislative decrees authorising the government to elaborate a text regulating a specific matter, and which consolidates all related legal acts.[1]

The Official State Gazette (BOE) contributes to an understanding of the legislative stock by publishing codes in selected areas, such as public service, contracts, working law, etc. In these codes, which are on sale, the BOE puts together different laws or decrees about that specific area.[2] The codes are a compilation of all related regulation in force. They are only "publications", in the sense that the legal reference is always to the original text.

Further mechanisms for legislative simplification do not exist (*e.g.* the "regulatory guillotine") or are not systematically used (sunset clauses).

Accessing legislation is not necessarily simple and legal clarity appears to be poor. The previous OECD review in 2000 indicated the lack of a consolidated code or registry as the most problematic issue at the national level. This creates difficulty in knowing which law, subordinate regulation, or articles can be enforced and which ones have been abrogated, totally or in part, by more recent laws and regulations. Three main reasons for the confusion are worth noting:

- First, matters are regulated by an array of laws on distinct matters. This phenomenon, identified by the Council of State as "legal mixture", appeared in the 1980s,[3] and was recently exacerbated by coalition governments. This trend has manifested itself mostly by annual enactment of the *Ley de Acompañamiento*, a special law which is voted at the same time as the budget, and which includes dozens of modifications to other laws. Because the reforms are negotiated in Parliament, they do not follow the procedures described in the previous subsections. This kind of law has not been used since 2004.

- Second, national regulators (including Parliament) have complied with difficulty with the obligation to provide an exhaustive list of articles and laws being abrogated by the new measure at the end of new laws or regulations.[4] It is a legal requirement that a table (*tabla de vigencias*) summing up which articles have been abrogated should accompany each new measure (either creating or reforming a regulation). Yet, according to the Council of State, an increasing number of new laws and regulations tend to use a general formula indicating that "all previous rules which are contrary to the one being enacted are henceforth repealed".

- Finally, legal security and overall transparency of the regulatory environment have decreased due to rapid shifts in the distribution of regulatory competencies across levels of government – European, national, and subnational.

To address these challenges, the Spanish government has taken a number of steps, including the development of a public database for verdicts; official access to the BOE website for consolidated texts;[5] and the reinforcement of judicial analysis in RIA. In the future, RIAs should state precisely the changes brought about by the proposed rules. Accordingly, the standard sentence "all previous rules which are

contrary to the one being enacted are henceforth repealed", which was commonly used, is no longer sufficient.

A further problem linked to legislative simplification in Spain is the complex nature of the legislative process, whereby ACs need to be involved differently depending on the policy area. A straightforward rationalisation of the stock is therefore difficult to design, and legal clarity suffers. The OECD peer review team heard a number of comments to this effect. A process of unification of doctrine is being carried out by the Supreme Court to establish a single interpretation of a rule when two or more courts have made different interpretations. The Ministry of Territorial Policy is responsible for ensuring that simplification efforts preserve the certainty and coherence of the legal environment across the territory. The OECD peer review team also heard that duplicative regulation is an issue, so regular cleaning of the regulatory stock is important. Concurrent regulation by the State and the ACs on the same issue was a point already picked up in the 2000 OECD report.

Administrative burden reduction for businesses[6]

Context

Administrative burdens on Spanish businesses are estimated to be above the international average. On data from 2005, the Bank of Spain has estimated that the burdens represent 4.6% of GDP (compared to 3.7% of GDP in the Netherlands).[7] A reduction of 30% would therefore imply (at least in principle) an increase in GDP of 1.4 points. A similar estimate of 4.6% GDP is suggested by the Spanish Chambers of Commerce, reporting on data from the European Commission (see Figure 5.1).[8] According to the central government, the 30% reduction target implies around EUR 15 billion annually of savings for Spanish enterprises.

Figure 5.1. Administrative burdens in some EU Member States in relation to national GDP

Administrative costs per EU member state

Administrative costs as % of GDP[1]	AT	BL	CZ	DE	DK	ES	FI	FR	GR	GR	HU	IE	IT	NL	PL	PT	RE	SK	SI	SE	EU25
	4.6	2.8	3.3	3.7	1.9	4.6	1.5	3.7	1.5	6.8	6.8	2.4	4.6	3.7	5.0	4.6	6.8	4.6	4.1	1.5	3.5

1. Kox (2005): Intra-EU difference in regulation caused administrative burden for companies. CPB Memorandum 136. CPB, La Haya.

Source: 2008 Spanish Chamber of Commerce Report, p.6.

The Chambers of Commerce have also estimated that some 42% of Spanish businesses incur administrative costs between EUR 6 000 and 30 000 per year, and 8% bear more than EUR 30 000 administrative costs annually. According to a study, businesses suffer mostly from inefficiencies of the public administration, triggered in first place by over-regulation and the lack of cost assessment. In addition, most of the companies analysed considered the government's policy supporting entrepreneurship to be complex and ineffective. The building sector and hotel and catering businesses are the sectors where burdens are perceived to be highest.[9] 94% of Spanish businesses employ less than 10 workers.[10]

to be complex and ineffective. The building sector and hotel and catering businesses are the sectors where burdens are perceived to be highest.[9] 94% of Spanish businesses employ less than 10 workers.[10]

The de-centralised legislative system (with increasing regulatory and administrative activity of the ACs over the past decades) is a key underlying issue. The great majority of the burdens on business are considered to derive from regulations issued by ACs and the local levels of government.

National policy on administrative burdens for businesses and citizens

Early policies

As in other European countries, the Spanish government has made successive efforts over a number of years to reduce administrative burdens and simplify citizens' relations with public authorities. These have led, for example, to the elimination of the need to present photocopies of the national ID card and registration certificates at the AGE. This allowed a saving of 7.5 million paper documents and close to 7 million processing hours.[11]

The introduction of ICT in the handling of administrative procedures will be accompanied by a process of redesign and simplification. Law 11/2007 (article 34) obliges administrative units to analyse, prior to the automatisation of a procedure, which documents are required, its time limits, and the distribution of work inside the Public Administration for handling the case.

Box 5.3. Administrative simplification: Initiatives recorded in the 2000 OECD report

- Project to review all procedures to incorporate the tacit authorisation rule contained in the Common Administrative Procedure Law (1999).
- Inter-ministerial Commission on Simplification (1999).
- Project to set up one-stop shops for entrepreneurs (*Ventanillas Unicas).*
- Administrative information system (*Sistema de Información Administrativa*), which has been implemented.

Current policy

Since 2007, the Spanish government has adopted a number of decisions that have reinforced its policies to reduce administrative burdens. The aim is to revitalise Spanish business and boost Spain's international competitiveness. The strategy is mostly aimed at business burdens though there is a small part for citizen burdens. The overall objective is to reduce administrative burdens on companies derived from Spanish regulations by 30% by 2012, from a baseline of May 2007.[12]

The programme includes burdens at the sub national levels of government (regional and municipal). It excludes regulations that transpose EU directives, if the information obligation can be directly traced back in the directive. The EU is, however, a clear driver, via Directive 2006/123/EC on services in the Internal Market (so-called Services Directive), for the establishment of one-stop shops. In addition, the Plan seeks to minimise administrative burdens on companies derived from new regulations. 16 ministries are engaged and 10 ministries are on a fast track to show results, based on areas found to be especially burdensome, which have been brought together into packages approved by the Council of Ministers. Use of the Standard Cost Model is promoted, wherever possible.

The specific objectives and modalities of the strategy are described in the Action Plan for the Reduction of Administrative Burdens, approved by the Council of Ministers in June 2008. As well as

confirming the overall 30% reduction target (up from the original 25%) this includes the following key projects:

- *Action in six priority areas.* The Action Plan follows the European Commission's approach of targeting priority areas rather than screening all the legislative stock. The priority areas are Company Law, Tax Law, Statistics, Public Procurement, Environment and Working Environment-Employment Relations.

- *Addressing new regulations.* Action Protocol on RIA to be applied to all new regulations adopted since 1 January 2009.

- *Three fast track packages,* covering a total of 159 measures.

- *A pilot project* in the area of the environment.

Box 5.4. Staging posts in the government's commitment to reduce administrative burdens

Spain's current strategy to reduce administrative burdens has been shaped through the following decisions:

1. Council of Ministers Agreement on the Promotion of the Better Regulation and Reduction of Administrative Burden Programme (4 May 2007). This agreement approved:

- the creation of a High-level Group (*Grupo de Alto Nivel,* GAN) to prepare an Action Plan for the Reduction of Administrative Burdens;

- co-operation with the ACs and local authorities to link their participation in the objectives included in the future Action Plan;

- identification of new initiatives that allow for progress in the simplification processes of procedures that influence the lives of citizens and companies; and

- agreement on co-operation mechanisms with the Chambers of Commerce, business organisations and trade unions to identify those measures that allow the reduction of administrative burdens.

2. Action Plan for the Reduction of Administrative Burdens (May 2008). It included the reduction of burdens affecting existing companies, particularly SMEs; the simplification of procedures for the creation and dissolution of companies, speeding up and reducing their associated costs and promoting an entrepreneurial spirit; and the promotion of investment, facilitating the diversification of companies into new sectors or new geographical areas. To this end, the Plan foresaw an administrative burden reduction target of 30% by 2012 for companies, and to minimise administrative burden on companies in all regulations approved as of 1st January 2009.

3. Council of Ministers Agreement for the development of the Action Plan for the Reduction of Administrative Burden and Better Regulation (20 June 2008).

4. Council of Ministers Agreements of 27 June and 14 August 2008, which approved the urgent implementation of 81 fast track measures to reduce costs in procedures affecting business activity was approved.

5. Council of Ministers Agreement of 17 April 2009, approved a further 78 measures for the reduction of administrative burdens on citizens and companies.

6. Council of Ministers adoption of Royal Decree 1083/2009 (*memoria del análisis de impacto normativo*) in July 2009, to boost the implementation of impact assessment.

Institutional framework in the AGE

A High-level Group (*Grupo de Alto Nivel*, *GAN*) drew up the Action Plan in 2007. The Group continues to lead the process. It is chaired by the First Vice-President of the government (Ministry of the Presidency) and comprises the Secretary of State for the Economy, the Secretary of State for the EU, the Director of the Prime Minister's Economics Office and the Undersecretary of the Ministry of Trade, Industry and Tourism. The Labour, Health and Environmental ministries are also present. The GAN meets 2–3 times a year.

The Ministry of the Presidency oversees and co-ordinates the simplification policies. The Sub-Directorate General for the Improvement and Simplification of Procedural Regulation created in 2007 within the State Secretariat for Public Service, is responsible for management and co-ordination of simplification policies, including the programme for administrative burden reduction (see Chapter 2). A staff of 14 are allocated to this work. The Ministry heads an inter-ministerial co-operation and co-ordination network. Under-Secretaries in each ministry have been designated as points of contact for the work. The reduction target of 30% is not divided between ministries.

Two other institutions are involved:

- The National Agency for the Evaluation of Public Policies and Quality of Services (AEVAL), through its reports on the effectiveness of public programmes. Among other relevant studies it produced a report in 2007 on administrative burdens and company creation.[13]

- The Inter-ministerial Commission for Administrative Simplification, through its role as facilitator at the interface between the public administration and external stakeholders.

The June 2008 Council of Ministers decision requires submission to the Council of Minister in the last trimester of each year of a legislative proposal encompassing all measures relating to administrative simplification. Business organisations and trade unions should be consulted while elaborating such proposal.

The Presidency Ministry, in collaboration with the other involved ministries, will draw up a report every six months on the measures adopted within the framework of the Action Plan, and their economic impact. The reported will be presented to the Council of Ministers.

The creation of a technical body to compute all existing procedures in the public administration as well as those simplified is foreseen for 2010. The body will allow access to a comprehensive inventory, which to date does not exist as each public administration has its decentralised, autonomous statistical structure.

Co-ordination with subnational levels of government

The programme and its goal is a shared one across all levels of government. This is unusual in the EU and marks Spain out, at least in this respect, as ahead of most EU countries. Co-operation agreements and working groups have been put in place to facilitate co-ordination (see also Chapter 8). Significant efforts are being made to define common ground, which can be a challenge. The central government is responsible for measuring and reducing administrative costs related to legislation with direct State origin, while the ACs are expected to take action in relation to their legislation. The central government encourages the ACs to respect their commitments and perform their tasks in a manner as harmonised as possible.

The different levels of government are all highly relevant to the programme in different ways. According to the CEOE, the central level is especially relevant to company law and taxation; the ACs are especially important for the regulation of commerce and the environment; and the municipalities for start ups and licensing.

Training

A range of training activities have been developed at the national level. They include presentations from ministry representatives, as well as representatives of the companies and associations who signed co-operation agreements in 2008. The International University Mendez Pelayo on its premises in Santander organises 2-day seminars on the topic. The reduction of administrative burdens has also been added as a subject for the selection courses for future public sector employees. An online course has also been launched on Better Regulation and the reduction of administrative burdens.

Overall, some 500 officials of the AGE have been informed and trained so far on the administrative burden reduction programme.

Methodology and process

Definition and scope of administrative burdens

Administrative burdens are understood as the cost of unnecessary information obligations contained in regulations and incurred by economic operators (business and not-for-profit operators such as the charitable sector and voluntary organisations) originated by any of the three levels of public administration (national, regional and local authorities), and which would otherwise not be incurred in the absence of those regulations.

Use of the Standard Cost Model (SCM)

The SCM methodology is being deployed in the six priority areas as well as for the fast track measures and the environment pilot project. Consultants have been hired to carry out the measurements. The Spanish government notes, however, that the SCM is not always well suited to capture the benefits of some reduction and simplification measures. These are often related to initiatives that are not focused on actions linked to administrative processes, but rather on other practices such as the reduction of timeframes for resolution by the administration; the injection of liquidity; and the implementation of "silence is consent" rules, In these cases, alternative analysis methods have been applied, leading to qualitatively determine (and sometimes quantify) the opportunity costs incurred by the company prior to implementation of the initiative.

New regulations

The target is not formally a net target. However burdens arising from new regulations are reviewed and measured. All impact assessments must include the measurement of the burdens which are being removed, the ones which are kept, and the ones which are introduced (with a justification). The measurement is being carried out by the unit proposing the regulation. The June 2008 Council of Ministers decision included the preparation and implementation of an Action Protocol on RIA (*Protocolo de actuación para el Análisis del Impacto de la Nueva Normativa),* which would ensure that the impact of new burdens on businesses and citizens be measured and kept to a minimum. Such a protocol shall be applied to all new regulations adopted since 1 January 2009. The 2009 RIA Guidelines make the identification and measurement of administrative burdens an integral part of the RIA process. They include an annex describing a simplified version of the SCM method.

The six priority areas

The Spanish government has targeted six of the thirteen priority areas identified by the European Commission. The baseline measurement of State regulations in these areas has already been completed using the SCM methodology. Consultants have been hired to detect information obligations imposed on companies and individuals in the six priority areas. The sixteen central ministries involved in the priority areas in this task. The ministries involved in the priority areas co-operated in this task. The Presidency

Ministry has now submitted the proposals for discussion and subsequent implementation to the line ministries.

Box 5.5. Administrative burden reduction: Screening and measuring the six priority areas

The Agreement of the Council of Ministers of 20 June 2008 set action in six priority areas in accordance with those information obligations that generate a higher cost for companies. These areas are Company Law, Tax Law, Statistics, Public Procurement, Environment and Working Environment-Employment Relations.

To date, the following stages have been carried out by the central government:

- Identification and selection of regulations from all of the priority areas. A list of relevant legislation has been drawn up for each of the six areas. Overall, 167 regulations were studied (five Organic Laws, 66 norms with the status of Law, 86 with Royal Decree status and 10 with a lower status).
- Identification of the related information obligations (IOs). From the analysis of those regulations, a total of 1 377 IOs were identified, using the following criteria:
  - the economic cost for the entrepreneur;
  - the general sphere of application;
  - the organisational impact for the entrepreneur, in accordance with the regularity of the IO, as a result of the volume of personnel affected, etc.; and
  - the territorial area (IOs with a limited geographical scope of application are not analysed in the study).
- Selection of the IOs with greater impact. Of the 1 377 IOs identified, 300 have been selected for measurement because they represent a greater burden for companies or are considered to be priority on grounds of public interest. The following general criteria applied:
  - the number of companies affected by the IO;
  - the frequency with which companies subject to an IO have to fulfill it;
  - the impact on the business activity, evaluating a priori the effort required by companies to comply with the IO; and
  - the capacity of measuring the IO, evaluating a priori the feasibility of measuring the cost of the activities generated in the company in order to comply with the IO.

Fast track measures

The Council of Ministers has also approved (in 2008 and 2009) three packages of measures (a total of 159 measures). The measures affect 10 ministries and their implementation spans three years (2008, 2009 and 2010). The baseline for measurement is set against the benchmark of May 2007. An external consulting company has been engaged to quantify the administrative burdens related to these procedures. These measures imply a cost reduction of more than EUR 2.3 billion.

Pilot project for the environment

A pilot project to measure burdens in the area of the environment was agreed with the aim of reducing the administrative burdens on transporters of dangerous waste by road (Box 5.6). Consultants were

engaged to cost the relevant burdens. This project engaged both the State (the Environment Ministry and the then Ministry of Public Administration) as well as the ministries of the environment in each AC. It has recently been completed.

Box 5.6. The pilot project on administrative burdens and the environmental sector

The procedure of "Notification of transport of hazardous waste across the national territory" was selected as a case study for its high significance, as it affects a large number of administration and private companies of different sizes and distributed in a wide range of sectors and levels of government. The transfer of large volumes of hazardous waste requires very comprehensive monitoring, as required by the related framework legislation, which has an European, national and regional character.

The pilot project followed a structured approach, which included a screening of the relevant legislation to identify the burdens. The information obligations placed on companies are very recurrent and are associated with each transaction they make, given that the ultimate goal of the procedure is to ensure the full traceability of the waste and avoid any situation of illegality that may occur. The information obligations covered by the pilot project included:

- the notification of transport of hazardous waste;
- the document control and monitoring during transport; as well as
- the annual statement by the producers and the annual report by the managers of hazardous waste collecting statistical data.

As a second step, the Standard Cost Model was applied to measure the cost. On the basis also of direct interviews with a representative sample of both producers and managers, the cumulated cost at the national level of the reporting requirements was concluded in EUR 16.5 million per year for the producers (some 8 207 in total) and managers (1 354). The unit cost per producer and manager amounted to EUR 2 468 and EUR 1 603, respectively.

The pilot project final report made a number of recommendations to reduce those administrative costs. Among them, the elimination of the national code and of the prior notification of transport; the introduction of fast track procedures for small national producers; the simplification of document control and monitoring; the establishment of a system for managing information on hazardous waste (notably by enhancing ICT tools and setting up one-stop-shops); and enhanced co-ordination between administrations. The findings were released in a moment of reflection and analysis of the administrative procedures regulating hazardous waste, in relation to the transposition of Directive 2008/98/EC. Thus, the pilot project contributed to decision-making within the Sub-directorate for Sustainable Production and Consumption, which is responsible for transposition process.

This pilot project was the first attempt to produce a SCM measurement in Spain. The project was a valuable experience for the administrations involved in experimenting the practical implication of the administrative burden reduction strategy, stimulating at the same time close collaboration both within the public administration and between this and the concerned stakeholders.

The government considers that the project provided the basis for a good approach to the subsequent big scale measurements. The main challenge was the involvement of the private sector to produce accurate figures, which not always has been possible. The findings of the report on the environmental implications have been useful for the concerned department, while the methodological ones for the Ministry of the Presidency and thus for the whole burden reduction programme. In particular, the report showed how to identify reduction proposals coming from the private sector, even when quantification in monetary terms is difficult.

Further to the pilot project, the ACs will continue to implement the system for sharing information on hazardous waste and apply the agreed standards. To this end, the Environment Ministry is developing a platform for exchange of information between the various public administrations.

Public consultation and communication

The Spanish government has opted to work through structured co-operation with key stakeholder representatives, backed up by formal agreements. Two co-operation agreements were signed with the

Spanish Confederation of Small and Medium-Sized Companies (CEOE)[14] and with the Higher Council of Chambers of Commerce and Industry. These associations of stakeholders provide help and assistance to the government in the detection of information obligations within the framework of the Action Plan.

Box 5.7. Co-operation agreements to reduce administrative burdens in Spain

The Spanish government has sought close collaboration with relevant affected stakeholders in pursuing its strategy to identify, measure and reduce administrative burdens on companies. Two co-operation agreements are worth mentioning in this respect.

Higher Council of Chambers of Commerce

The agreement with the Higher Council of Chambers of Commerce regulates the participation of that association in the development of the Project "The Reduction of Administrative Burden in the Spanish Company: Impact on Productivity". Linked to the overarching Action Plan for the Reduction of Administrative Burden, it intends to promote the study and transfer of information between the public administration and the Chambers; the identification of actions and promotion of joint initiatives; the design of procedural simplification. The agreement includes the setting up of a permanent advisory panel of companies by the Higher Council of Chambers of Commerce.

CEOE and CEPYME

A further co-operation agreement was signed in the framework of the project "Analysis of the Administrative Burden supported by Spanish SMEs", which is developed jointly by the central government, the Spanish Confederation of Employers' Organisations (CEOE), and the Spanish Confederation of Small and Medium-Sized Companies (CEPYME). Also in this case, among the purposes of the agreement are the carrying out of studies, exchanging information, and the identification of possible joint initiatives aimed at implementing the overall Action Plan. In particular, the agreement includes the selection by the CEOE and CEPYME of a group of companies of different sizes, sectors of activity and territorial implementation to carry out an analysis, co-ordinated by the associations, of all the actions and administrative processes that these companies must carry out with the public administrations in the normal course of their activity.

These projects are to be considered as a starting point for closer interaction and integration. The relevance of this project is twofold. It not only tests current co-ordination mechanisms between the levels of government, but it also helps to establish which burdens are created at what level and by which authority.

The Chambers of Commerce and the CEOE have made a significant contribution to shaping the Action Plan:

- The Chambers of Commerce have carried out a project to measure administrative burdens making use of its legal status, its presence across the national territory, and its daily contacts with businesses. In October 2008, the Chambers published a report commissioned to a private consulting company and a law firm, which identified the administrative procedures and information obligations faced by businesses (mostly, SMEs) and recommended simplification measures. Overall, 200 businesses were consulted. The areas considered referred to legislation enacted by the State in its exclusive capacity (Art. 149 SC), focussing on six horizontal and six sectoral domains. The former were domains affecting businesses irrespective of the sector of activity, while the sectoral legislation represents 53% of Spanish firms. Overall, 225 norms were analysed, ranging from laws to royal decrees to decrees and resolutions. 160 were State laws. The study identified 584 procedures and obligations related to these norms and proposed 113 concrete simplification measures.[15] An internal Working Group was created by the Chambers to follow up the project and contribute to the government's programme.

- The CEOE has launched a project with a view to quantifying administrative burdens on SMEs. To this end, in accordance with a protocol signed with the Ministry of the Presidency, personal in-depth interviews will be carried out with some hundred companies in the commerce, food, transport, and tourism sectors. A questionnaire was also sent to 1 500 companies seeking to capture the "irritation factor" of some of the burdens identified. A report, including recommendations for possible simplification measures, is expected by the end of 2009.

Use of e-Government in the AGE

Extensive use is being made of e-Government for the simplification programme. Most of the fast track measures adopted by the Council of Ministers use ICT or the introduction of online services. The Administrative Information System (AIS) is an example of the synergies exploited between the e-Government strategy and the Action Plan for the Reduction of Administrative Burdens (see below). The AIS was initially conceived as a support tool for the AGE. Its main purpose was to implement the mandate of Law 30/1992 which requires that every public administration has a complete catalogue of all existing administrative procedures. Because of its remit and sophistication, the AIS has now become the tool for monitoring the application of Law 11/2007 on the electronic access of citizens (definition includes companies) to public services.

Box 5.8. E-Government and reducing administrative burdens in the AGE

The actions include:

- Electronic Office and Electronic Register in the Ministry of Justice.
- Electronic Signature System for Civil Servants to interact with citizens (Ministry of Economy and Finance).
- Electronic or Telephone Resolution of tax infringement in Personal Income Tax.
- Electronic Filing of Economic – Administrative Claims.
- Creation of a network of 3 000 Cadastral Information Points.
- Electronic Access to the Cadastral Virtual Office by Notaries or other Public Administrations.
- Electronic Registration Application for Security Companies.
- Electronic Application for all benefits administered by the National Social Security Institute.
- Electronic Payment of Industrial Property Charges.
- Application for the driving licenses through the medical cabinets.

Achievements so far and next steps

As in other European countries, it takes time for processes to start yielding results. The current Action Plan of the Spanish government was adopted in 2008. However, the first reductions have already taken place. In April 2010, 109 of the fact track measures had been fully implemented, totalling an annual saving of more than EUR 1 157 billion.

176 proposals for the six priority areas have now been presented for validation by the responsible ministries. These proposals taken together, if implemented, would amount to an annual saving for Spanish

enterprises of more than EUR 5 billion. Another package of proposals for simplification elaborated in collaboration with CEOE-CEPYME and the Higher Chamber of Commerce has been prepared. As of April 2010, the proposals for costs reductions may total nearly EUR 10 billion.

The National Institute for Public Administration has created an Investigation Group for the Better Regulation and burden reduction policy. The participants include high-level officials for the three levels of the public administration (State, Autonomous Communities and municipalities), as well as representatives of enterprises (Higher Chambers of Commerce), and academics. It meets once every two weeks and is chaired by a civil servant of recognised expertise and authority from the Ministry of the Presidency. The purpose of this Group is to analyse possible improvements and specific horizontal procedures that could be generalised to all ACs and local authorities. In particular, the Group is now evaluating the authorisation procedure of the city of Madrid and its possible change to a declaration or previous communication scheme, as well as the possibility of adopting the rule "silence is consent". The Group also aims to study the documents required of citizens for hundreds of the administrative procedures of the Autonomous Community of Madrid, in order to determine if these are already held by the central administration.

Other simplification measures for businesses

One-stop shops

One-stop shops for businesses have been established in Spain, called *Ventanillas Únicas Empresarial* (VUE). These bodies support entrepreneurs in setting up new activities through the provision of integrated services. In particular, the VUE system seeks to inform and orientate businesses and to facilitate the processing of individual cases. The aim is to reduce all procedures related to all relevant administrations into a single step. So far 31 VUE one-stop shops have been set up across ten ACs. A virtual one-stop-shop portal[16] has also been established, which provides general information, as well as personalised advice on procedures related to starting and promoting an economic activity. From June 1999 to December 2005, the VUEs contributed to the creation of more than 36 500 companies and offered advice to more than 162 000 persons.[17] From December 2005 to end of 2009, further 34 500 new businesses have been created and 110 000 people given advice.[18]

Licences and permits

As already noted in the 2000 OECD report, Spain faces important challenges with the length and complexity of procedures for licensing and permits.[19] The government reports that the main problems are the volume of files managed and the generalisation, in most municipalities, of "authorisations" instead of "communications". The same diagnosis is provided by a study by the AEVAL.[20] The Agency recommended, among other matters, to extend the access to electronic procedures to all types of company; the development of a single template and portal; the introduction of a single municipal licence throughout Spain; and deadlines to be set for public authorities (ACs and local councils) for granting activity licences, failing which the authorisation should be automatic.

A number of actors are mobilised to address the problem, including the municipalities, as well as a multi-disciplinary commission within the National Institute for Public Administration (INAP). The Law on Measures to Promote the Information Society approved in 2007 incorporates actions aimed at reducing the constitution times of a Limited Company, such as the creation of a set of pre-registered company names, and the possibility of using a guidance model of by-laws which allows registration within 48 hours.

The chambers of commerce suggested that municipalities are a source of delays and braking reform on licences. This is partly because onerous *ex ante* proof is needed to establish a business.[21] Not least, licences are an important source of income when the tax base is limited. Another factor is the often very small size of municipalities.

Administrative burden reduction for citizens

Most initiatives to reduce administrative burdens do not strictly distinguish between businesses or citizens (see above). Many of the projects set out above also have some effect on citizens. More broadly, Law 11/2007 on electronic access of citizens to public services (see Annex A) was an important milestone in defining citizen rights with respect to the public administration (electronic access, communication and procedures), as well as the obligations of the authorities with respect to citizens and a framework of co-operation with reference to electronic information between administrations.

Administrative burden reduction for the administration

No specific programme targeting administrative burdens incurred by the public administration has so far been developed by the Spanish government. However, initiatives for the modernisation of the administration are now established in central government strategy. They are partly pursued through administrative simplification.

In February 2007, the then Ministry for Public Administration implemented the "Plan for the Simplification and Computerisation of the Procedures of the General State Administration (AGE)" updating the inventory of procedures in force in the AGE. To this end, the so-called Administrative Information System (AIS) was designed as a repository to introduce, exploit, and monitor information on procedures and carry out related analysis through a series of indicators (Bureaucratic Effort Index). According to data available in the AIS, there are a total of 2 612 procedures in the AGE regulations, of which 2 112 are external procedures and 500 are internal.

With the objective of creating more efficient and direct procedures, a Web Tool was designed to support the redesign of the administrative procedures (HARPA). The tool was made available to the public administrations and offers the possibility to define new processing circuits, eliminate activities that fail to add value and optimising the processing times, and as a result improve the quality of the services provided to citizens. The *060 network* also contributes to reducing burdens through access to information services and to electronic processes.

Notes

1. The texts can be seen on the website of the Congress, at: *www.congreso.es/portal/page/portal/Congreso/Congreso/Iniciativas/LeyesAprob?_piref73_1335447_73_1335446_1335446.next_page=/wc/busquedasLeyesAprobadas&anoLey=2000&selectLey=tituloListadoRealesDecretosLeg* (last accessed 28 September 2009).

2. See: *http://tienda.boe.es/oresults.html?sf=N2COD&se=101(*last accessed 28 September 2009).

3. *Communication of the Consejo de Estado (1999).*

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

5. Previously, consolidated texts and judicial verdicts were provided to the public by some private services.

6. In Spain the distinction between actions for business and citizens is blurred, partly because legally the two notions are rolled together. Further to legal acts establishing such a notion, such as law 11/2007, "citizens" often means both natural and legal persons (corporate bodies). This section therefore contains some elements that are also relevant to citizens.

7. See: Bank of Spain, *Una primera estimación del impacto económico de una reducción de las cargas administrativas en España*, in Bolétin Economico, Julio-Agosto 2008.

8. See: Consejo Superior de Cameras de Comercio, Industria y Navigacion de España, *Análisis de los trámites administrativos soportados por las empresas en su actividad cotidiana derivados de la regulación*, Final Report, Octobre 2008, p.6.

9. See: Chambers of Commerece, *Regulacion y Competitividad Empresarial*, Panel de Opinion 10, 2007. The report considered about 6.500 companies and the survey took place in July 2007.

10. See: Bank of Spain, *Una primera estimación del impacto económico de una reducción de las cargas administrativas en España*, in Bolétin Economico, Julio-Agosto 2008, p.85.

11. See: Spanish Government, AB Agreement of 4 May 2007.

12. This compares with a reduction target of 25% at the EU level.

13. See: AEVAL (2007), Administrative Procedures for Company Creation in Spain, Madrid.

14. The CEOE is a matrix organisation covering all sectors of the business community and the whole Spanish territory. It comprises 225 associated

federations, or 1.2 million companies, and claims to represent over 95% of Spanish economic activity. A specialised federation, the CEPYME, covers SMEs and works in close co-ordination with the CEOE.

15. See: Consejo Superior de Cameras de Comercio, Industria y Navigacion de España, *Análisis de los trámites administrativos soportados por las empresas en su actividad cotidiana derivados de la regulación*, Final Report, Octobre 2008.

16. The portal is a part of the *060.es* website: *www.060.es/empresa-ides-idweb.jsp* (last accessed 20 August 2009).

17. See. *www.ventanillaempresarial.org/docum_vues/datos_VUEs_31dic05.pdf* (last accessed 20 August 2009).

18. The figures are provided by the Spanish government.

19. The 2000 OECD report noted that setting up, operating and closing a business in Spain appears to be a more cumbersome process than in other countries. The main culprit is a complex system of authorisations, permits and licences existing at all levels of government. The overall burden is disproportionately borne by the very large SME sector.

20. See: AEVAL (2007), *Administrative Procedures for Company Creation in Spain*, Evaluaciones E06, Madrid.

21. Spain is still based on a notarial system, which implies significant, formal administrative procedures that can only be taken forward through a licensed official- the notary. However, the government considers the system vital in order to guarantee the security of economic traffic.

Chapter 6

Compliance, enforcement, appeals

Whilst adoption and communication of a law sets the framework for achieving a policy objective, effective implementation, compliance and enforcement are essential for actually meeting the objective. An *ex ante* assessment of compliance and enforcement prospects is increasingly a part of the regulatory process in OECD countries. Within the EU's institutional context these processes include the correct transposition of EU rules into national legislation (this aspect will be considered in Chapter 7).

The issue of proportionality in enforcement, linked to risk assessment, is attracting growing attention. The aim is to ensure that resources for enforcement should be proportionately higher for those activities, actions or entities where the risks of regulatory failure are more damaging to society and the economy (and conversely, proportionately lower in situations assessed as lower risk).

Rule-makers must apply and enforce regulations systematically and fairly, and regulated citizens and businesses need access to administrative and judicial review procedures for raising issues related to the rules that bind them, as well as timely decisions on their appeals. Tools that may be deployed include administrative procedures acts, the use of independent and standardised appeals processes,[1] and the adoption of rules to promote responsiveness, such as "silence is consent".[2] Access to review procedures ensures that rule-makers are held accountable.

Review by the judiciary of administrative decisions can also be an important instrument of quality control. For example, scrutiny by the judiciary may capture whether subordinate rules are consistent with the primary laws, and may help to assess whether rules are proportional to their objective.

Assessment and recommendations

Compliance rates are not monitored and there may be a compliance issue. As in most other EU countries, Spain does not keep any systematic record of compliance rates. However, this may be particularly relevant in the Spanish context. As the 2000 OECD report had already noted, the complexity of the regulatory system may put pressure on the rate of compliance, and the Spanish government has not yet emphasised the need to design compliance friendly regulations. There are also recorded instances of mismanagement and corruption. The OECD peer review team was not able to examine this issue in any depth but it seems that compliance needs attention.

Recommendation 6.1. Consider whether to set up a system for monitoring compliance rates, starting with the records that may already be kept.

Box 6.1. Comments from the 2000 OECD report on compliance

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

The approach to enforcement varies significantly across the national territory, and risk-based enforcement has some way to go. Variations in approach, due in large part to delegated responsibilities, cause significant variations in quality of services provided, and there are no minimum standards. Efforts have been made to improve enforcement strategies, but these tend to focus on increasing controls (more inspectors, and databases) rather than adopting a more efficient risk-based approach as in some other EU countries (varying the rate of inspection to the risk of non compliance). The OECD peer review team also heard that the State peripheral administration often implements central regulations but has little voice in shaping it, as it is not consulted in the development of legislation.

Recommendation 6.2. Consider a review of enforcement policy, engaging all relevant actors and addressing the scope for evolving towards a more risk-based approach.

There is a comprehensive and diversified appeal system, but delays are a major issue, which the Justice ministry is addressing. The situation as recorded in the 2000 OECD report still appears to be valid. Spain's appeal mechanisms are accepted as fair, but also criticised as complex, slow and costly. The citizen is protected against possible abuses by the administration, but it is a difficult process. The main issue is delays, with a slowing up of some procedures over the last ten years. The cost of pending judicial claims has been estimated at EUR 6 billion. Litigation is rising. The Justice ministry has recently established a Modernisation Plan to address issues and update the framework.

Box 6.2. Comments from the 2000 OECD report on the appeal system

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

Facing these challenges, the government has launched measures that focus on establishing credible dispute resolution mechanisms. For instance, reforms to the Common Administrative Procedure

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

Background

General context

The Ministry of Justice has recently launched a Strategic Plan for Modernising the Justice System 2009-12. The Spanish government approved this Plan on 18 September 2009. This appears to be an important and well focused initiative, but it was not possible for the OECD peer review team to evaluate it as it occurred after the team's missions to Spain earlier in 2009. The stated aim is to "achieve a flexible, efficient justice system that is comparable with the most advanced public services" (Box 6.3).

Box 6.3. The Strategic Plan for Modernising the Justice System 2009-12

On 18th September 2009, the Spanish Government approved the Strategic Plan for Modernising the Justice System 2009-12, a document that brings together the regulatory reforms, organisational changes and technological improvements that the Ministry will implement over the next three years. The aim is to achieve a flexible, efficient justice system that is comparable with the most advanced public services. Justice is a priority because of its central value for the development and well-being of our country, and for this reason a further EUR 600 million will be devoted to modernizing justice over the next three years. This commitment starts in 2010 with EU 218 million for setting the Strategic Plan in motion.

An agreed Plan

The Plan is the practical translation of the Social Agreement concerning Justice to all political forces, institutions, professional associations and organisations linked with justice. It won the support of the Congress of Deputies in plenary session, the General Council of the Judiciary and the autonomous communities. It was drawn up following consultations with practitioners and over one hundred public bodies and civil society organisations.

Source: Extract from Strategic Plan for Modernising the Justice System, 2010.

Compliance and enforcement

Compliance

In general, no track is kept centrally of compliance rates and trends, and no evaluations are systematically carried out. Sectoral information is available in certain domains, such as environmental impact or in the prevention of occupational hazards. For the securities market, the National Securities Market Commission (*Comision Nacional del Mercado de Valores*, CNMV) publishes an annual monitoring report on compliance with sectoral regulations. The report is submitted by the President of the CNMV to the Congress and made public. The number and importance of formal infringement complaints filed by market operators are sometimes used as parameters to gauge compliance rates.

The Spanish government has not yet emphasised the need to design compliance-friendly regulations from the beginning by assessing the likely effects of regulations on target populations. This approach would require the regulator to understand how the regulated population will respond to rules and enforcement strategies, and how they can be encouraged to comply with regulatory objectives.[3] The OECD

peer review team heard that the State field administration is not especially well connected and informed regarding the shaping of new regulations, and are not systematically consulted. This issue is relevant to the further development of *ex ante* impact assessment and related consultation procedures (see Chapter 4).

Responsibilities for enforcement

Responsibilities for enforcement are linked to the attribution of competences between the State and the ACs:

- *State competences.* The State may enforce directly. Or it may (more commonly) delegate enforcement to the ACs, in which case the ACs either have powers only to enforce, or they may have powers to implement (*i.e.* develop secondary implementing regulations to give effect to a State law) and enforce.

- *AC competences.* The ACs enforce their own legislation and regulations.

- *Shared competences.* In some of these cases the ACs may enforce State legislation as well as their own legislation. Education, housing, health and social care policies are such cases.

Enforcement of State regulations

In the case of direct enforcement by the State, it may use its own national inspection agencies.

Where enforcement is delegated to the ACs, to oversee that it is properly done, the State relies on the so-called "peripheral administration" (*administracion periferica*), which provides direction and oversight of all the central administration and its public organisms services in the respective Autonomous Communities (art. 22.1 Law 6/1997).[4] 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.

Administrative procedures and political leverage are used to ensure that enforcement is effectively carried out. Administrative procedures include State monitoring of the actions of the ACs through direct supervision (*alta inspección*). Indirect supervision is also used. The Ministry of Industry, Tourism and Commerce (MITYC), for instance, relies on accredited organisations in the sector of tourism and industry. Sectoral bodies carry out enforcement controls in the form of general supervision and specific inspection activities. This is the case of the CNE and the CMT in the energy and telecommunication sectors.

In the areas of ACs' own competences, there is no scope for a State wide approach. The State has no powers and it can merely co-ordinate, stimulate, provide good practices and offer assistance.

Enforcement policy

The approach to enforcement varies significantly across the national territory. The situation varies with regard to the enforcement of national standards as well as standards for the ACs own legislation. The government explains that broadly speaking, mechanisms for the definition and enforcement of national standards differ from one policy to another. For each field, a board, council or system integrating all the public administrations affected, establishes standards. Nevertheless, and whilst this issue could not be examined in any depth, the OECD peer review team heard of that standards could be an issue, and could cause significant variation in the quality of the services provided by the ACs where these have delegated enforcement responsibilities. The system certainly appears to be complex.

Improving enforcement strategies has recently become more prominent on the government agenda, in particular for tax and environmental regulations. This is reflected in an increase in the number of inspectors and a more intensive use of computerised databases to obtain the information needed for control.[5] For instance, under the 1996 pension reform agreement (the so-called "Toledo Agreement"), a Bureau of National Investigation of Tax Evasion (*Oficina National de Investigación del Fraude*) was created. In the

environment area, the Ministry of Environment has set up surveillance networks for air, toxic waste and sea water quality controls to help ACs to compare their performance.[6] In relation to the implementation of the MITYC's annual aid plan, a control table has been developed within the ministry's Under-Secretariat and it is published at the beginning of each year since 2006. The objective was to increase transparency and establish a tool to track compliance with the regulations in relation to the award of aid. This approach –setting up more sophisticated control mechanisms and key performance indicators – can be contrasted with the approach taken by some other EU countries, such as the UK and the Netherlands, to move toward risk-based enforcement (companies for example, are inspected more or less frequently depending on their performance at the last control). Risk-based strategies do exist but tend to follow an EU lead (the Health Agency has followed the EU lead, for example).

The OECD peer review team also heard that there are issues of the link between the central government and its peripheral administration. The latter often implement central regulations but have little voice in shaping it, as they are not consulted in the development of legislation.

Appeals

A comprehensive and diversified appeal system exists in Spain, which provides protection to citizens against possible abuses by the administration. It comprises a number of elements, some of which can be activated simultaneously.[7]

There have been significant developments over time to reinforce the system. The Spanish Administrative Procedure Law of 1958 was progressively reformed in order to increase accountability and transparency across the administration. A first revision occurred indirectly in 1992,[8] when the legal regime of the procedures connecting citizens with the administration was revamped, and the response time in the delivery of public services reduced. The start, end and format of the procedures were redefined. The reforms set up minimum standards to be followed by all sub national administrations. In addition, the silence-is-consent- principle was introduced, implying that in case of non-response by an authority, the applicant can assume the request was authorised. The Law has recently been updated (Law 25/2009) to implement the Services Directive. This has brought in considerable change. The update modifies the principles of public intervention when limiting rights, requiring the adoption of the least restrictive measure and justifying it. It also modifies the "administrative silence" of administrative procedures started by citizens, and introduces explicitly the "responsible declaration" and "previous communication principles".

Another law extended tacit authorisation to the procedures of all ministries in 2004.[9] The Common Administrative Procedure Law of 1999 (a modification of Law 30/1992) created a new arbitration instrument based on agreement and mediation.

Following the practice of some other countries, attempts to improve existing complaint systems include the use of administrative feedback. In 1997, the Ministry of Economy and Finance established a special broad-based council (the *Consejo de Defensa del Contribuyente*), to speed up complaints and reduce appeals against tax laws and the revenue service. The system allowed the screening of some 12 000 complaints in 2008 and rejected some of them on different grounds, notably because of *desestimacion* (43%) and legal incompatibility (13%).[10]

Judicial review

The main element of the system is the existence of courts that deal with all complaints against actions (whether regulatory or executive) of the public administration. These so-called contentious - administrative courts are not administrative but judicial bodies, and their rulings can be appealed to the Supreme Court. Control in the contentious-administrative jurisdiction is regulated by law.[11] Orders, decrees and legislative-decrees are understood to be disputable, the latter only when they exceed the scope of the delegation.

Administrative appeals

Citizens can also complain against specific administrative decisions by administrative appeals addressed to the author of the decision or superior decisions. These are "appeal guarantees" and "reversal appeal", respectively. An important novelty introduced by the reform of the Common Administrative Procedure of 1999[12] is that administrative appeals can now not only include appeals against decisions but also against underlying regulations.

The timeframe for resolving appeals in the administrative sphere varies according to the type of appeal. In the case of appeals, the deadline is three months to pronounce and notify the resolution, while one month is allowed for reversal. In the case of extraordinary review, three months are allowed from the time the appeal is lodged. In the administrative-contentious sphere, data is not available at present on the timeframes for resolution by the courts.

Administrative appeals: regulatory agencies

Agencies form part of the public administration, and are therefore ruled by the same system. In accordance with the legislative provisions,[13] their actions may thus be subject to administrative or contentious-administrative appeal, depending on whether they refer to acts that put an end to the administrative channel or not. Both processes and resolutions may be appealed. Normally, the resolutions of the director or president of the agency bring the administrative channel to a conclusion.

The Ombudsman

The national Ombudsman (*Defensor del Pueblo*) is constitutionally independent. It is an office cited in the Constitution of 1978 as a high commissioner of the parliament guaranteeing the defense and protection of citizens' fundamental rights.[14] The Ombudsman is appointed by parliament for a five year mandate. The ombudsman office submits annual reports to the parliament. In addition, it produces "monographic reports" on particular themes and it publishes recommendations regarding the public administration's legal duties toward citizens. The Ombudsman can also challenge a particular law before the Constitutional Court to consider its constitutionality.[15] ACs tend to follow the national example, and regional ombudsmen are progressively being appointed also at the regional level.

The Office of the Attorney General

A further institution with the power to file actions for infringement of fundamental rights and freedoms is the Office of the Attorney General (*Fiscalía General del Estado*),[16] which is also in charge of promotion legal actions to defend the rights of the citizens and the public interest. The Attorney General also watches over the independence of the tribunals and courts. The Attorney General is appointed by the King upon proposal of the government.

Other dispute settlement mechanisms and processes

- A regulatory practice may be reported to a specialised body, such as the National Institute for Consumers and the Service for the Protection of Competition.
- The Common Administrative Procedure Law of 1999 created a new arbitration instrument based on agreement and mediation.
- European bodies such as the European Court of Human Rights may be invoked.
- The Chambers of Commerce have established arbitrage chambers on commercial law (*laudos arbitrales*).

- The order of lawyers has developed training on mediation.

Appeals at the subnational level

The national system is valid across the national territory, reflecting the unitary nature of Spain's judicial system. The system of administrative and judicial appeals that may be lodged at the level of the ACs is the same as the one established by the State legislation on administrative procedure and contentious administrative jurisdiction.

At the same time, ACs have set up some of their own structures. Some ACs like Catalonia and Madrid have created Arbitration Councils to handle minor complaints. Some ACs (*e.g.* Andalusia) have created a Suggestions and Complaints Book (*Libro de Sugerencias y Reclamaciones*) as an instrument to facilitate citizens' participation. Any individual or legal entity that believes it has been the subject of neglect, delays or any other infringement in its dealings with the regional administration as a result of a supposed poor functioning of the services, may report it in the corresponding Suggestions and Complaints Book, where any suggestions considered opportune to improve the efficiency of these Services may also be formulated. This Book is accessible via the Internet. It is also worth mentioning the possibility of reporting certain regulatory practices to specialised organisations, in areas such as competition, consumption, etc. Finally, citizens may file complaints to the Ombudsman for their Community (where one has been set up).

Performance of the system

The OECD peer review team heard that a recurrent complaint is delays of the system.[17] The Judicial Statistics does not offer direct data on delays. Nonetheless, estimates of the average length of the cases ended in the various Courts of administrative jurisdiction between 2004 and 2008 are reported in Table 6.1. (the lengths are stated in months). While in some jurisdictions the length of the cases has remained relatively stable or was even reduced (*e.g.* in the Contentious Administrative Chamber of the High Court of Justice, and the Third Chamber of the High Court), procedures in the Administrative Courts have become much slower.[18] The gravity of the situation was illustrated by the President of the Supreme Court who, in his opening speech of the 2009-10 judicial term, quantified the cost of judicial claims actually pending in the Second Section of the Contentious Administrative Chamber as approximately EUR 6 billion.[19]

Table 6.1. Average length of administrative cases (2004-08, in months)

Courts of Administrative Jurisdiction

	2009	2008	2007	2006	2005
Administrative Courts	11,1	10,6	10,2	8,9	7,5
H.C.J. Contentious Administrative Chamber *	26,2	29,0	31,6	32,3	29,5
Central Administrative Court	14,8	11,8	9,2	7,4	5,7
National Court. Contentious Administrative Chamber	17,6	18,1	18,2	19,3	19,7
High Court 3rd Chamber	18,8	19,7	21,30	22,36	22,40

* In first instance

Administrative Courts

	2009	2008	2007	2006	2005
Land Development	16,0	15,5	14,9	13,2	11,3
Compulsory expropiation	14,7	12,4	12,1	11,8	7,7
Administrative contracting	15,3	15,0	13,5	11,6	10,1
Public ownership	13,1	13,5	13,2	11,9	9,6
Taxes	13,4	12,7	11,1	9,5	8,8
Environment	14,6	13,4	12,4	11,2	9,6
Public functions	11,7	11,1	10,2	8,7	7,9
Labor administration	12,6	12,9	12,1	11,0	9,2
Immigration	7,9	8,0	8,8	7,6	6,0
Administrative penalties	12,3	11,5	10,4	8,8	7,1
Electoral	8,9	4,9	0,6	4,9	5,8
Authorization of entries into home	2,7	2,7	2,4	1,9	1,8
Patrimonial responsibility	13,2	12,3	11,0	8,4	6,4

Source: General Council of the Judiciary (2009), The Spanish Justice System. All the Facts 2008, at: *www.poderjudicial.es/eversuite/GetDoc?DBName=dPortal&UniqueKeyValue=79267&Download=false&ShowPath=false* (last accessed 25 February 2010).

In recent years, litigation of administrative issues has escalated. The Justice Ministry is seeking to modernise the existing framework, by trying to limit the number of administrative appeals lodged to the highest instance, the Supreme Court (*Tribunal supremo*), which reached 15 000 cases in 2008 alone. An option under consideration might be to set a minimum threshold of EUR 300 000 for appeals considered by the Supreme Court. This would also help to focus its activity on ensuring uniformity of doctrine, as provided for by the Law.[20]

Notes

1. Administrative review by the regulatory enforcement body, administrative review by an independent body, judicial review, ombudsman.
2. Some of these aspects are covered elsewhere in the report.
3. OECD/PUMA (1999), The State of Regulatory Compliance : Issues, Trends and Challenges.
4. The General Administration of the State includes the national ministries and agencies.
5. Communication from the Spanish Government to the OECD, March 1999.
6. Ministry of the Environment (1998), El Sistema de Inspección Ambiental en España, p. 18-20.
7. Given the unitary nature of the judiciary, the processes described below may be triggered for all administrative actions regardless of whether they emanate from State competences or responsibilities, or from AC and local entities competences and responsibilities. See: Art. 2.1 of Law 30/1992 and Art 1.2 of Law 29/1998.
8. See: Law 30/1992. This law was not just a reform of the previous legal regime as set in 1958, s its scope was wider. Law 30/1992 helped modernise the Spanish administration, make it closer to the citizens. It reformed several laws: the 1957 Law of *Régimen Jurídico de la Administración del Estado*, the 1956 Law regulating the *jurisdicción contencioso-administrativa*; and the 1958 Adminstrative Procedure Act.
9. See: Law 4/1999.
10. See: the 2008 Report of the Consejo de Defensa del Contribuyente, Madrid, 2009, at: *www.meh.es/Documentacion/Publico/GabSEHacienda/Memoria%20CDC%202008.pdf* (lat accessed 23 February 2010).
11. See: Law 29/1998 (LJCA, esp. Art.s 25-27).
12. See: Law 6/1999.
13. See: Law 30/1992 and Law 29/1998.
14. See: Art. 54 SC, and the related Organic Law 3/1981 regulating the institution.
15. This actually happened in 2006, with the new Statute of Autonomy of Catalonia.
16. See: *www.fiscal.es.*
17. For complaints, see: pages 93-98 of the 2008 annual report made by the Consejo General del Poder Judicial (CGPJ)".
18. See: General Council of the Judiciary (2009), *The Spanish Justice System. All the Facts 2008*, at: *www.poderjudicial.es/eversuite/GetDoc?*

DBName=dPortal&UniqueKeyValue=79267&Download=false&ShowPath=fa lse (last accessed 25 February 2010).

19. See: *Discurso de Apertura de Tribunales del Presidente del Tribunal Supremo y del CGPY*, Madrid, 21 September 2009, p.7.

20. See: Art.s 96-99 of Law 29 of 13 July 1998 on the *Jurisdicción contencioso-administrativa*.

Chapter 7

The interface between member states and the EU

An increasing proportion of national regulations originate at EU level. Whilst EU regulations[1] have direct application in member states and do not have to be transposed into national regulations, EU directives need to be transposed, raising the issue of how to ensure that the regulations implementing EU legislation are fully coherent with the underlying policy objectives, do not create new barriers to the smooth functioning of the EU Single Market and avoid "gold-plating" and the placing of unnecessary burdens on business and citizens. Transposition also needs to be timely, to minimise the risk of uncertainty as regards the state of the law, especially for business.

The national (and subnational) perspective on how the production of regulations is managed in Brussels itself is important. Better Regulation policies, including impact assessment, have been put in place by the European Commission to improve the quality of EU law. The view from "below" on the effectiveness of these policies may be a valuable input to improving them further.

Assessment and recommendations

The EU is a major driver of Better Regulation in Spain. Implementation of the Services Directive was mentioned by a number of stakeholders as a driver of positive internal change. It is less clear whether the EU is considered a major source of regulations (a point which is often emphasised by other EU countries), with most interviewees expressing greater concern about Spanish production.

The State has overall responsibility for the negotiation and transposition of EU directives, and the system seems to be broadly effective. There is a clear central co-ordination framework for negotiations. In particular, Spain has a good record in transposition, ranking fourth in the EU's latest Internal Market scoreboard. This positive achievement would appear to be based in part on supporting tools and processes, including a centralised database and correlation tables, which have been mandated by the 2009 RIA Guidelines. Unlike in some other EU countries, gold-plating (going beyond the strict requirements of a directive) does not appear to be a major issue. Impact assessment is applied as a matter of course (as for domestic origin legislation) for both the negotiation and the transposition phase, which many other countries do not do.

Spain's decentralisation nevertheless can pose challenges for the efficient implementation of EU policy. Because in many policy areas competences are allocated at different levels, transposition can be complex, and as the OECD peer review team were told, "there is no magic solution" to address the issues arising from a split in responsibilities across the levels of government for the same directive. The institutional mechanisms for bringing the State and the ACs together (Conference of European Affairs and other mechanisms) are not always effective. In some cases, *ad hoc* Committees are created in order to guarantee the correct implementation of directives among all Public Administrations. An example is the

"Better Regulation Committee" related to the transposition of the Services Directive. There can be failures to transpose all the provisions of a directive, with the issue ending up in court.

A further strengthening of the framework seems desirable. The Council of State suggests that areas for attention include late participation in the negotiating phase; the lack of a sound basis for negotiations; and internal disconnection between the negotiating and the transposition phase. Among other recommendations, it suggests a more structured forward planning, and enhancing RIA practices applied to EU legislation. The OECD peer review team also heard that public consultation and communication on EU matters can be ineffective and cut short prematurely.

Recommendation 7.1. Consider a review of the framework for the management of EU regulations, from negotiation to transposition.

Spain is one of the larger EU member states and its voice needs to be heard in Brussels. It is understandable that Spain's voice has so far been relatively muted, as many of its own Better Regulation policies are only now being strengthened, and there is an issue of resources. However it is not the only country to face resource issues. Making a contribution to the future of regulatory management by the EU institutions would contribute to a stronger domestic regulatory management, given the importance of EU regulations.

Background

General context

The central government notes that it is quite difficult to define the impact of European regulations impact on national legislation in percentage terms. It judges that specific sectors affected by EU rules are likely to be the same as in other member states (agriculture, environment, statistics…). However, the analysis of the six priority areas for the National Action Plan for Administrative Burden Reduction, has highlighted the extremely high impact of European statistics regulation on the national regulatory framework. If Spain wants to reduce burdens significantly in this area, it judges that prior simplification is needed at the EU level.[2]

Negotiating EU regulations

Institutional framework and processes

The State is responsible for negotiating Spain's interests in the EU. Arrangements are similar to those of many other EU countries, with a clear central co-ordinating function but with responsibilities for the actual negotiations allocated to the relevant ministry. The main co-ordinator is the Secretariat of State for the European Union, under the auspices of the Ministry of Foreign Affairs and Co-operation. It co-ordinates all actions that are carried out by the AGE in EU affairs.[3] The Inter-Ministerial Commission for Affairs of the European Union (CIAUE) plays a specific co-ordinating role with regard to economic affairs.

Various mechanisms are in place at different levels within the State administration (AGE) to resolve disagreements over responsibilities or the negotiating stance. Agreement may be reached bilaterally between ministries, but if not, the Secretary of State for the EU steps in. The bodies preparing the work of the Council of Ministers may also be addressed to settle differences. In particular, the Government Delegate Commission for Economic Affairs (CDGAE), the General Commission of Secretaries of State and Sub-Secretaries (CGSySb), and, in exceptional cases the Council of Ministers itself, operate in this respect.

There appears to be room for improvement in the organisational structure and the procedures for the participation of the Spanish government in EU decision-making. The Council of State suggests in a recent report[4] that there are some weaknesses: late participation in the negotiating phase; the lack of a sound basis for negotiations; and internal disconnection between the negotiating and the transposition phase. Among other recommendations, the Council of State suggests a more structured forward planning, and enhancing RIA practices in relation to the European legislative programme and its transposition and implementation at the national and regional levels.

The role of the Autonomous Communities

Whilst the State is overall responsible for EU negotiations, AC interests may be affected. Responsibilities and procedures for handling this reflect provisions of the Spanish Constitution and the case law of the Spanish Constitutional Court. If specified in their Statutes of Autonomy, the ACs have the right to be informed of developments related to international treaties and agreements related to their competences, which includes EU matters.

Mechanisms to give effect to these provisions have been established and continue to be developed. The Conference for European Affairs (*Conferencia para asuntos relacionados con la Comunidad Europea*, CARCE) is the main channel for the inclusion of the ACs in the elaboration of the Spanish policies at the European level. The CARCE was institutionalised in 1992.[5] In 1994 the Internal Participation Agreement was adopted through Sector Conferences. In 1996, the possibility of regional civil servants taking part in specific EU committees was acknowledged, and the Department for Regional Affairs was set up in the Permanent Representation of Spain to the EU (REPER). Finally, in 2004, an agreement was reached regarding regional participation in the meetings of certain Council bodies; in the meantime, the first meeting of the Conference of Government Leaders, which took place in 2004, focused on the creation of channels to foster the participation of ACs in EU decision-making bodies when debating matters that affect their competences.

Regulatory agencies

As in other countries, some regulatory agencies, because of their technical expertise, play an active role in EU discussions, preparing the technical ground for meetings of the Council on draft regulations.

The role of Parliament

The Joint Commission for the European Community (*Comision Mixta para la Union Europea*) contributes to the elaboration and implementation of EU law. The Commission is formed by an equal number of members of the two chambers and plays an active role in the preparation, discussion and approval of EU regulations.

Public consultation

Formally, consultation of interested parties follows the same procedures as for domestic legislation (see Chapter 3). The OECD peer review team heard some evidence to the effect that public consultation on EU proposals is not strong, and that stakeholders sometimes find it easier to obtain information directly from Brussels, via their representative bodies. The Consumers' Association, for example, told the team that it is regularly solicited by its European association (BEUC) to comment on Commission initiatives. Some interviewees said that there was a tendency to stop the debate once decisions had been made in Brussels, and that some directives were simply "given up "to be settled at the EU level.

Ex ante impact assessment

As for domestic legislative proposals, ministries must produce reports on the need and appropriateness of the proposal; on their gender impact; an economic report; and other assessments, according to the 2009

RIA Guidelines. However, there is no centrally managed knowledge of how ministries and departments contribute to the preparation of impact assessments at the EU level, nor the use they make of them.

Transposing EU regulations

Institutional framework and processes

As with negotiation, the state is overall responsible for the full, correct and timely transposition of EU law. At the same time, the competences of the ACs are taken into account.

Responsibility for the transposition of Community regulations is established in accordance with the content of each EU directive and the distribution of competences between ministries. Once the directive is published, the Ministry for Foreign Affairs and Co-operation, via the Secretary of State for the European Union, first names the responsible ministry and, if appropriate, other affected ministries involved in the transposition. The ministries concerned must show their agreement or disagreement with the allocation. The lead ministry may suggest, if appropriate, that responsibilities should also be allocated to other levels of administration (regional and local).

A written procedure for the resolution of responsibility conflicts exists and is usually effective. If differences are not settled in this way, co-ordination meetings are held. Should this channel also fail, the General Commission of Secretaries of State and Sub-Secretaries is informed, where the final solution will be adopted. These are exceptional cases.

The role of the Autonomous Communities

Whilst the State is overall responsible for the proper and timely transposition of directives, practical responsibilities for taking this forward rest with the level of government which has the relevant competence- either the State or the ACs. The OECD peer review team heard that issues can arise, with occasional deadlocks which may ultimately have to be resolved by the courts.[6]

The Territorial Policy Ministry reports on the suitability of the competence framework with regard both to the development of state regulations as well as the efforts of the ACs to incorporate EU legislation into their respective regulatory frameworks. As part of the process for developing state and AC regulations, the Council of State and councils created in the ACs have a particularly significant role. Broadly speaking their functions include assessing compliance of their regulatory framework with EU legislation, as well as the distribution of competences and, as a general rule, compliance with the legal system as a whole. The ACs have increasingly become directly involved in the processes of the EU, whether through national channels and collaborative institutions, or by establishing representative offices in Brussels.

Legal provisions and the role of Parliament

The State must determine the appropriate norm to secure the so called "useful effect "(*efecto util*) of the EU legislation. The Council of State has stated in this respect that the transposition act must have the same legal status as existing domestic norms regulating the area in question.

Transposition usually occurs by direct transposition of the directive itself into a new legal instrument, and not by amending existing domestic provisions.[7] Transposition is carried out using the same instruments and processes as for national origin legislation. There are no specific (fast track) procedures. In order to keep the transposition delays to a minimum and ensure the highest compliance with the EU law, the government issued an Agreement in 1990 listing instructions to the AGE, which is in charge of the main transposition dossiers. The Agreement grants priority to the transposition process and recommends that the authorities speed up ongoing projects so as to facilitate the transposition.

The same checks and processes are applied as for domestic regulations (see Chapter 4). Notably, the opinion of the Council of State is compulsory in relation to the preparation of draft bills and regulatory

proposals for the implementation of EU law.[8] The Council of State thus oversees constitutional and legal aspects. It also focuses on ensuring that the transposition process is not used to add unnecessary additional requirements (gold-plating).

Public consultation

In general, procedures are followed and tools used as during the domestic legislative process (see chapter three). There are no written guidelines governing the transposition procedures. However the Commission Recommendation of 12 July 2004, on the transposition into national law of Directives affecting the internal market, acts as a reference instrument. During the preparation phase of transposition acts, subnational administrations and interested parties and sectors are consulted via the standard domestic hearing process. In the recent past, transposition proposals have increasingly been posted on the website of the lead ministry.

Ex ante impact assessment

The 2009 RIA Guidelines apply to any legislative initiative of the Spanish government, including acts transposing and implementing EU law. An Annex on EU law to the Guidelines provides desk officers with a description of the formal steps to be followed when transposing EU directives – including establishing correlation tables (*tablas de correspondencia*). Such information refers mainly to juridical considerations (not least in case of an infringement procedure), but it clearly constitutes one of the innovative elements of the Guidelines.

Monitoring transposition

Transpositions are monitored using a centralised database which offers information on the transposition status of each Directive at any moment, as well as the general status of the transposition procedures for directives. The database is administered by the Secretary of State for the EU, who exerts pressure on the ministries in case of delays in the transposition process.

Correlation tables used to be prepared when the ministry responsible for the transposition considered it necessary. When available, these tables were communicated to the European Commission, but they are not published for general information purposes. The 2009 RIA Guidelines make the establishment of such tables mandatory.

The Spanish government does not consider "gold-plating" to be an issue of particular concern, and efforts are made to normally take the less burdensome option. Parliament may, however, use the opportunity of transposition to legislate on additional issues.

Spain's performance in transposition is good relative to the EU average, ranking fourth in the EU's Internal Market scoreboard. It has met the transposition objectives established by the European Council for directives affecting the internal market (see Box 7.1). The government notes that the speed of transposition depends on a range of factors. These include the issue to be regulated; the interests at stake; the status of the transposition regulation; transposition repercussions in the legal system; the transposition deadline established by the directive, etc. It notes, however, that the transposition of the Services Directive has been done ahead of many other EU countries.

Box 7.1. Spain's performance in the transposition of EU Directives

In the November 2009, Internal Market Scoreboard, Spain performs comparatively well being ranked 4th together with Finland, the Netherlands and Slovakia. Its transposition deficit here only amounts to 0.5%. In terms of the general transposition deficit rate of all directives, *in force* Spain performs below the EU 15 average.

ES	Nov-97	May-98	Nov-98	May-99	Nov-99	May-00	Nov-00	May-01	Nov-01	May-02	Nov-02	May-03
Transposition deficit as % in terms of Internal Market Directives	4.7	3.3	2.7	1.8	2.2	1.5	1.6	1.8	1.3	1.5	1.6	1.2
	Jul-04	Jul-05	Dec-05	Jul-06	Nov-06	Jul-07	Nov-07	Jul-08	Nov 08	May 09	Nov 09	
	0.8	1.4	1.5	1.7	1.4	1.9	1	0.8	1.0	0.8	0.5	

Source: European Commission.

Interface with Better Regulation policies at EU level

There appears to have been relatively little proactive engagement so far with EU level initiatives.[9] Some other EU countries are actively engaged, for example helping to shape and develop the Commission's impact assessment and administrative burden reduction policies. Spain's relative late start in the deployment of Better Regulation probably explains this. The government reports that engagement is growing, but currently (human) resources are not sufficient to allow for a permanent link with the EU level.

Notes

1. Not to be confused with the generic use of the term "regulation" for this project.
2. The 2000 OECD report noted that a large part of the Spanish legal framework is based on European law and judicial decisions, and that the Council of State had estimated that even before the Maastricht and Amsterdam Treaties, more than 54% of the legal framework was related to EU directives, regulations, and decisions.
3. See: Art. 11.2 of Royal Decree 1124/2008 regulating the basic organic structure of the Ministry of Foreign Affairs and Co-operation.
4. See: Council of State (2008), Informe Sobre la Insercion del Derecho Europeo en el Ordenamiento Español, esp. pp.90ff, at *www.consejo-estado.es/pdf/Europa.pdf* (last accessed 24 February 2010).
5. Law 2/1997.
6. An example was given by the Energy agency in relation to the internal market for electricity. The national grid is the responsibility of the central state, but the distribution grid is with the ACs. Failure by the ACs to meet the obligations of the directive for a single electricity market (which requires access to and use of the grid both nationally and at the distribution/regional level) led to a court action by power producers. The agency said that there were no magic bullets

and no clear mechanisms for dealing with this kind of issue, if there is failure to reach consensus with the ACs (although it helps if the issue affects the territory of several ACs).

7. By "direct" is meant that no reference is made to the original directive. The rule is "translated" in Spanish judicial terms, so the Spanish rule is complete by itself. This is done sometimes through a new rule or by amending old ones. This approach is considered by the Spanish government to be simpler, as it does not require to consider the directive to know what is in force.

8. See: Organic Law 3/1980 on the Council of State.

9. Some of the sectoral agencies are heavily engaged, due to their specific missions, alongside their counterparts in other EU member states.

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 municipals of programmes of reform based on consistent principles should form the basis for more formal co-operation measures. Consideration should be given to establishing fora for such purposes as well as to resolve issues arising from regulatory conflicts. A complementary strategy should also be developed to help autonomous communities encourage municipalities to launch regulatory reform programmes. Continued leadership from the centre to encourage and learn from experimentation at the 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" (*administracion periferica*), offices representing the General Administration of the State (*Administracion 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. It hat 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_co-op/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).

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Annex A

e-Government

National e-Government strategy

Initial plans included the *España.es* and *Conecta* plans managed by the then Ministry of Public Administration. Between 2005 and 2008, the government's action was framed by the so-called *Plan Moderniza,* which included some 16 measures to improve the quality, transparency, and accessibility of the services provided by the AGE.[1] Current e-Government initiatives benefit directly from the preparatory work carried out in that framework.

The current national e-Government strategy is closely intertwined with the public sector modernisation agenda. It consists of the following programmes:

- *The Action Plan for Compliance with the Law on Citizens' Electronic Access to Public Services*, complementing Law 11/2007, led by the Ministry of the Presidency, with the objective of developing services of the central government (*administracion general del estado*) so that they are available electronically.

- *The Reduction of Administrative Barriers,* led by the Ministry of the Presidency, which aims at reducing the obligations of information/procedures that businesses must transact.

- *eModel*, led by the Ministry of the Presidency, seeking the modernisation of local governments, the simplification of procedures and the improvement of the provision of public services.

The information society: *Plan Avanza*

The so-called *Plan Avanza Action Plan 2006-10* of 2005 (its extension as *Plan Avanza 2* was approved in June 2010 for 2011-15[2]) is Spain's national strategy for the promotion of the information society.

Designed in close relationship with, and as a reaction to, the European Lisbon Strategy, the eEurope 2002 and 2005 and the i2010 strategies, *Plan Avanza* aims to:

- increase the productivity and competitiveness of the Spanish economy through ICT diffusion and support to the ICT sector, so as to catalyse the shift towards more value-added economic activity;

- promote convergence with Europe (and between Spanish regions) in key dimensions of IS development (*e.g.* accessibility, usage, security and privacy);

- reduce digital divides through greater inclusion of citizens in the Information Society in order to exploit the potential for ICT to generate welfare and improve citizens' quality of life; and

- reach higher levels of ICT spending (total public and private), specifically up to 7% of GDP by the year 2010.

The relevance of *Plan Avanza* (which mobilised some EUR 9 billion over the period 2005-09) with contributions from all tiers of government (central, regional and local) as well as non-government stakeholders and, in particular, the proposed *Plan Avanza*[2], may become centrally important given the current political and economic climate in Spain. The objectives of the *Plan Avanza 2*, closely aligned with the European Digital Agenda, are:

- Promoting innovative processes in Public Administrations through the usage of ICTs

- Extending the usage of ICT in health care and social welfare

- Enhancing the application of ICT to education and the training systems

- Improve the capacity and the extension of telecommunications networks

- Extend the safety awareness among citizens and businesses

- Increase usage of advanced digital services by citizens

- Extending the usage of ICT-based solutions in businesses

- Developing technological capabilities in the ICT sector

- Strengthen the digital content industry by ensuring better protection of intellectual property in the current technological environment and within the European and Spanish legal framework.

- Green ICT development

One important component of the Plan has been its work in local governments. *Avanza Local* is the "municipal arm" of *Plan Avanza*, which has strengthened the eModel programme. It promotes e-Government at the local level through support for ICT diffusion and the development of ICT solutions specifically for the needs of local governments. The Plan also produces studies leading to a good practice catalogue for the content and use of municipal applications. The plan combines a set of ICT solutions designed to help small and medium-sized municipalities to offer e-Government services to citizens. The Spanish Federation of Municipalities and Provinces (FEMP) is responsible for maintaining and promoting the platform, as well as providing technical assistance and training to participating municipalities.[3]

One branch of Plan Avanza addresses e-inclusion. *Avanza Citizen*, in particular, intends to reach the following targets by 2010: 62% of households with Internet access; 45% of households with Broad Band access; 65% of individuals who regularly use the Internet at least once a week. Situation has significantly improved, but 2008 figures indicate that further action is needed to fill the gap (Box A.1)

Box A.1. Information Society indicators in Spain

- Percentage of households with Internet access: 51% (2008).
- Percentage of enterprises with Internet access: 95% (2008).
- Percentage of individuals using the Internet at least once a week: 49% (2008).
- Percentage of enterprises with a broadband connection: 92% (2008).
- Percentage of individuals having purchased/ordered on line in the last three months: 13% (2008).
- Percentage of enterprises having received orders online within the previous year: 10% (2008).
- Percentage of individuals using the Internet for interacting with public authorities: obtaining information 27.8%, downloading forms 15.5%, returning filled forms 9.1% (2008).
- Percentage of enterprises using the Internet for interacting with public authorities: obtaining information 59%, downloading forms 60%, returning filled forms 45% (2008).

Source: ePractice, eGovernment Factsheets. Spain, Edition 11.1 June 2009, p.2 (based on Eurostat data).

The Plan is managed at the central level by the Secretary of State for Telecommunications and the Information Society (SETSI) within the Ministry of Trade, Tourism, Industry, and Energy, as the competent authority for Information Society Development. It is nonetheless implemented jointly with regional and local governments as well as with non-governmental stakeholders. The plan closely involves citizens, firms and the public administration on a number of goals. The Ministry of the Presidency co-operates with the SETSI in the management of the actions related to the e-Government area.

The e-DNI, 060 Network, Sara Network and other shared services

A cornerstone in the Spanish e-Government Strategy has been the deployment of the e-DNI (Electronic Identification National Document), the national eID, that must be accepted in all the e-services. The e-DNI provide strong authentication based in digital certificates which are stored in a smart card. The last data (June 2010) related with the deployment of this citizen smart card shows that nearly 17 million of Spaniards have obtained it since 2006. Beside this national eID, there are more than 2 million digital certificates legally binding provided by other public and private entities.

The *060 Network* (Red 060) is a comprehensive and multi-channel platform to interact with each public administration in Spain. It consists of three different channels of contact.

The Network's local offices consist of 101 contact points for entrepreneurs – 31 business information offices and 80 *camerales antennae* situated in city councils.[4] In these offices, entrepreneurs can access eServices for businesses provided by all levels of government, as well as information, guidance and personalised advice. For instance, they can access services related to the creation, development or cessation of companies.

www.060.es is the first portal to give unified electronic access to Spain's public services, regardless of which administration runs them. The portal was renewed and updated in 2007, allowing personalised applications and formats for individual users. "060.es" now also offers interactive functions, including one that permits users to evaluate and comment on the services provided. Surveys and FAQs have also been added. To date, all ACs and over 1 600 municipalities participate in the "060 Network", offering 1 225

public eServices. Of these, 729 were provided by the various departments of the national administration, 340 by Autonomous Communities and 156 by local authorities. The user-focused design of the portal was scored with the maximum possible value in the 2009 assessment of e-Government services done by the European Commission. The related phone number "060" is intended to replace over 600 phone numbers available for citizens to access information of the AGE. It receives an average of 180,000 calls each month

The "SARA network" (Red SARA)[5], interconnects the networks of the three levels of government in Spain in order to enhance collaboration and inter-operability among the respective information systems. One of the services provided by the network is access to S-Testa, the Paneuropean network between the EU institutions and the Public Administrations of the EU Member States. The overall objective is to save time, costs and facilitate the access and re-use of information. The network operates since 2006 and now allows access as diverse shared services as checking and notifying identity, residence and other personal data; "@firma" (the multiPKI Validation Platform for eID and eSignature services; payments; etc).

In order to reduce the resolution times, a common service for Electronic notification and communication system was put in place in 2004. This system allows legally binding notifications to be received by citizens via the Internet. The number of citizens subscribed to the service has increased from 8 414 in 2004 to 74 629 in 2009, and the number of e-notifications issued annually has climbed from 36 051 in 2004 to 1 425 269 in 2010. It must be said that other government units and regional governments have put in place their own Electronic notification and communication systems where the demand of their services required.388c. Aiming to overcome a strictly bilateral model for the exchange of information between government units, a data-broker called the Service Intermediation Platform has been put in place in order to exchange the more common certificates in administrative procedures in a more efficient way. Its first aim was to remove the paper photocopies of the national identity and residence documents, requested to the citizens in the majority of the administrative procedures. This procedure has been replaced by a paperless electronic request to the Service Intermediation Platform, with the same legal value as the traditional identity documents. The system will include the verification of other data and citizens and enterprises' certificates (tax, labour, universities diplomas, catastre, justice, etc). Since they became operational on 1 January 2007, the use of the Service has been increasing gradually. In 2009 more than 19 million consultations of citizens' identities and consultations of residence have been made (saving the same amount of paper certificates delivering).[6]

The digital certificates and e-signatures validation system called "@firma" is the core of the eIDM. According to the eDNI Certificate Practice Statement, it is the universal validation system for the digital certificates stored in this smart card for the public sector. @firma also provides the validation service for all the digital certificates issued by other providers according to the eSignature Act (Ley 59/2003). Managed by the Ministry of the Presidency, the service provided by @fima is free of charge to all national, regional and local government units. According to the internal data provided by @firma, its usage has been increased from 880.827 validations in 2006 to 14.458.488 validations in 2009.

Legal milestones

Law 11/2007 on electronic access of citizens to public services

A key milestone was the approval of the law on Electronic Access to Public Services for Citizens (LAECSP) in June 2007.[7] This law sets the legal basis for e-Government in Spain. The Law offers a regulatory framework that describes in detail the rights of citizens (this includes companies) with respect to electronic access, communication and procedures with all the Spanish Public Administrations (National, Regional or Local). It also contains the obligations of the authorities with respect to citizens and a framework of co-operation with reference to electronic information between administrations. The Ministry of the Presidency is responsible for upholding this Law. The rights of citizens established in this Law can be exercised in relation to all authorities at national level, at the level of the ACs, and at the local level,

after 31 December 2009. Regarding the regional and local government tiers, the fulfilment of the law is subject to budget restrictions.

Law 11/2007 creates the legal right for a citizen to use electronic means when dealing with the administration, *e.g.* to:

- get information;
- make an enquiry or a claim;
- notify an opinion;
- make an application;
- give consent;
- make a payment or another transaction; and
- challenge a resolution or an administrative act.

The law does not prescribe the form of this electronic access. The citizen has the right to choose the available electronic means of communication. When documents or data are already in the hands of the administration it is up to the administration to retrieve these pieces of information. Citizens are not obliged to deliver them again.

The Law establishes a series of further rights for citizens, among which the following stand out: Citizens must be given electronic access to the status of administrative procedures which they are part of – except in cases of specific legal restrictions. They have the right to obtain the necessary means for electronic identification. In any case natural persons can use the electronic signature contained in the National ID Card. Finally, citizens have the right to electronic conservation of all documents which form part of their dossier, and to obtain electronic copies. Public administrations are required by the Law to create electronic registries in order to receive, stock and send electronic communications, applications and documents.

Public administrations are called upon to make all of their public services available on-line and abide to these provisions by 31 December 2009. Law 11/2007 also states that there shall be no discrimination for citizens who are not willing to use electronic means for their communication with the administration.

2008 Action Plan for its implementation

A regulation by the Council of Ministers of December 2008 develops actions implementing the Law and an Action Plan and schedules the adaptation of all the procedures managed by the AGE to the Law. Most of the improvement initiatives focus on technological actions.

The Action Plan bases its strategy on four courses of action, establishing a total of 21 measures:

- *Focus public services on citizens.* To achieve this objective, the administrative information services of the ministerial departments and government organisations will be interconnected, creating a unique information network. For instance, *the 060* Network will be consolidated. This is the multi-channel network (offices, telephone and Internet) allowing access information or public services processes of any administration. In addition, electronic access to public services will be extended, creating global access points and sectoral single points of contact which do not need knowledge of the internal structure of the AGE to access the required services. This will allow processes and procedures to be fully processed in specific sectors of activity.

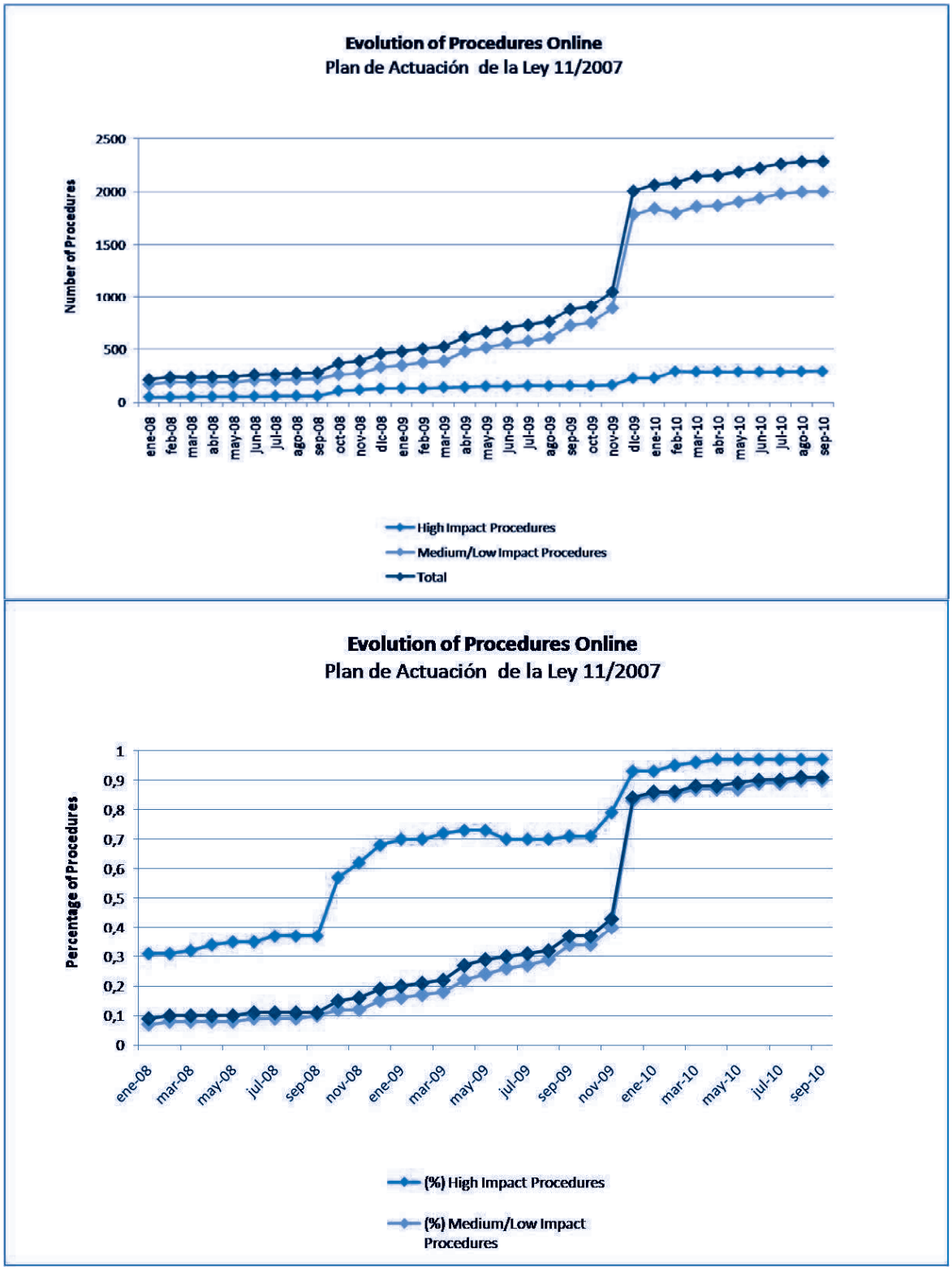
- *Adapt administrative procedures to the Law.* All public services and administrative processes should be accessible electronically as of 2010, according to the requirements set out in the Law: information, downloading and sending completed forms, on-line payment and completion of the procedure without the need for citizens to visit public offices. The design of these services will include the simplification of the necessary administrative processes to reduce their administrative burden.

- *Create, promote and share common infrastructures and services.* Common infrastructures and services mentioned above will be made available to all organisations, facilitating the development of the necessary software solutions, ensuring interoperability and reducing implementation costs and timeframes.

- *Implement horizontal actions to meet citizens' expectations.* Quality public services will be reached through civil servant awareness of this technology, establishing quality controls and measurements, security and interoperability, and the professionalism of the administrative implementation services.

The major result of the Action Plan has been a critical improvement in the availability of the public electronic services. Over 90% of procedures and administrative services provided by the national government (which is more than 98.5% of the cases handled) have an electronic version (see Figure 4.1).

Figure A.1. Evolution of the availability of the full online implementation of administrative procedures in the National Government (numerical and percentage)



Source: Ministry of the Presidency.

Other important legal developments

These include the 2007 law on Measures for the Promotion of the Information Society.[8] This introduced the obligation of electronic invoicing within the framework of contracting with the national public sector. That law also required all public administrations to promote, extend and spread the use of electronic resources in all phases of the contracting process, and introduced reforms to the Company Act, which seeks to drastically reduce the timescale for establishing and registering a Limited Liability Company. There is also the Law introducing the electronic signature.[9] Additionally, a number of older decrees regulate generic aspects of the development of e-Government in the country.[10]

As a consequence of the Law 11/2007, the National Interoperability and Security Frameworks has been developed. Both Frameworks were foreseen in the Law 11/2007. The National Interoperability Framework was developed in the Royal Decree 4/2010[11] and it pursues the creation of the necessary conditions to ensure an adequate level of organisational, semantic and technical interoperability of systems and applications used by Public Administrations. The National Security Framework was developed in the Royal Decree 3/2010[12] and it pursues the creation of the necessary conditions of confidence in the use of electronic means, through measures to ensure the security of systems, data, communications and electronic services of the Public Administrations. Both Royal Decree should be fulfilled by the National, Regional and Local Governments.

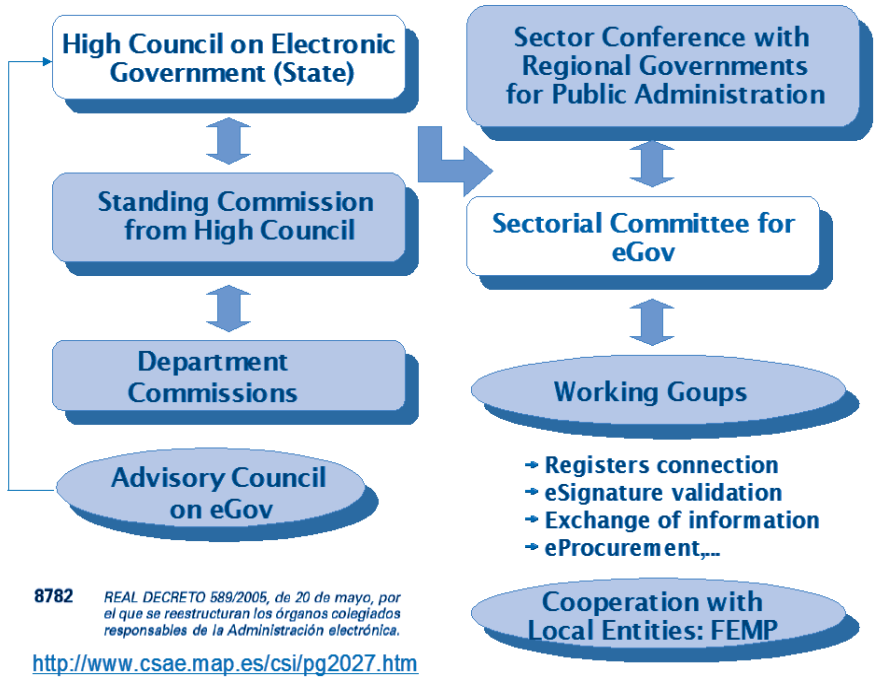
Institutional setting

The Ministry of the Presidency is responsible for e-Government policies and it operates the shared services. Through the Directorate General for the Promotion of e-Government in the State Secretariat of the Civil Service, the Ministry aims fostering the full integration of information technology and communications to the provision of public services and the promotion and development of e-Government.

There is a very wide range of institutions and bodies, which has been put into place over the past five years. A 2005 Royal decree established the inter-ministerial Higher Council for eAdministration (*Consejo Superior de Administracion Electronica*)[13], now with to the Ministry of the Presidency. Its mandate is to prepare, develop and implement the ICT and e-Government policies of the government. The Council comprises senior officials from all ministries and is supported by a permanent commission, ministerial e-Government commissions, as well as technical committees and working groups. One of the functions of the CSAE is being an e-Government Observatory and follows-up the developments of e-Government in the National Government.

The Royal Decree 589/2005[14] established the e-Government Higher Council (*Consejo Superior de Administración Electrónica-CSAE*). This body is "in charge of the preparation, design, development and implementation the ICT policy of the Government, as well as the promotion of e-Government in the national government" (Article 3.2). As well, section four of Law 11/2007 is dedicated to co-operation between the national government and the other government tiers, and established for this purpose the Sectoral Committee for e-Government. This close co-ordination over e-Government has already paved the way for administrative simplification and burden reduction in the implementation of the Services Directive.

Figure A.2. e-Government governance structure in Spain



Source: www.csae.map.es/csi/pg2027.htm.

In April 2006, a mixed Advisory Council on e-Government (*Consejo Asesor de Administración Electrónica*) was created to assist in the development of an integrated strategy for e-Government. Meeting at least twice a year, the Council includes representatives of business, academics and experts on the technological sector. In addition, in parallel to the adoption of the Action Plan implementing Law 11/2007, two new bodies were created at the end of 2007. In the framework of the e-Government and administrative burdens reduction strategies of the government, moreover, an Inter-ministerial Commission for Administrative Simplification operates within the Ministry of the Presidency with a view to analyse and table proposals for measures aimed at facilitating the relationship between citizens and the AGE.

The Ministry of Industry, Tourism and Trade is responsible for conducting and implementing the *Plan Avanza*, notably through the State Secretariat of Telecommunications and the Information Society (SETSI). The State Secretariat is in particular in charge of: access to the Information Society; business and the Information Society; services in/for the Information Society; and multimedia. "Red.es" is a State-owned company which is part of the SETSI. Its role is to encourage, support and monitor the use of information and communication technologies in Spain, notably in the public sector. Among other things, Red.es participates in the implementation of Plan Avanza by maintaining a National Observatory of Telecommunications and the Information Society and providing consulting and support services to central and local administrations.[15]

On a technical ground, ASTIC[16] is the professional association of IT experts and managers of the AGE. It provides support and information services to its members for the development and implementation of their e-Government projects.

The Ministry of the Interior is in charge of the implementation of the electronic ID card project.

Co-operation between the AGE and the ACs is also covered. The Sectoral Committee of e-Government has been active since 2004. Since Law 11/2007 came into force, this Committee has served as the technical body of co-operation between the AGE and the ACs and local governments in the field of e-Government. In addition, the Sectoral Committee monitors the implementation of the principles and goals stated in Law 11/2007. In particular, the Committee is responsible for ensuring the interoperability of the applications and systems in use within public administrations, and for preparing joint action plans in order to improve the e-Government development.

Finally, with a view to ensure that the e-Government rights of citizens are respected, Law 11/2007 provides for the appointment of a form of e-Government ombudsman, the Defender of the e-Government users (*Defensor del usuario de la administración electrónica*) in charge of monitoring its application. The Defender will publish an annual report gathering the complaints and suggestions received, together with proposals for actions and measures to be taken in order to ensure an adequate protection of users' rights. The Defender is to be chosen among recognised experts in the field of e-Government and reports to the Presidency ministry, and is to execute his/her functions with impartiality and independently.

e-Government Strategy 2011-15

The recently approved "Plan Avanza2" has an advanced role in the future e-Government strategy of the national government. Reaping the benefits of the services already deployed through the promotion of its usage will be the major objective. The forthcoming strategy will be closely aligned with the priorities set in the *Malmö Declaration*.

Among the targets set in "Plan Avanza2" related with e-Government, three of them are linked with achieving a more sustainable Public Administration:

- Elimination of the usage of paper in Public Administrations by 2015
- 3% savings by 2013 and 5% savings by 2015 in the ICT budget of the National Government (additional to savings already achieved). The usage of Cloud-Computing technology and shared services centres will be the key to reach these targets.
- 20% savings by 2015 in the Government Energy Consumption through the usage of ICTs

The development of an "Open Government Action Plan" is one of the measures included in "Plan Avanza2". The establishment of an specific Open Government portal and the promotion of open data initiatives and advance in the re-use of public sector information are also mentioned in the new strategy.

Notes

1. See: w*ww9.mpt.es/documentacion/iniciativas/mejora_de_la_administracion_general_del_estado/moderniza/parrafo/00/document_es/Plan_Moderniza.pdf.*

2. See: *www.planavanza.es*.

3. See: *www.planavanza.es/Noticias/MITyC+y+FEMP.htm* (last accessed 20 August 2009).

4. The figure refers to March 2007 and is reported in ePractice, e-Government Factsheets. Spain, Edition 11.1 June 2009, p.29.

5. See: *www.csi.map.es/csi/pg5r12.htm* (last accessed 20 August 2009).

6. See more: *www.epractice.eu/en/cases/identityresidence.*

7. See: Law 11/2007. *www.boe.es/boe/dias/2007/06/23/pdfs/A27150-27166.pdf* .

8. See: Law 56/2007. *www.boe.es/boe/dias/2007/12/29/pdfs/A53701-53719.pdf.*

9. See: Law 59/2003. *www.boe.es/boe/dias/2003/12/20/pdfs/A45329-45343.pdf.*

10. See: in particular the Royal Decree 263/1996 of 16 February 1996 on the use of electronic and telematic techniques in the State administration (modified by Royal Decree 209/2003 of 21 February 2003 on the use of telematic registers and notifications and electronic certificates; the Royal Decree 589/2005 of 20 May 2005 on the organisations in charge of electronic administration; and the Royal decree of 23 December 2005, which regulates the issuance of the national ID document and its eSignature certificates.

11. See: *www.csae.map.es/csi/pdf/ENI_INTEROPERABILITY_ENGLISH_final.pdf.*

12. See: *www.csae.map.es/csi/pdf/ENS_SECURITY_ENGLISH_final.pdf.*

13. See: Royal Decree 589/2005. The website of the Higher Council is *www.csae.map.es.*

14. Royal Decree 589/2005 is available in: *www.boe.es/aeboe/consultas/bases_datos/doc.php?coleccion=iberlex&id=2005/08782.*

15. See: *www.red.es/index.action (last accessed 20 August 2009).*

16. See: *www.astic.es.*

OECD PUBLISHING, 2, rue André-Pascal, 75775 PARIS CEDEX 16
PRINTED IN FRANCE
(42 2010 26 1 P) ISBN 978-92-64-09506-9 – No. 57623 2010

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SPAIN

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ISBN 978-92-64-09506-9
42 2010 26 1 P