OECD Reviews of Regulatory Reform

ITALY

BETTER REGULATION TO STRENGTHEN MARKET DYNAMICS



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Foreword

The OECD Review of Regulatory Reform *and liberalisation policies in Italy is one of a series of country reports carried out under the OECD's Regulatory Reform Programme.*

The OECD has assessed regulatory policies in 22 member countries, and in Brazil, China and Russia. The reviews aim at assisting governments to improve regulatory quality – that is, to reform regulations to foster competition, innovation, economic growth and important social objectives. The review draws on the 2005 Guiding Principles for Regulatory Quality and Performance, *which brings the recommendations in the 1997* OECD Report on Regulatory Reform *up to date, and also builds on the 1995* Recommendation of the Council of the OECD on Improving the Quality of Government Regulation.

The country reviews follow a multi-disciplinary approach and focus on the government's capacity to manage regulatory reform, on competition policy and enforcement, and on the regulatory framework of specific sectors against the backdrop of the medium-term macroeconomic situation.

Taken as a whole, the reviews demonstrate that a well-structured and implemented programme of regulatory reform can make a significant contribution to better economic performance and enhanced social welfare. Economic growth, job creation, innovation, investment and new industries are boosted by effective regulatory reform, which also helps to bring lower prices and more choices for consumers. Comprehensive regulatory reforms produce results more quickly than piece-meal approaches; and they help countries to adjust more quickly and easily to changing circumstances and external shocks. At the same time, a balanced reform programme must take into account the social concerns. Adjustments in some sectors can be painful, but experience shows that the costs can be reduced if reform is accompanied by support measures, including active labour market policies.

While reducing and reforming regulations are key elements of a broad programme of regulatory reform, experience also shows that in more competitive and efficient markets, new regulations and institutions may be necessary to ensure compatibility of public and private objectives. Sustained and consistent political leadership is another essential element of successful reform, and a transparent and informed public dialogue on the benefits and costs of reform is necessary for building and maintaining broad public support.

The policy options presented in the reviews may pose challenges for each country. However, the in-depth nature of the reviews and the efforts made to consult with a wide range of stakeholders reflect the emphasis placed by the OECD on ensuring that the policy options presented are relevant and attainable within the specific context and policy priorities of the country.

The review consists of three parts. Part I presents an overall assessment, set within the macroeconomic context, of regulatory achievements and challenges across a broad range of policy areas. Part II presents comprehensive chapters on regulatory policies and outcomes, including government capacity for quality regulation, competition policy and professional services. Part III presents a multi-level regulatory governance perspective, with an assessment of the challenges as well as a number of relevant sectoral chapters, including commercial distribution, transport and energy. Specific chapters include policy options for consideration which seek to identify areas for further work and policy development in the countries under review.

Acknowledgements

The country reviews on regulatory reform are co-ordinated by the Directorate for Public Governance and Territorial Development, under the responsibility of Ms. Odile Sallard at the time. This work is carried out by the Regulatory Policy Division, headed by Josef Konvitz.

The Review of Italy reflects contributions from all participants in Italy, both at national and regional levels, from the OECD Working Party on Regulatory Management and Reform of the Public Governance Committee, the Competition Committee and the OECD Group on Regulatory Policy.

Stéphane Jacobzone, Principal Administrator, supervised and co-ordinated the preparation of the report. Scott Jacobs, Consultant, provided support for the synthesis sections, which also drew on materials prepared in the Economics Department by Paul O'Brien, Senior Economist, Romina Boarini, Economist, and Jens Arnold, Economist. The chapters on quality regulation as well as the general aspects of multi-level regulatory governance were prepared by Lorenzo Allio, then Administrator in the OECD Regulatory Policy Division. The competition chapter was prepared by Michael Wise, Principal Administrator, Competition Policy Division, who also supervised the various competition-related aspects. The chapter on commercial distribution was prepared by Prof. Luca Pellegrini, Consultant. The chapters on professional services and local transport were prepared by Prof. Nicoletta Rangone, Consultant. The energy chapter was prepared by Prof. Fulvio Fontini and Prof. Antonio Nicita, Consultants. Emmanuel Job, Statistician, OECD Regulatory Policy Division, provided statistical assistance. The documentation was prepared by Jennifer Stein.

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Acronyms

AEEG	Italian Regulatory Authority for Electricity and Gas *(Autorità per l'Energia Elettrica e il Gas)*
AGCM	Italian Antitrust Authority *(Autorità Garante della Concorrenza e del Mercato)*
AIRE	Register of Italians Resident Abroad *(Anagrafe degli Italiani Residenti all'Estero)*
ANCI	National Association of Italian Municipalities *(Associazione Nazionale Comuni Italiani)*
ANPA	The original association of UGAI – The Young Italian Lawyers' Union *(Associazione Nazionale Praticanti ed Avvocati)*
APQ	Framework Programme Agreement (*Accordo di Programma Quadro*)
ATN	Technical normative Analysis *(Analisi Tecnico-normativa)*
BIT	Business Impact Test
BRE	United Kingdom Better Regulation Executive
CAF	Common Assessment Framework
CAPIRe	Control of the Chambers on the policies and regional interventions (*Controllo delle Assemblee sulle Politiche e gli Interventi Regionali*)
CAWI	Computer Assisted Web Interviewing
CIACE	Interministerial Committee for European Community Affairs *(Comitato Interministeriale per gli Affari Comunitari Europei)*
CIPE	Interministerial Committee for Economic Planning *(Comitato Interministeriale Programmazione Economica)*
CISL	Second Largest federation of Italian Trade Unions *(Confederazione Italiana Sindacati dei Lavoratori)*
USAE	Autonomous Union of European Workers *(Unione Sindacati Autonomi Europei)*
CNA	National Confederation for the Craft Sector and Small and Medium size Enterprises *(Confederazione Nazionale dell'Artigianato e della Piccola e Media Impresa)*
CNEL	National Counsel for Economy and Labour *(Consiglio Nazionale dell'Economia e del Lavoro)*
CNIPA	National Information Centre on Public Administration *(Centro Nazionale per l'Informatica nella Pubblica Amministrazione)*
CNSA	National Committee for Food Safety *(Comitato Nazionale per la Sicurezza Alimentare)*
CONFSAL	National Federation of Autonomous Unions *(Confederazione Generale dei Sindacati Auotnomi dei Lavoratori)*
COREPER	Permanent Representatives Committee, which consists of the Member States' ambassadors to the European Union
CSF	Community Support Framework (relates to the Objective of the EU regional policy)
DAGL	Legislative Office *(Dipartimento per gli affari giuridici e legislativi)*
DIA	Statement on the beginning of an economic activity *(Denuncia di Inizio Attività)*
DL	Legislative Decree *(Decreto Legge)*
DPEF	Economic Financial Planning Document *(Documento di Programmazione Economica Finanziaria)*

DPS	Department for Development Policies in the Ministry of Economic Development *(Dipartimento per le Politiche di Sviluppo)*
ECN	European Competition Network
EDF	Electricité de France, French Electricity Company
EFSA	European Food Safety Authority
ENEL	Italian National Electricity Company *(Ente Nazionale per l'Energia Elettrica)*
FAS	Fund for the Underserved Areas *(Fondo per le Aree Sottoutilizzate)*
FORMEZ	Training and Study Center, providing training and Support to public Administrations, under the Ministry of public Administration *(Centro di Formazione Studi)*
GENCOs	Energy Generating Companies
HHI	Herfindahl-Hirschman Index (Index of economic concentration).
HICP	Harmonised Indices of Consumer Prices
IPEX	Italian Power Exchange
IRI	Institute for Industrial Reconstruction, state-owned Italian holding company *(Istituto per la Ricostruzione Industriale)*
ISTAT	Italian Statistical Institute *(Istituto Nazionale di Statistica)*
MISE	Ministry of Economic Development *(Ministero dello Sviluppo Economico)*
MOA	Measurement of Administrative Burdens *(Misurazione degli Oneri Amministrativi)*
MSD	Energy Dispatching Market *(Mercato dei Servizi di Dispacciamento)*
NARS	Unit for the Regulation of public services, regulating those services without a sectoral regulator *(Nucleo di consulenza per l'Attuazione delle linee guida per la Regolazione dei Servizi di pubblica utilità)*
NSRF	Italian National Strategic Reference Framework
NSW	New South Wales, Australia
NTBF	New technology-based firms
OLI	Inter-regional legislative observatory *(Osservatorio Legislativo Interregionale)*
OPs	Operational Programmes
OTC	Over-the-counter Drugs.
PMR	Product market regulation
POR	Regional Operating Programme *(Programma Operativo Regionale)*
PORE	Project on Opportunities for Regions in Europe *(Progetto Opportunità delle Regioni in Europa)*
QSN	National Strategic Framework *(Quadro Strategico Nazionale)*
RIA	Regulatory Impact Analysis
RIS	Regulation Impact Statement
SAPER programme	System of Analysis for Regional economic-fiscal policy (*Sistema di Analisi per la Politica Economico-fiscale Regionale)*
SCM	Standard Cost Model
SIA	Statutory Instrument Act
SSPA	National School for Public Administration *(Scuola Superiore della Pubblica Amministrazione)*
STOGIT	Italian Company for Gas Storing *(Stoccaggi Gas Italia)*
SUAP	Second generation of one-stop shop *(Sportello Unico per le Attività Produttive)*
TAR	Regional Administrative Court *(Tribunale Amministrativo Regionale)*
TERNA	National Operator for energy transmission, *(Rete Elettrica Nazionale)*
UANAS	Administrative Simplification Office *(Ufficio per l'Attività Normativa ed Amministrativa di Semplificazione delle norme e procedure)*

UFP	Technical Unit Project Funding *(Unità Tecnica Finanza di Progetto)*
UGL	General Labour Union *(Unione Generale del Lavoro)*
UIL	Italian Labour Union *(Unione Italiana Lavoratori)*
UNCEM	Association of Italian Mountain Communities *(Unione Nazionale Comuni Communità Enti Montani)*
UPI	Association of the Italian Provinces *(Unione Province Italiane)*
URPT	Regional Association of the Provinces of Tuscany *(Unione Regionale delle Province Toscane)*
USQR	Unit for Simplification and Better Regulation *(Unità per la semplificazione e la qualità della regolazione)*
VAS	Environmental Impact Assessment *(Valutazione Ambientale Strategica)*
VIR	Regulatory Impact Analysis *(Verifica d'Impatto della Regolamentazione)*
VRD	Targets on the revenue for distribution defined by the energy regulator *(Vincolo sul Ricavo da Distribuzione)*

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Executive Summary

Key messages

- A renewed commitment to regulatory reform in Italy in recent years is well-timed, due to the need to speed up recovery from the current economic crisis and the large potential benefits from addressing the micro-economic challenges facing the country.
- Regulatory reforms in Italy should aim primarily at improving the competitiveness of the national economy. Improving competitiveness involves boosting productivity through a variety of different channels, which will help increase living standards over the long term. Because of the broad-based benefits of regulatory reform, this is an agenda that citizens, businesses, consumers, and investors can support nation-wide.
- As part of the mix of reforms needed to address productivity and other growth constraints in the economy, regulatory reform is particularly beneficial to Italy. The strong role of SMEs in the Italian economy, on the one hand, and the pervasiveness of regulatory issues through the economy, on the other hand, mean that regulatory simplification, cost-cutting, and quality improvements will have a concrete and direct effects across the whole of the economy.
- Political commitment for regulatory reform is now strong, and technical capacities are being built to match the difficulty and scale of the reforms ahead. Remarkable efforts have been made through the cutting law exercise and the measurement and reduction of regulatory burdens, as well as in terms of modernising the management of public administrations. However, scope for improvement remains, as some areas could still come closer to best international practice in important respects. Capacities need to be enhanced for carrying out reforms effectively in sectoral ministries and speedily across a complex multi-level administrative environment. Sustaining an effective regulatory framework requires modernising the administrative culture to overcome inertia and promote a client-oriented approach.
- Decentralisation of the public sector creates new opportunities and risks for regulation and market performance. The framework for co-ordination, coherence, and respect for good regulation principles is emerging, but risks are becoming clearer, and key national interests, such as the need for ensuring competition and the development of core infrastructure in terms of transport or energy, need to be more strongly enshrined. This is important if efforts at the national level are to be translated into effective actions and incentives at the local level, and also help the country strengthen core infrastructures such as future energy plants or high speed rail tracks.

Economic growth and competitiveness are at the top of the national economic agenda

Over 15 years, successive Italian governments have pursued a range of initiatives to address the post-war legacy of state intervention and heavy regulation, in line with the efforts in neighbouring European countries. However, over the past decade, Italy's economic growth rate remained below the European average. After 2000, by some measures, labour productivity in Italy began to decline relative to other large European economies. Total factor productivity appears actually to have fallen. This reflects some of the challenges faced by the country in terms of boosting growth, wages, and competing outside its borders. Addressing these long term trends requires continued efforts and is vital if Italy is to tackle the big challenges ahead of securing resources and capacity for a rapidly ageing population, as well as facing up intense European and global competition.

Formal indicators of investment in innovation and R&D are less favourable than those of key trading partners, such as Germany, Switzerland or France. The Italian economy has traditionally been export-oriented, but Italian export performance has been mixed. Although Italy's share of the value of OECD exports has been stable since 2000, export volumes have been growing more slowly than demand, reflecting implicitly a higher value added for Italian exports. FDI in Italy also remains quite a bit lower than in other countries of similar size. This could reflect a business environment that is difficult for foreign investors in relation to regulatory, administrative and other hurdles.

The question now being addressed in the range of regulatory reforms already underway is how Italy's regulatory framework could help its businesses, large and small, to compete with their peers on a world scale, to innovate and grow, and to benefit from the productivity-enhancing effects of FDI.

Policy responses: The government strategy for reinvigorating growth and competitiveness

As in other countries, the economic crisis prompted the new government to accelerate microeconomic reforms. Regulatory reform plays an important role in the various recovery packages that have been announced. The Strategic National Framework contributes to improve the multi-level framework for regulatory reform and to speed up the reform processes. A burst of reforms was initiated. A Minister for Normative Simplification is now in place. A push to modernise public administration by the Minister for Public Administration is tackling needed reforms.

Integration into the European Single Market and monetary union has provided Italy with both incentives and tools to move ahead with these tasks. Regulatory and fiscal reforms are now inextricably part of Italy's performance in Europe. Joining the euro zone brought significant benefits in terms of financing the public debt but also has implications for maintaining a competitive economy.

Italian businesses must now compete directly on the basis of quality and price, but, Italy's product market and labour markets are often hindered by unnecessary regulations and lack of competition. These regulatory issues are faced all over Europe and are also addressed at the EU level. The renewed drive for regulatory reform that occurred in Italy after 2005 was fully in the mainstream of European good practices and was responsive to

the mid-term review of the EU Lisbon Strategy. Italy's strategy for regulatory reform adopted in June 2008 – based on "cutting-laws", "cutting-burden" and "cutting bodies" initiatives – demonstrates the political importance of regulatory reform and simplification. Italy has also moved to speed up integration with European markets by closing the transposition deficit, which fell from 2.7% to 1.3% in 2007 – in line with the EU average. These kinds of regulatory reforms should contribute to creating a more flexible and lower-cost business environment. All over Europe, similar initiatives are under way to slash regulatory costs and impediments to business, while taking into account social and environmental objectives.

Core targets for improving competitiveness: Productivity, labour markets, R&D, education, and integration of immigrant workers

- The competitiveness agenda is, in essence, a call to improve productivity growth. Turning around slow productivity growth is a complex phenomenon that requires a multi-faceted reform agenda addressing labour regulations, regulatory barriers, entrepreneurship, education, innovation, and integration of immigrants into the workplace.
- Sustaining wages in Italy depends on boosting productivity. Despite important reforms in labour markets over the past 15 years, unit labour costs in Italy have risen faster than in other countries as a result of lower productivity growth. Aggregate real wage rates have increased even when there have been little or no productivity gains. The sharp rise in unit labour costs is not because wages have risen faster than elsewhere, but because productivity growth has been lower in Italy. Productivity should therefore be the main focus of reforms.

Low labour market participation rates also need to be taken into account. The employment rate in Italy is still well below the average for OECD countries for several age groups, though the participation rate has steadily increased and recorded unemployment had declined from over 11% in 1998 to 6% by early 2008 before the economic crisis. Innovation has a strong effect on economic growth, but expenditure on R&D in Italy remains low. This has resulted in, for example, the slow introduction of ICT in many sectors in Italy. Factors explaining this include the small size of Italian firms, regulatory hurdles for example in commercial distribution, and limited access to external capital, as well as under-developed research institutions.

- Education is also an issue, as human capital, measured by years of education, has a powerful effect on productivity, but the level of educational attainment in Italy remains comparatively low, with significant regional variation in student performance.
- It should be recognised that integration of large numbers of immigrants into the workforce has been a success story for the Italian labour market and economy. Immigration appears to have been responsible for part of the considerable increase in average participation rates in Italy, and hence for boosting output.

Regulatory reforms are particularly suited to Italy, since SMEs will benefit more than other firms

Italy has a high proportion of employment in small firms, often family firms, which represent about 11.5 employees in 4.4 million firms. Reforms that increase entrepreneurship will be

important for the future dynamic of this sector. The long-lasting small family firm should be supplemented in Italy by a host of new small firms and growing medium-scale firms in areas where Italy can compete and seize new market opportunities.

Ease of entry (regulatory and financial) and exit are crucial to making this happen. Further work to speed up business creation will help, as will reforms to improve the adjudication of civil law. The 2006 reform of the bankruptcy legislation was a useful reform that will ease the exit of firms, increasing the flexibility and speed of economic recovery. Italian rules of transparency and investor protection have been increasingly brought into line with European standards. Venture capital has also been slower to develop in Italy than elsewhere, and continued removal of constraints on the growth of high-performing firms might stimulate its growth.

- SMEs are more sensitive than big firms to regulatory burdens. The focus on reducing operating costs for businesses, streamlining implementation, and removing barriers to market competition are clear principles directly relevant to the Italian economy dominated by SMEs. The goals, performance targets, and tools of the Italian regulatory reform programme should be focused rigorously on these issues.

Regulatory reform becomes an even more important micro-economic strategy in the current crisis, and could stimulate a burst of productivity

- These challenges become even more important in the current economic situation. In the mix of policy tools needed to face the crisis, defining and implementing a clear and consistent strategy for regulatory reform – involving national and regional governments – can improve long-term growth prospects. According to OECD product market regulation indicators, the role of the Italian state in the economy was significantly reduced from 2003 to 2007, but regulation still remains high compared with a large share of the OECD membership.
- Efforts to move ahead should yield substantial benefits. The Italian investor, consumer, and worker have already enjoyed significant benefits from regulatory reforms linked to markets and growth. OECD scenarios in which Italy converges with good European regulatory practices predict that Italy would gain an additional increase in productivity of 13.75% over the next decade if it was in a position to fully converge with these European practices. While such estimates only provide an order of magnitude, a large body of evidence supports the conclusion that, under realistic circumstances in Europe, Italian regulatory reforms would stimulate a burst in productivity gains, setting the stage for a more competitive, innovative, and flexible private sector.

A high priority is to sharply cut the high regulatory burdens facing Italy's private sector. Already, progress is being seen

- The lower-cost regulatory reform that Italy needs is fully compatible with maintaining high levels of safety, health and environmental protection, the quality of urban centres, and the identity of food products. But regulatory costs in Italy are also placing a high burden on small and family run businesses. According to data from the Union of

Chambers of Commerce (*Unioncamere*) Red tape costs an average Italian business about EUR 11 800 annually, which is the cost of hiring a part-time employee. Eliminating regulations that are unjustified or no longer needed, and simplifying the rest, is a high priority.

- In recent years, Italy has accelerated the simplification of administrative procedures and reduction of burdens. Simplification initiatives reduced energy tariffs for citizens and enterprises, reduced administrative costs facing enterprises, and streamlined fiscal administrative burdens and procedures for storing documents. The "guillotine clause", introduced by the 2005 Simplification Act, repealed 7 000 laws. Targets for reducing administrative costs by 25% by 2012 have been set and significant results have already been achieved in terms of reducing administrative burdens, with over EUR 4 billion of annual savings for businesses. These reforms represent positive significant steps and should be further broadened, sharpened, and sustained over time.

Creating a political economy that supports regulatory reform from the top to the bottom of the public administration

Success on the regulatory reform agenda requires broad consensus over years to ensure that political commitments are translated into concrete changes from the top to the bottom of the public administration. Successive Italian governments have found it difficult to maintain the focus and investments needed to keep the reforms moving at an effective pace. As a result, formal reforms and commitments have not always yielded all the expected benefits in terms of concrete changes in regulatory costs and risks for enterprises. For example, in the past, one-stop shops have not worked in practice as well as expected. Regulatory impact assessments have not been of high enough quality to detect unneeded regulations. Dissemination and implementation of reforms remains uneven across regional jurisdictions.

- The current political leadership and the economic crisis, with its sense of urgency, both represent an opportunity for further reforms. In particular, the efforts of the Minister for Normative Simplification and the Minister for Public Administration and Innovation will determine the success of these efforts.

Political involvement must be supported on a day to day basis by stable, expert, and well resourced institutions at the centre of government that can promote, oversee, and enforce the regulatory reform commitments of the government. Italy's Better Regulation bodies – in particular, the units serving the Minister for Normative Simplification, an administrative simplification office serving the Minister of Public Administration and Innovation, and the Legislative Office (DAGL) with a regulatory impact analysis unit – are a big step forward. These are accompanied by useful consultative bodies, such as the permanent board for simplification.

Other drivers of reform that will help improve implementation include using benchmarks and reports by the OECD and other economic organisations, and better communication with government and public about the need for and benefits of reforms, particularly when reforms encounter resistance from specific interests.

Continued vigilance from one of Europe's most effective antitrust agencies is needed to expand market pressures for productivity and innovation

Antitrust safeguards support a more productive economy. Italy is making progress towards eliminating numerous protections, impediments and distortions to competition that reduce productivity and hamper growth. The effectiveness of the Italian Antitrust Authority compares well to international good practice and it now wields the power to apply competition law in all sectors and to control mergers. The authority acts as a watchdog within the government, using its advocacy powers frequently to criticise regulatory practices that undermine free markets.

Regulatory reforms have corrected or eliminated many competition problems identified in the 2001 OECD Report. For example, the Authority has promoted competition in major infrastructure sectors. Reforms introduced in 2006 and 2007 improved transparency, consumer choice and competition in a wide range of sectors, such as bakeries, banking, insurance, retail trade and restaurants, taxis and pharmaceutical products and services

The job is not complete. For example, costly constraints in competitively structured industries such as retailing and professional services are still an issue.

Decentralisation to regions can boost innovation in the public sector, but also requires planning and co-ordination of regulatory policies and reforms

New challenges are emerging due to the recent constitutional reforms to decentralise the state. Decentralisation provides more scope for experimentation and innovation, but it results in an increasingly complex layering of regional and state competences, where responsibilities risk becoming fragmented and where co-ordination is required to preserve policy coherence. For example, skills and capacities for better regulation are an issue in some jurisdictions. In addition, local regulations have implications for liberalisation and market competition. Local and regional authorities have significant regulatory powers in retail trade, energy, and transport, where these are strongly related to local vested interests. It is important that competition principles are not only affirmed at the national level, but also translated into practice at sub-national levels.

The Italian apparatus for co-ordination is well developed compared with many other countries, but the magnitude of the challenges in the decentralised state may call for further efforts. In areas such as commercial distribution, local transport and energy, the various authorities will have to invest more in safeguarding market and "better regulation" principles.

Strengthening capacities for reform: institutions and tools

- Significant steps to strengthen capacity have been taken at the centre of government, and the process needs to continue. Convergence with best OECD practices can only be achieved through long term efforts. The costs and barriers thrown up by the regulatory

environment and competitive conditions are pervasive across the economy, and affect incentives, and competitiveness. Other countries are also moving ahead, and therefore Italy needs to maintain the effort and move even faster. A sustained, institutionalised, and long-term effort should be based on development across a number of fronts:

- Sustaining the impressive administrative simplification programme, and ensuring that removal of old burdens is not offset by adoption of new burdens. This is very important given the number of new regulations adopted either at EU or national level.
- The array of central quality control bodies for regulation is a good start, but more authorities and resources are needed. A lesson that has been learned over and over again in Europe is that reforms based on RIA, consultation, and other regulatory quality tools are crucially dependent on the support by active quality control mechanisms at the centre, with incentives for compliance. Staffing and expertise in these units still need to be consolidated and increased in comparison with best European and OECD practices. More investments are also needed at several levels. Resources and economic and analytical skills in the line ministries also need to be increased for these institutions to implement the "better regulation" tools.
- The experience of Italy with RIA still leaves scope for improvement. Recent steps to rejuvenate RIA might help, but mechanisms for quality control still need to be consolidated. The methods of RIA should be more explicit and more precise. The Ministry of Public Administration is making bold attempts to professionalise public services, but further investment in staffing and RIA training will be necessary to enable the ministries to conduct analysis sufficient to compare options and understand the consequences of their actions before they act. Finally, a targeted approach of "proportional analysis" would help build skills and support over time.
- The Italian policy process still needs to improve its transparency mechanisms to reflect good practice by OECD countries. The Government has sought to improve procedures for consultation, but there still is no general requirement for ministries and regulatory agencies to consult with stakeholders and there are no formal legal requirements to publish the results of consultations, reveal the parties consulted, or provide feedback. Adoption of a clear government-wide consultation policy, which mandates minimum standards for consultation on all regulatory decisions with effects on businesses and citizens, is a much-needed reform.
- Further strengthening of enforcement and application of competition law in all sectors. Enforcement would be more effective with stronger sanctions against associations that are vehicles for anti-competitive agreements, and with individual or criminal penalties against hard-core cartels. Competition implications of the emerging multi-level system of governance warrant close oversight.
- Consolidating the sectoral independent regulators while retaining their independence and credibility also remains a core issue, which is even more important now in core sectors such as financial services, or energy and energy prices.
- Developing co-ordination mechanisms, oversight capacities, financial incentives, technical capacities, and co-operative principles and frameworks to embed "better regulation" principles in the development of the multi-level regulatory system. Many issues are emerging, and others not yet anticipated will develop. The diverse range of initiatives underway in Italy to improve the quality of public services of all kinds in the decentralised system is impressive. Continued work is needed in vital areas such as

the quality of services and policy areas that are significantly devolved to local and regional authorities, including local public services, and the development of core economic sectors such as commercial distribution, transport and energy, which are key to the economic future of the country and its competitiveness. Overall, there is greater potential to introduce benchmarking practices among regions, stimulating the diffusion of best practices.

PART I

Regulatory Reform and Liberalisation Policies in Italy

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Better Regulation to Strengthen Market Dynamics
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Chapter 1

Performance and Appraisal

This chapter summarises the core trends for regulatory reform in Italy, assessing the performance in the light of the economic context. This includes an analysis of the links with economic growth. The chapter discusses goals, progress and results of regulatory reform policies, in terms of the political commitment, the new institutional impetus, the tools for regulatory quality, as well as protecting competition and consumers and addressing the challenges of quality regulation in a multi-level governance context. The chapter assesses the potential benefits of reforms and offers options for moving forward the regulatory reform agenda, building political momentum and consensus for reform.

Introduction

Italy is facing the economic crisis as is the case for all OECD countries. In this context, defining and implementing a clear and consistent strategy for regulatory reform is part of the policy tools that can be used to improve long-term growth prospects. While Italy may have felt the impact of the crisis with some delays compared with other OECD and European countries, it still faces a regulatory challenge related to its past economic performance. Regulatory issues permeate the economic fabric of Italy, and regulatory constraints, costs, and risks appear in every respect to be correlated to economic performance. While regulatory reform is not in itself the only solution to Italy's economic issues, with other significant reform areas deserving attention in terms of R&D, innovation and education, regulatory reform is essential if economic reforms are to be put to work. Improving the regulatory function of government throughout the many policy regimes will remove barriers to results, amplify the benefits of other reforms, and accelerate progress. It should facilitate resilience as well as facilitate a faster recover from the crisis. Regulatory reform is not an "add-on" that can wait in a lengthy queue until other reforms are completed. Regulatory reform is a fundamental reform that should be integrated with other reforms as part of a comprehensive strategy of good economic and social governance. It should be rooted in the core of government efforts, and permeated to all policy areas, both at national and regional levels.

Regulatory reform is not only an economic programme. Regulatory reform is fully compatible with maintaining high levels of safety, health and environmental protection, not to mention the quality of urban centres or the distinct features of food products. Of course, regulations that are unjustified or no longer needed should be eliminated. Regulatory reform offers scope to achieve public policies or better public policies, while simultaneously reducing regulatory costs. Regulation that is better targeted, better designed, at lower cost, and works as much as possible with the market rather than against it, will also help to strengthen protections for health and safety, the environment and consumers. Regulation that is more streamlined, transparent, and responsive to the needs of businesses and people will assist the country with new governance institutions that are redistributing core responsibilities between national and regional governments.

Regulatory reform is not new to Italy. Over the years, Italian governments have given it increased attention, including the appointment of a specific Minister for Normative Simplification under the current legislature. This follows a range of initiatives over 15 years to address the post-war legacy of state intervention and heavy regulation. Some of those initiatives have yielded positive results that contributed to better productivity performance and consumer welfare through a wider range of services and lower prices. For example, Italy has for long been a leader for the diffusion of mobile communication services. OECD indicators for 2007 show that the overall level of product market regulation seems to have fallen in 2007, being now slightly below the previous 2003 OECD average. Promising reforms are underway today, evolving through a succession of governments and fuelled by renewed

reform energies. The economic crisis, with its sense of urgency, however, also represents an opportunity for reform, which could help built a brighter future in Italy.

However, many core issues remain to be addressed. Italy's domestic markets are still subject to significant regulations, due to the interplay of national as well as regional, and even sometimes municipal regulations. While the structures and processes have received significant attention at national level and at the centre of government, they are now operating in a more complex environment where regional regulations play a significant role. New regulatory challenges are emerging due to constitutional reforms to decentralise the state. While decentralisation represents an opportunity in terms of scope for experimentation, innovation and progress, it results in a more diffuse environment, where co-ordination mechanisms may need to be strengthened. Much work lies ahead to converge with good regulatory practices in OECD and EU member states, as Italy's peers forge ahead.

While it is too early to assess the full impact of the current crisis, over the past decade Italy's economic growth rate remained below the European average. The country has had to cope with the challenge of globalisation, in a context where production of goods and services is altered at an unprecedented scale, with many low-cost nations competing in traditional sectors. Formal indicators of investment in innovation and R&D are less favourable than those of its key trading partners, with educational attainment remaining an issue of concern. This has implications for the capacity of the business sector to innovate, perform, and compete, even if structural changes are taking place. For Italy, specialisation in niche and up-market products within broad economic areas is not fully captured by some economic indicators. The automobile industry has experienced a certain rebound over recent years. The country is certainly not alone in facing the challenges of adapting to a world where benchmarks of performance are rising every day, and where market opportunities and constraints are changing quickly.

Yet other countries in Europe, even some new EU members, had experienced more rapid growth over the recent period. In the difficult environment ahead, this report develops a detailed regulatory reform agenda, with simplification and liberalisation policies offering a practical way ahead. This is a well-tested reform agenda that can help Italy manage change with less disruption and improve its long-term prospects. It is also key to Italy to adapt to a context of fixed exchange rate. While interest rates remain low, easing the financing of public debt represents a strikingly distinct feature, as scope for monetary adjustment is not permitted. This makes direct price adjustments necessary, whereas product market and labour market services are often hampered and hindered with unnecessary regulations and lack of competition. More flexible markets appear to be a necessary complement to a fixed exchange rate.

The current report is organised in three parts:

Part I includes a structural analysis of the determinants of long-term productivity in Italy, assessing regulatory reform and its contribution to performance so far, setting goals, progress and results, before turning to options for moving forward the reform agenda.

Part II addresses core policy issues, including government capacity for quality regulation, competition policy and competition and regulatory reform in professional services.

Part III acknowledges the full impact of the 2001 reform by discussing the implications of a multi-level governance approach for regulatory reform and liberalisation policies. This

involves a discussion on overall aspects of competitiveness and development at sub-national level, as well as regulatory and competition related issues, with the much debated issue of the local public service. Three policy areas illustrate the challenges of multi-level governance: commercial distribution, local transport and energy.

Drivers for regulatory reform

Over the past few months, a renewed political impetus to reform has appeared, due to the appointment of a Minister for Normative Simplification, accompanied by a strong push to modernise public administrations by the Minister for Public Administration. This also builds on significant efforts in very recent years to consolidate and streamline the regulatory framework. The Presidency of the Council has given a new impetus to its better regulation approach, reflecting the government priorities. It has adopted measures elaborated by the Legislative Office (DAGL) to consolidate the institutional foundation for the co-ordination of the normative activity of the government. Maintaining political commitment is essential, if reforms are to be accelerated, broadened and deepened. This will require sustained energy and will, but represents the way ahead if Italy is to resolve its serious and persistent regulatory problems.

Regulatory reform is an agenda that entails difficulties and political costs, with reform often becoming possible only when the costs of poor regulatory practices rise so high as to become politically visible. And so it is in Italy. Faced with persistent economic challenges, Italy is facing crucial policy choices to revitalise its economy. They are made even more urgent with the recent financial turmoil which has dampened economic prospects, in Italy as well as in all OECD countries.

Regulatory reform in its broadest sense – as a government that regulates only when necessary and only to the extent needed to achieve its goals – is accepted in Europe and around the world as a practical and affordable approach to address core microeconomic weaknesses. Regulatory reform is now a core agenda of the EU Lisbon strategy for competitiveness, supported at high political level.

The main goal of reform in Italy is to improve the competitiveness of the national economy. The economic crisis has also had a significant impact, prompting the new government to accelerate its reform agenda, through a number of packages over the summer and autumn 2008. The redesigning of the Strategic National Framework (QSN), as part of Law Decree 185, which represents a package to fight the crisis, provides an illustration of the impact of the crisis in terms of fostering further liberalisation, tariff reductions and reduction of administrative costs borne by businesses. The broad economic context for regulatory reform matters, as it has generated pressure for reform, leading to more integrated approaches over the recent period. Administrative simplification has been linked to initiatives to liberalise economic activities and modernise government.

Besides the European dimension and the crisis, the Italian strategy has also been subject to a number of external drivers over the past decade. Reports by the OECD and other economic organisations such as the World Bank, the Institute of Management and Development, and the World Economic Forum have casted a growing body of evidence on the importance of the regulatory framework for economic competitiveness and growth, and the potential benefits to Italy of moving forward with the agenda. Even if single indicators can be disputed and if the evidence is patchy, the diagnostics tend to converge.

In some cases, evidence has lead to a significant increased awareness domestically, such as for civil justice, even if the policy responses are complex and require multiple aspects. Such benchmarks have done much to assist reformers. The Italian government has actively participated in international projects aiming at benchmarking national performances and sharing best practices, particularly at the European Union's (EU) level. Italy has also moved quickly to assess and measure its regulatory burdens (MOAs, see Chapter 2), in accordance with international best practice and standards, following the Standard Cost Model.

EU institutions have been particularly influential in Italy in recent years and Italy's current regulatory reform reflects its commitments to Europe. The goal of the European Commission is clear: "Establishing a fully fledged and integrated Better Regulation system should be the medium to long-term objective of all member states."[1] Regulatory reform became a priority within Europe following the work of the Mandelkern Group on better regulation and the Commission's Better Regulation Action Plan (2002), which adopted the recommended OECD agenda. The "better regulation" strategies adopted at every level in Europe are aimed at contributing to growth and jobs, while taking into account social and environmental objectives and benefits for citizens and national administrations. Italy is actively engaged in important European networks, such as the Directors and Experts for Better Regulation.

Since 2002, the European Commission has embarked on a major "Action Plan for Better Law-making".[2] In the 2005 renewed Lisbon Strategy, focused on growth and jobs, the Commission announced its intention to launch a comprehensive initiative to ensure that the regulatory framework in the EU meets the requirements of the 21st century. As part of the 2005 initiative, the Commission requires member states "to demonstrate their clear commitment to better regulation principles through their National Lisbon [Action] Programmes". The Commission has stated: "These are the key tools to drive implementation of the Lisbon strategy: they offer a checklist of national commitments and benchmarks to monitor progress in the months and years ahead".[3] The Commission charged member states with two specific regulatory reforms:

> EU leaders are invited to set a joint 25% target for reducing administrative burdens to be achieved jointly by the EU and member states by 2012. This target was formalised by the Commission in 2007.
>
> In addition, the Commission intends to conduct a systematic analysis of key goods and services' markets to identify specific obstacles to competition and make proposals for removing them, and invites member states to do the same.

These developments in Europe seem tailored to Italy's needs, and have had a significant impact. A new drive for re-establishing the regulatory reform agenda occurred after 2005. This may have reflected persisting external pressures (*e.g.* the mid-term review of the EU Lisbon Strategy) as well as attempts to improve the competitiveness of the country. The substance of the Italian reform programme reflects the mainstream of regulatory reform in Europe. The focus on reducing operating costs for businesses, streamlining implementation, and removing barriers to market competition are clear principles that are directly relevant to the Italian economy dominated by SMEs. The goals, performance targets, and tools of the Italian regulatory reform programme need to be further focused rigorously on these issues.

Section 1. The Macroeconomic Context

Economic stabilisation through a long period of slow growth

The Italian economy was slowing even before the economic crisis intensified in the autumn of 2008, and the subsequent economic downturn appears to be as pronounced as in neighbouring European countries, despite Italy's comparatively slower growth over the last decade. Although, in common with a number of other European countries, Italy's GDP per capita was no longer "catching up" with the United States by the late 1980s, it did maintain its relative position throughout the 1990s. But while the other large European economies continued broadly to maintain their relative position into the new century, Italy began to fall back quite abruptly after 2000 (Figure 1.1, Panel A). The diagnostic depends on how to take account of the trade effects: ignoring these effects, and considering the level of output relative to the population of working age, Italy begins to lag, but shows no sudden change after 2000 (Figure 1.1, Panel B), whereas a more direct measure of labour productivity, output per employed person, again shows a fall after 2000, following a post-1995 slowdown (Figure 1.1, Panel C).

However, faced with such changes, the question arises: What happened? And then: What is the relevance of regulatory reform to the underlying causes of the structural slowdown? The answer seems to lie in understanding the drivers of productivity growth in Italy, and then in determining where regulatory reform can contribute. The diagnosis is key. Slower growth does not inherently signal structural problems, particularly as Italy as an ageing country is experiencing unfavourable demographic trends in terms of labour supply. A period of slower growth was even to be expected in the second half of the 1990s due to the discipline of the European monetary union. Fiscal policy had to be tightened because of the need to meet the criteria for the euro membership and because exchange rate depreciation was no longer an option. Exchange rate depreciation had previously allowed the inflation rate to remain permanently above that of Italy's main trading competitors without long run deterioration in competitiveness, and in turn allowed the real value of government debt to depreciate.

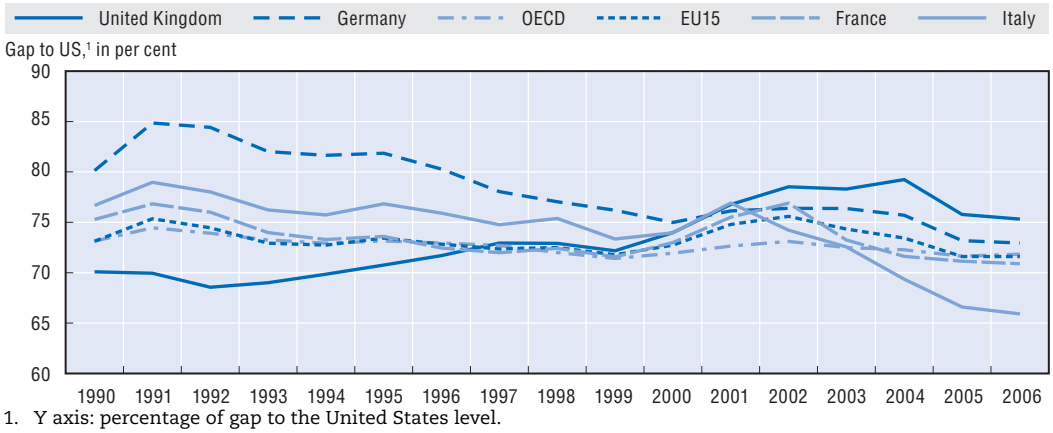
Yet, in the medium-term, joining the euro zone also brought significant benefits. Fiscal tightening was required prior to the monetary union, but once Italy entered the monetary union, its public finances benefited from lower costs of financing its large debt, as nominal interest rates on government debt fell substantially because of lower inflation and a lower risk premium on the currency. This positive development allowed the debt: to GDP ratio to fall significantly for several years. However, fiscal discipline was progressively relaxed, as in other EU countries given adverse economic conditions in 2000-02. Increased spending gradually eroded the cost-savings of lower interest payments. By 2007, the debt ratio was nearly 20 percentage points below its mid-1990s peak and was once again dropping, but it was barely lower than it had been in 2002 (Figure 1.2). The government's target in the last available documents is to bring the level of debt to about 92% of GDP by 2013 (Forecasts and Planning Report for 2009). However, due to the current crisis, these projections are currently being updated in the last Unified Report on the Economy and Public Finance to be released in 2009.

Productivity, inflation and relative manufacturing costs are key

Monetary union implies that price adjustments cannot occur through currency fluctuations. This offers both benefits in terms of stabilisation of inflation expectations, with direct effects on labour markets. Because wage inflation could no longer be offset by currency

Figure 1.1. **Measures of per capita GDP**

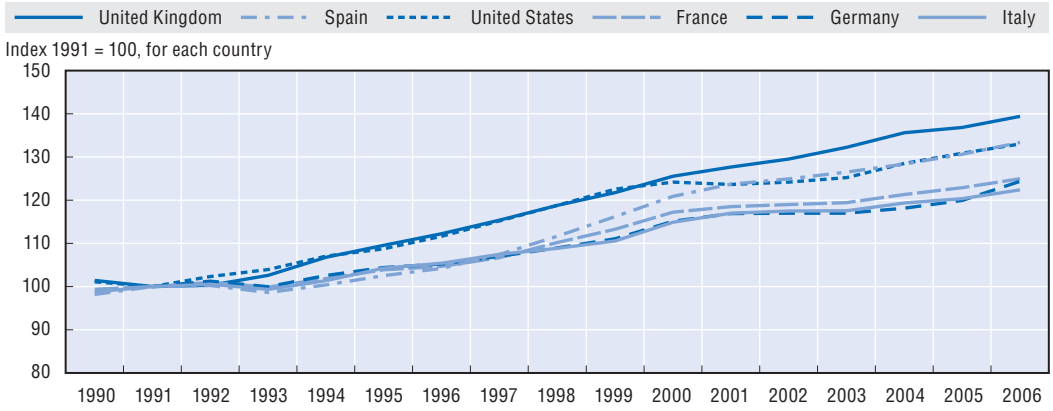
A. Per capita GDP, current prices, purchasing power parity exchange rates



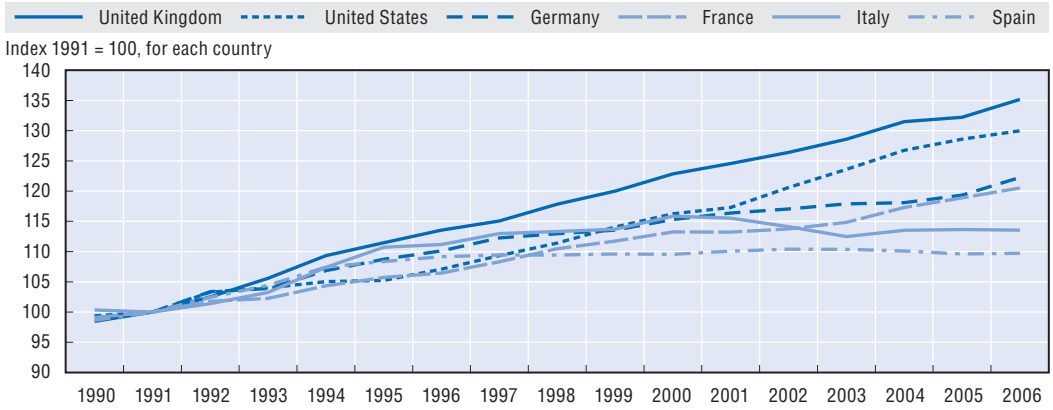
1. Y axis: percentage of gap to the United States level.

Source: *OECD Factbook 2008*.

B. GDP per working age population, constant prices and exchange rates



C. GDP per employed person, constant prices and exchange rates



Source: OECD Analytical Database.

depreciation, more flexible wage bargaining was needed to adjust to changing market conditions. An important step toward breaking the inflationary cycle was already taken 15 years ago, when automatic indexation of wages was removed. This helped to bring inflation down from high levels, but was not effective in moderating relative labour cost growth in a low-inflation environment: unit labour costs in Italy have, in fact, risen faster than in other

Figure 1.2. **Public finances**



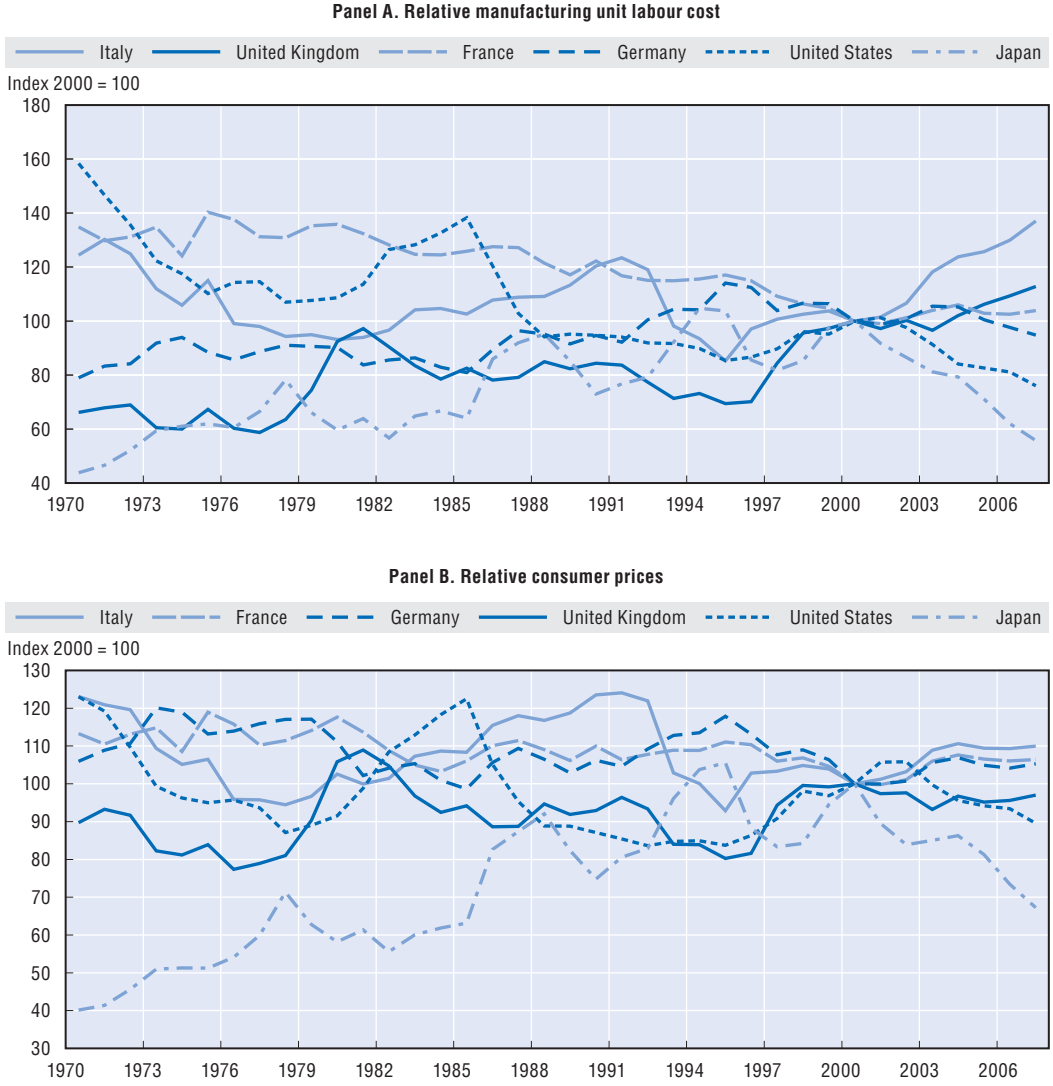
Source: OECD Analytical Database.

countries due to poor productivity developments (Figure 1.3, Panel A), even though monetary union has successfully brought about convergence of consumer price inflation.

The system of central wage negotiations in place since the 1990s had some success in keeping wage growth low in absolute terms and by historical standards, but this was apparently insufficient. The two-stage bargaining process involves centralised national negotiations that effectively ensure that real wages in all sectors cannot fall. The second level bargaining is interned to reflect local or firm level productivity gains.

Aggregate real wage rates have increased even when there have been little or no productivity gains, producing the increase in relative unit labour costs (Figure 1.3). Employers' organisations[4] have called for less constraining all-embracing contracts with more room for plant level bargaining and for incentives for the individual. But reducing wage growth is not the whole story. The sharp rise in unit labour costs is not because wages have risen faster than elsewhere, but because productivity growth has been low in Italy.

Figure 1.3. **Cost and price competitiveness**



Source: OECD Analytical Database.

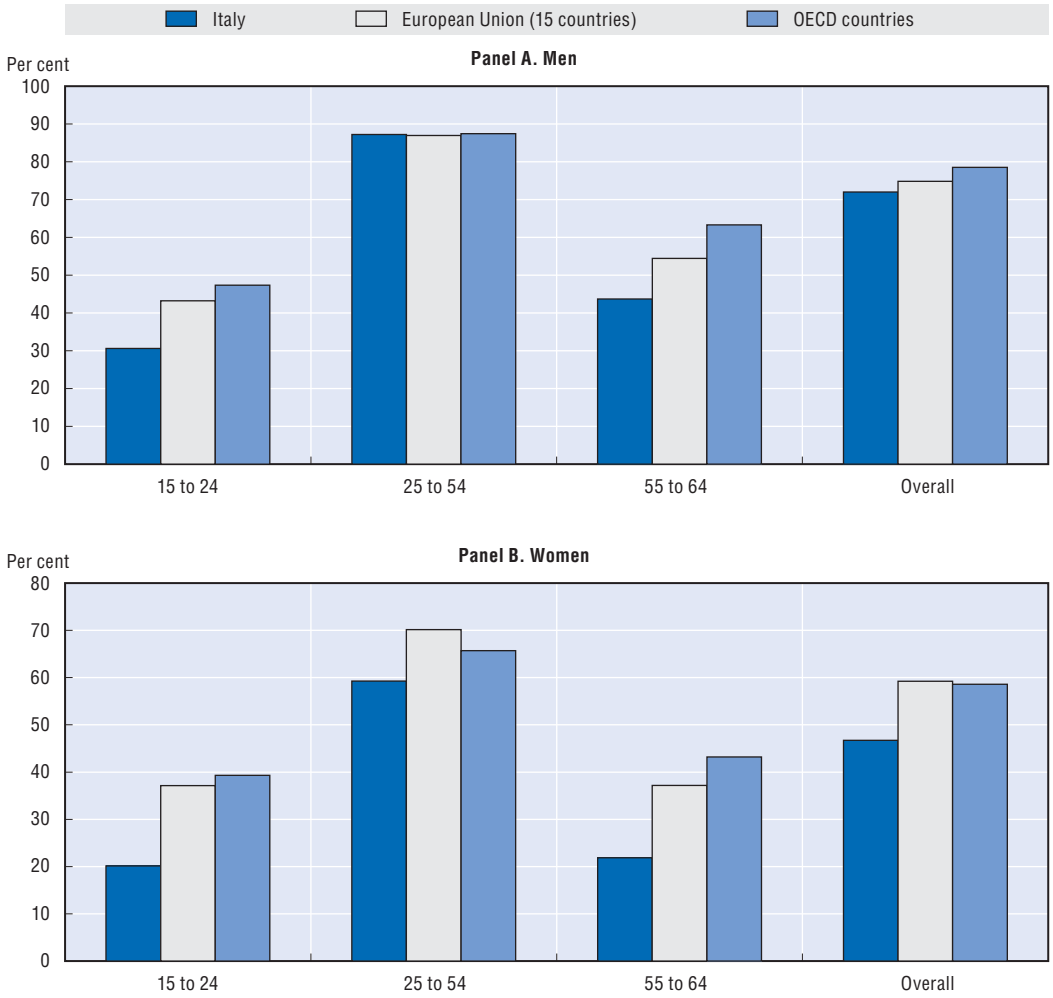
Low labour market participation rates: Another cause for slow growth

Another potential contributor to slow growth in per capita GDP is low labour force participation. These are due to a number of regulatory and non-regulatory factors. Per capita GDP depends not only on productivity measured as output per worker, but also on the share of the population that is working. In recent years, per capita GDP in Italy has been affected by the level of labour force participation as well as by productivity growth.[5]

The employment rate in Italy is well below average for OECD countries. Measured on the population aged 15-64, only 59% of Italians are employed compared with an EU average of 67% and an OECD average of 69%. For males aged 25-54 the employment rate is similar to the EU and OECD averages. But all other age-gender groups show relatively low employment, including prime-age females, although the gap there is actually somewhat lower than for both older females and the 15-24 age group (Figure 1.4). The gap between female and male employment has been falling faster in Italy than in most other countries,

but it still remains relatively high by OECD standards, even for prime age workers (OECD, 2008). For the other groups identified in Figure 1.4, Italy is one of the 3 or 4 countries with the lowest employment rates in the OECD. For the older age groups, only Turkey, France and Spain and some eastern European countries have such low employment rates, while in the 15-24 age group, Italy France and Eastern Europe together also have low employment rates.

Figure 1.4. **Employment rate by age, 2006**



Source: OECD.Stat.

Even though Italy's position is still not yet favourable, the overall situation has improved for over a decade. The participation rate is low, but it has been steadily increasing; labour force survey data show a rather stronger increase than national accounts-based sources, where the increase tailed off after 2003, but both have clearly improved over the medium term. At the same time, recorded unemployment has been declining steadily since 1998, from over 11% then to just 6% at the beginning of 2008. The corresponding growth in employment, which decelerated somewhat in 2007, has mostly reflected strong growth in the number of short-term contracts, particularly in response to a significant relaxation of the regulations covering temporary contracts which began in the late 1990s and continued up to 2003. But as output growth has tended to remain rather low, this growth in employment has had implications in terms of dampening productivity growth.

For the older age groups (OECD, 2004a),[6] low activity rates are associated with the pension system which gives strong incentives to retire at an early age. Major reforms have resulted in a new system which is being progressively introduced and participation rates of older workers seem to have begun to respond, but the phasing in of the new arrangements is slow so that the incentives are still skewed against continued employment for older workers. For younger people, as in most countries, low activity is strongly associated with job mobility choices: some parts of northern Italy have consistently maintained high employment rates with shortages even of unskilled labour, but migration of young people from areas of high unemployment has not helped to fill the gap. This is in contrast to the strong mobility shown in the period after World War II – admittedly in response to much higher income gaps – and contrasts with current immigrants, who are more open to move to areas with jobs. In part this may be related to aspects of regional policy where efforts to stimulate the economy of the south and the islands have tended to have the effect of generating higher levels of public sector employment in those areas. However, it has proved impossible to negotiate regionally-differentiated wages in the public sector, even though both the cost of living and wages in the private sector are much lower in the south than in the north. As a result, for an unemployed person in the south the possible prospect of a well-paid public sector job may outweigh the incentive to move to a private sector job in another region.

Female employment rates and their average wages are both relatively low, while the level of education of younger females measured in terms of years spent in full time education is, for the new generations, somewhat higher than that of males. While low educational attainments may explain activity rates among women over 45-50, low female participation rates even among the youngest cohorts may have several other causes. The lack of family policies and formal child care services, which increases the opportunity cost of work for mothers with young children, is also likely to be a major factor holding back female participation (see for instance Jaumotte, 2003; D'Addio and Mira d'Ercole, 2006; OECD 2007c). Implicit discrimination might be another possibility for low activity rates among Italian women, though there is no solid evidence supporting this explanation.[7]

Low employment rates are not only a function of specific labour market characteristics, although these are certainly important factors. Competitive conditions on product markets are also seen to be important; lack of competition allows producers to exploit market power to gain economic rents, which may be shared with workers (Ichino, 2008). This of course benefits the employed but may mean a tendency for wages to remain higher than in a more competitive market, and therefore lower employment. Cross-country empirical evidence supports this view (Conway *et al.*, 2006), and there is corroborating evidence for Italy. For example, Viviano and Schivardi (2007) study regional variations in entry restrictions to retail trade and find that entry barriers have a negative and sizeable impact on employment growth.

Slow productivity growth in Italy: A complex phenomenon in which regulation plays a key role

Potential explanations for low productivity growth in Italy since 2000 are easy to find but hard to evaluate empirically.[8] Some data issues are important. For example, a significant amount of activity takes place in the informal sector, so much that the national statistical office corrects the official national accounts for this factor. However, it is hard to estimate the level and the growth rate of productivity when estimates of significant

components of both employment and output are based on highly indirect methods. Yet the consistency of measurements over time is persuasive that productivity growth in at least some key areas of the economy is genuinely slow.

The factors behind low productivity growth seem to reflect economy wide effects. The slowdown in productivity is generalised across economic sectors, so it cannot be attributed to the experience of particular industries (Table 1.1). (Revisions to productivity data since this table was compiled show that productivity growth, while weak, was somewhat stronger than shown by earlier data).

Table 1.1. **Productivity[1] growth by sector**

	1990-95	1995-2000	2000-06
Total	2.1	0.8	0.1
Agriculture, hunting, forestry and fishing	7.4	5.0	0.4
Industry including energy	3.8	0.9	0.0
Mining and quarrying	7.7	3.0	–2.1
Manufacturing	3.9	0.9	–0.2
Food products, beverages and tobacco	1.5	1.5	–1.1
Textiles, textile products, leather and footwear	5.4	1.0	–1.8
Wood and products of wood and cork	2.8	4.3	–0.2
Pulp, paper, paper products, printing and publishing	2.8	1.9	–0.5
Chemical, rubber, plastics and fuel products	5.2	–1.5	0.3
Other non-metallic mineral products	3.4	3.1	0.7
Basic metals and fabricated metal products	5.7	0.3	–0.2
Machinery and equipment	3.7	0.0	0.3
Transport equipment	0.3	2.0	0.0
Other manufacturing; recycling	3.1	1.4	0.4
Electricity gas and water supply	3.6	1.9	3.9
Construction	–1.7	–0.5	0.3
Total services	1.3	0.5	0.1
Wholesale and retail trade; restaurants and hotels	3.0	1.3	0.2
Transport storage and communications	4.4	2.8	2.0
Finance, insurance, real estate, and business services	0.4	–2.9	–2.0
Community social and personal services	–0.7	0.2	0.4

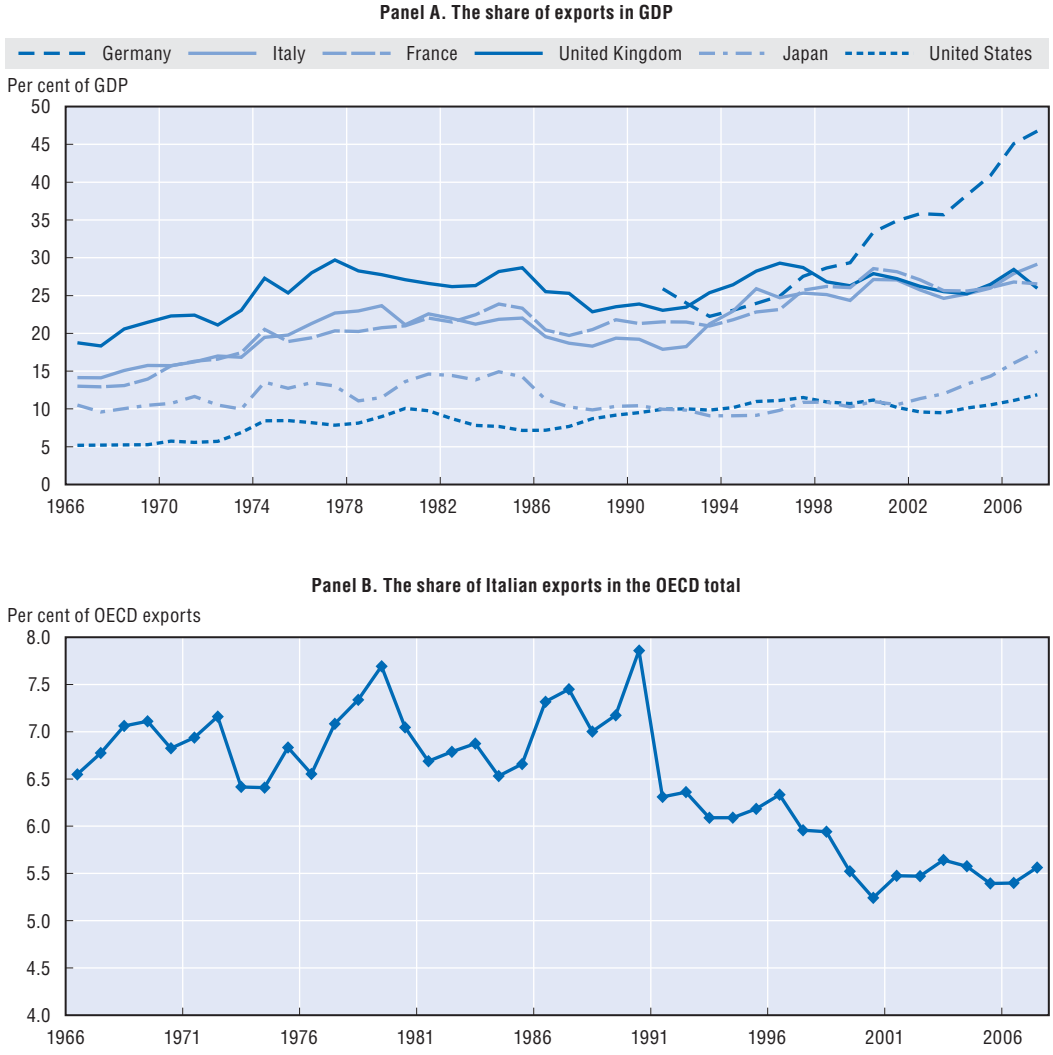
1. Value added (volume, chained prices) per hour worked.

Source: OECD, STAN database.

Changes in export composition also suggest economy-wide issues. The Italian economy has traditionally been export-oriented. The share of exports in GDP is comparable to that in the United Kingdom and France (Figure 1.5). This openness exposes the economy to the dynamics of competitive forces, generally thought to be an element in stimulating productivity gains in the longer run. However, a positive reaction can only be expected if the framework conditions for growth, such as the general regulatory environment that is discussed below, allow businesses to exploit market opportunities. The question is the extent to which Italy's regulatory framework allows its businesses, large and small, to compete with their peers in Europe and on a world scale, and to reap the positive effects of international competition through specialisation and search for comparative advantage.

On some measures, Italian export performance has been mixed. When compared with the volume of demand growth in the markets it typically supplies, export volumes have been growing more slowly for some time. On the other hand, Italian exports have, on average, been rising in price relative to those of their OECD competitors so that their share of total OECD exports, though it declined during the 1990s, has been more stable since 2000 (Figure 1.5).

Figure 1.5. **Italian export performance**



Source: OECD Analytical Database.

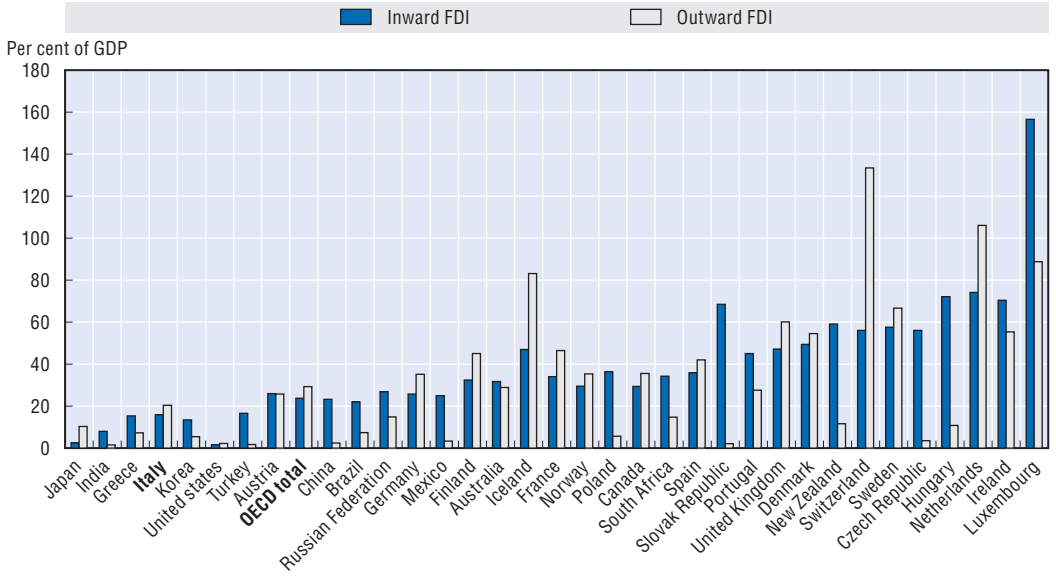
This phenomenon of rising relative export prices and falling relative volumes can be interpreted in different ways, aside from possible statistical difficulties.[9] It may represent an active move by Italian entrepreneurs into more profitable product lines with higher value-added, or it may be purely defensive as firms in Italy can no longer succeed in some markets. If the first is true, this process is part of a successful adaptation of the Italian economy to the challenges of globalisation and may reflect the strength of the *made in Italy* brand, which is not fully measured in statistics for patents and innovation. If the second is true, it might explain why Italian entrepreneurs seem to be moving production abroad.[10] The magnitude of such "off-shoring" capacity is not clear.

FDI and foreign economic attractiveness

Another indicator of underlying productivity can be related to FDI and economic attractiveness. Results in terms of the attractiveness of the Italian economy in terms of Foreign Direct Investment (FDI) are less satisfactory. The total amount of FDI in Italy remains lower than in other similar sized countries. According to the World Investment

Report 2008, Italy ranks 13th out of the top 20 economies in terms of FDI inflows even though the situation improved in 2007 compared with 2006. This is true not only in comparison with historically relatively liberal countries such as the United Kingdom, but also with France, for example (Figure 1.6). This has two implications. First it is a likely culprit for low productivity growth, since foreign investment is certainly one of the ways that new ideas spread internationally. Second, it is at least suggestive of an environment that is difficult for foreign investors. Other factors such as tax policy, public administration and infrastructure, and the financial and corporate governance systems can also contribute to lower FDI inflows. Some studies go even further: Ichino (2008) argues that workers and productivity in Italy suffer from not being able to "choose" foreign employers. He presents a persuasive argument that, at least in a number of specific examples, FDI appears to be inhibited by just such a combination of interests, often including workers themselves (or, at least, their union and bargaining representatives), that combine to keep foreign investors out, and that the result is that potential efficiency gains are missed.[11] Ichino (2008) attributes this in large part to the industrial relations model, but notes that this model is successful only "in a relatively closed and static national productive fabric". The 2008 cut in the standard rate of corporate tax from 33% to 27.5% may somewhat improve the attractiveness of Italy to FDI.

Figure 1.6. **The stock of foreign direct investment, 2005**



Source: OECD Factbook 2008.

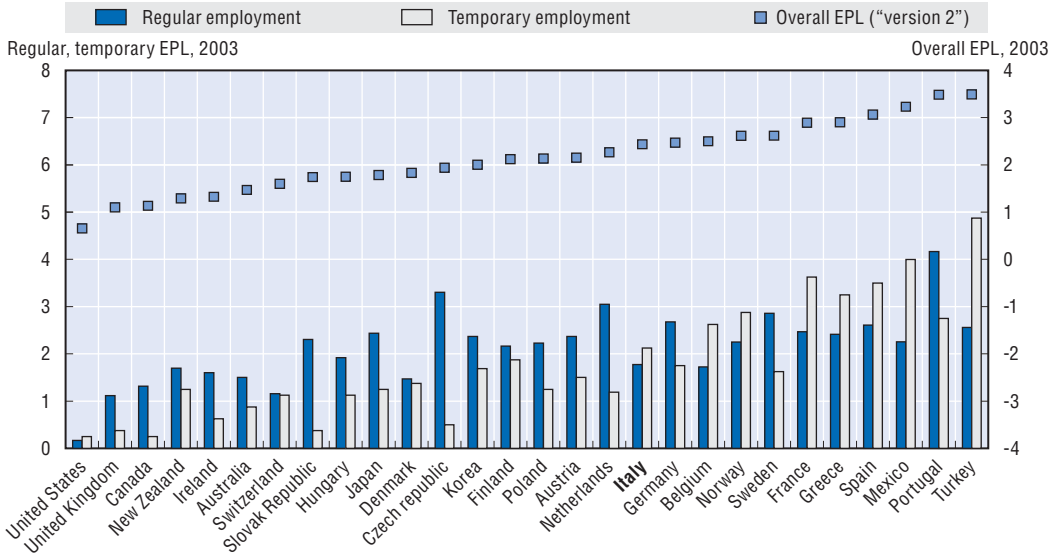
The implications of a dual labour regulation in terms of productivity and economic specialisation

Relaxation in restrictions on temporary employment has accentuated the duality in the Italian labour market, as it has been very difficult to change any of the employment protection legislation (EPL) for workers on permanent contracts. The labour code establishes the basic rules that make dismissals in large companies relatively difficult. Its implementation is a source of rigidity in that part of the labour market, even if a relatively small proportion of the labour force is directly protected by it.[12] Opinion on the impact of EPL has evolved in recent years; while early studies claimed that it increased overall unemployment, this is not now

thought to be the case for prime age workers. But EPL can reduce demand for workers from groups at the margins of the labour market, and this may well be a contributory factor to the low employment rates for some of the groups mentioned above.

Despite the attention it receives, employment protection does not seem to be outstandingly strict in comparison with other OECD countries (Figure 1.7). The fact that temporary contracts have been an important factor behind employment growth in recent years, despite the apparently relatively strict conditions attached to such contracts, does suggest that regular EPL is quite constraining because at least at the margin, many employers seem to prefer such temporary contracts, less rigid pay structures and, in certain cases, lower social security contributions may also make them more attractive. A survey of workers suggested that most workers prefer a labour market where it is difficult to find a job but where protection is high than one where protection is low but jobs are easy to find (Boeri, 2002). The main reason why the indicator for regular employment in Italy is relatively high is the provisions on collective redundancies, whereas other aspects of employment protection related to required notice and individual severance pay are among the least stringent of all countries.

Figure 1.7. **Indicators of employment protection legislation**



Notes: The bar chart refers to Employment Protection Legislation for regular and temporary workers (left scale). The dots correspond to overall EPL (right scale).
The numerical value of the "regular" indicator is not comparable with that for temporary employment.
Source: OECD Indicators of Employment Protection Legislation.

Understanding the puzzle

The growth in relative unit labour costs mentioned earlier, combined with low labour supply, should encourage entrepreneurs to switch to more capital intensive production. This would increase recorded labour productivity, though it might not increase efficiency measured as total factor productivity.[13] In practice, however, labour productivity growth has been low and total factor productivity appears actually to have fallen.

Therefore, further analysis is warranted. Despite data issues, the following explanations can be considered, including labour regulations, regulatory barriers to growth, the nature of

the Italian family firm, educational attainment and inadequacies in tertiary education, lack of innovation and R&D activity, and integration into the workforce of large numbers of immigrants. This report does not reach a definitive conclusion on the relative importance of these different factors, but will present some evidence on each of them.

Entrepreneurship, dynamics of new firms and firm size

Another aspect of the industrial structure that is often highlighted in Italy is the high proportion of employment in small firms. Often these have been family firms. There are a number of arguments why their predominance may have been a factor in holding back growth, though they have probably become less important more recently. Often these are family firms. While Italy has a high proportion of employment in stable small firms, SME creation is not relatively high compared with the stock of existing firms. Italy exhibits in recent years relatively low creation rates for services, lower than Portugal, Spain, and the UK for services and industry, but higher than France and Sweden for industry.

The high proportion of small firms in the Italian economy is a mixed blessing. Small firms, notably in industries such as textiles, leather, and small scale engineering, have historically been successful in supplying both domestic and export markets. But increased external competition has largely removed the advantage that Italy once had in low-cost production. One response, likely to continue, has been the movement of production to other countries by some medium-sized Italian companies. Another has been to concentrate more on lower volume niche markets. Both of these responses can be successful for the companies concerned, but for the economy as a whole it is important that the resources of labour and capital released in this adjustment find new, efficient uses. In other words, the long-lasting small family firm should be supplemented in Italy by a host of new small firms and growing medium-scale firms in areas where Italy can compete and seize new market opportunities. In this scenario, the ease of entry (regulatory and financial) and exit are crucial.

There are a number of arguments why small firms have dominated in Italy and how their dominance may have held back growth. A usual explanation for the domination of small firms is explicitly regulatory: the presence of explicit threshold effects in regulation, notably in labour law. In practice, however, this effect seems not to be very important.[14] More "cultural" explanations mixed with management of risks are often advanced. The cultural explanation – that Italian entrepreneurs themselves *prefer* their companies to stay small – is difficult to refute, but is not very logical and requires explanation. One possibility is related to the functioning commercial legal system, growth beyond a point where family and personal connections can no longer enforce contracts, greatly increases risks and the costs of control. The size of firms is limited to the personal network in such a system. The discussion above of the poor performance of adjudication of civil law suggests that these arguments might be relevant today.

The reallocation of entrepreneurial resources from today's small firms to tomorrow's larger firms and new small firms involves many mechanisms but three key ones are the creation of new firms, the exit of unsuccessful firms, and the rapid expansion of successful existing ones.[15]

Steps to significantly reduce formal barriers to firm creation have been taken, though there is uncertainty as to how quickly such reforms will produce concrete results. For example "one-stop shops" have been developed to reduce the time required to create a new

business from the 35 days estimated for 2003 to what is reported as 3 in 2007; but reports suggest that the actual decline in time and cost may have been smaller than this. If further reforms could boost firm creation, the environment could become more dynamic, though the direct impact on overall growth in the economy is uncertain, as this has to do more with the expansion of successful firms than simply the rate of creation of new enterprises.

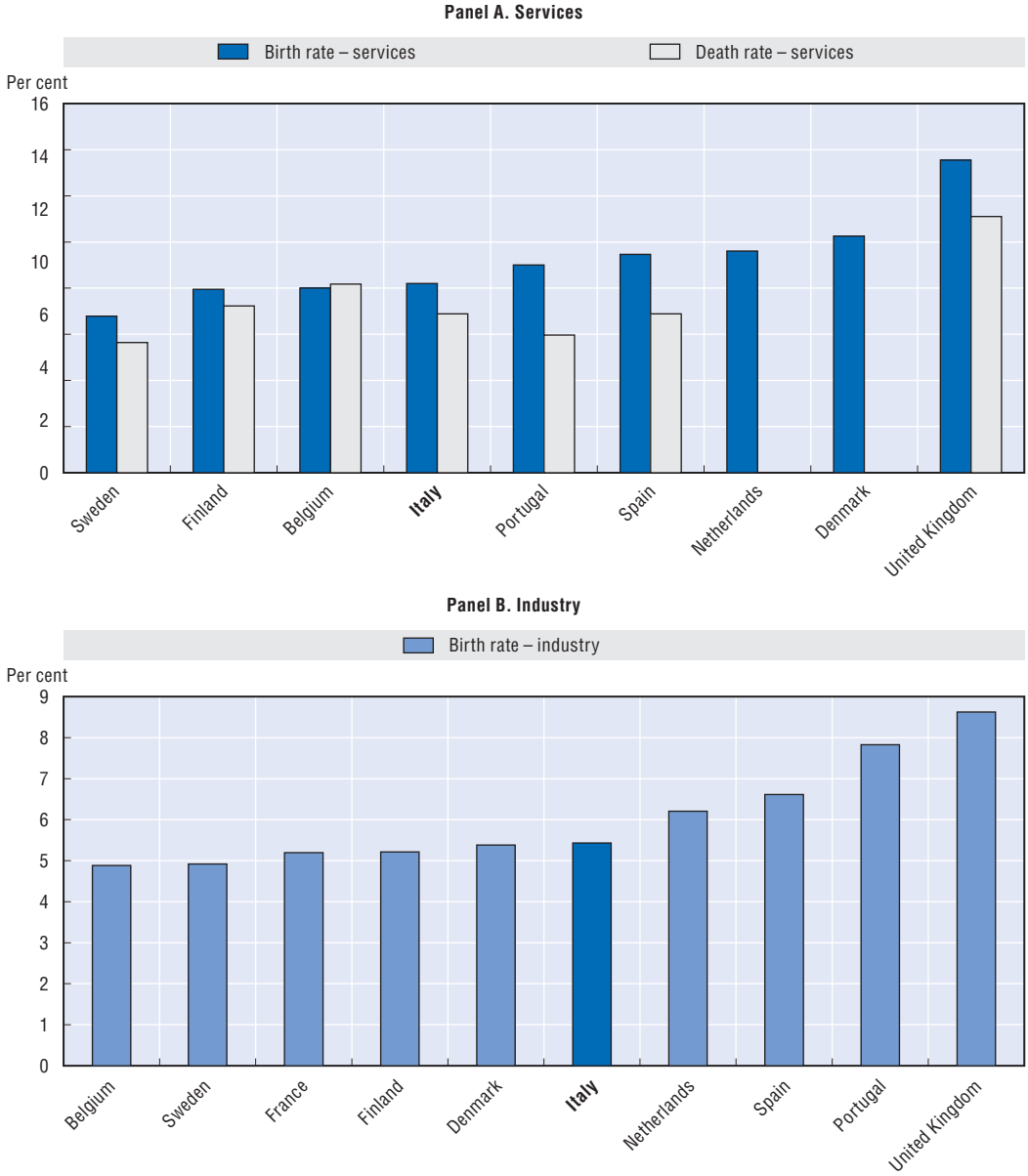
Until recently, bankruptcy exposed entrepreneurs to risky criminal proceedings, often putting personal wealth at risk. This may have discouraged expansion for risk-averse entrepreneurs. The recent (2006) reform of the bankruptcy legislation should make firm exits easier. The new regime allows speedier proceedings, and changed the requirements for being subject to bankruptcy, setting a threshold of EUR 300 000 for investments and EUR 200 000 for income. More substantially, the reform seeks to move from the old liquidation procedure that blocked the residual business endowment and caused long disputes to a more flexible process aimed at retrieving operation and production capacities. The criteria were modified again with a new one entering in force in 2008. The reforms have accelerated the legal proceedings, enlarged the competence of the creditors' committee, reduced the term of exercise of claw back action and greatly improved the conditions faced by companies under bankruptcy.

In parallel to the relatively underused equity markets as a source of finance, venture capital has also been slower to develop in Italy than elsewhere, perhaps partly because of the traditional importance of personal or family control, perhaps also because of the perceived difficulties for foreign financial investors. Venture capital is nevertheless of growing importance in Italy. The 2006 bankruptcy reform and attempts to expand the role of external equity finance should reduce the risks of growth for small firms. Nevertheless, it will probably be some time before diffuse equity (where most large quoted companies are owned by large numbers of shareholders) becomes important in Italy, whose stock market is still dominated by established firms (where cross shareholdings limit the effective rights of minority shareholders) and a few newly-privatised companies (Micossi, 2006, 2008). Giacomelli and Trento (2005) suggest that the basic ownership structure in Italian firms changed rather little between 1993 and 2003; family control is still prevalent, financial institutions rarely own or play a role in controlling non-financial firms, though cross-holdings among non-financial firms are still common. There has been some increase in foreign ownership however. While the share of ownership accounted for by non-financial companies has fallen, that of holding companies has risen (Bianchi *et al*., 2005; Bianchi and Bianco, 2009).

Recent work confirms the importance of avoiding constraints on the growth of high-performing firms. Arnold *et al.* (2008) present evidence that the association between the degree of regulation and overall productivity growth passes partly through the variation of firms' growth rates within a country; faster growing countries appear to have a narrower distribution of growth rates across firms, but with a significant "tail" in the distribution of high growth performers. In turn, the number of firms in this "tail" is linked to the degree of regulation and the importance of information and communication technology (ICT) in different industries. The hypothesis is that faster-growing countries are those which have a relatively narrow distribution of growth rates (because slow-growing firms are easily eliminated) but which have a significant number of high flyers ("gazelles").

High average growth rates and relatively large high-growth "tails" are found much more often in ICT-using sectors than non-ICT using sectors. The ICT-using sectors are, in turn, particularly sensitive to the negative effects of regulatory barriers to entry. The

Figure 1.8. **Business demographics, average 1998-2005**



Notes: A firm's birth rate is defined as the number of enterprise births in the reference period (t) divided by the number of enterprises active in t.
A firm's death rate is defined as the number of enterprise deaths in the reference period (t) divided by the number of enterprises active in t.

Source: Eurostat Business Demographics.

introduction of ICT-related innovation in Italy has been particularly slow, and Italy is among the countries with a relatively wide distribution of growth rates and only a small high-growth tail. This corroborates the hypothesis of Arnold *et al.* (2008), and also suggests that recent trends in regulatory liberalisation could have significant impact in stimulating productivity growth by creating more "gazelles".

Corporate governance might also be an important influence on firm size. The unusual nature of the ownership structure in Italian capitalism was analysed in previous OECD reports (OECD, 2005).[16] Holding structures tend to obscure beneficial ownership and to give

insiders control that significantly exceeds their share in ownership. For a long time, public policy did little to discourage this relatively closed ownership structure but since the late 1990s, as Italian rules of transparency and investor protection have been increasingly brought into line with European standards, the situation has improved. For example, the use of pyramidal and cross-ownership structures has diminished, while the importance of coalitions of shareholders has risen. As OECD (2005) noted, however, it is taking time for actual outcomes to be brought fully into line with best practice, for example compliance with codes of corporate governance remains sometimes more formal than substantial. Opposition to foreign control was in the past particularly clear in the banking sector, but this had become more relaxed even before. The transfer of responsibility for competition issues in the banking sector from the Bank of Italy to the Competition Authority is a clear signal of change. Foreign stakes have increased since then.

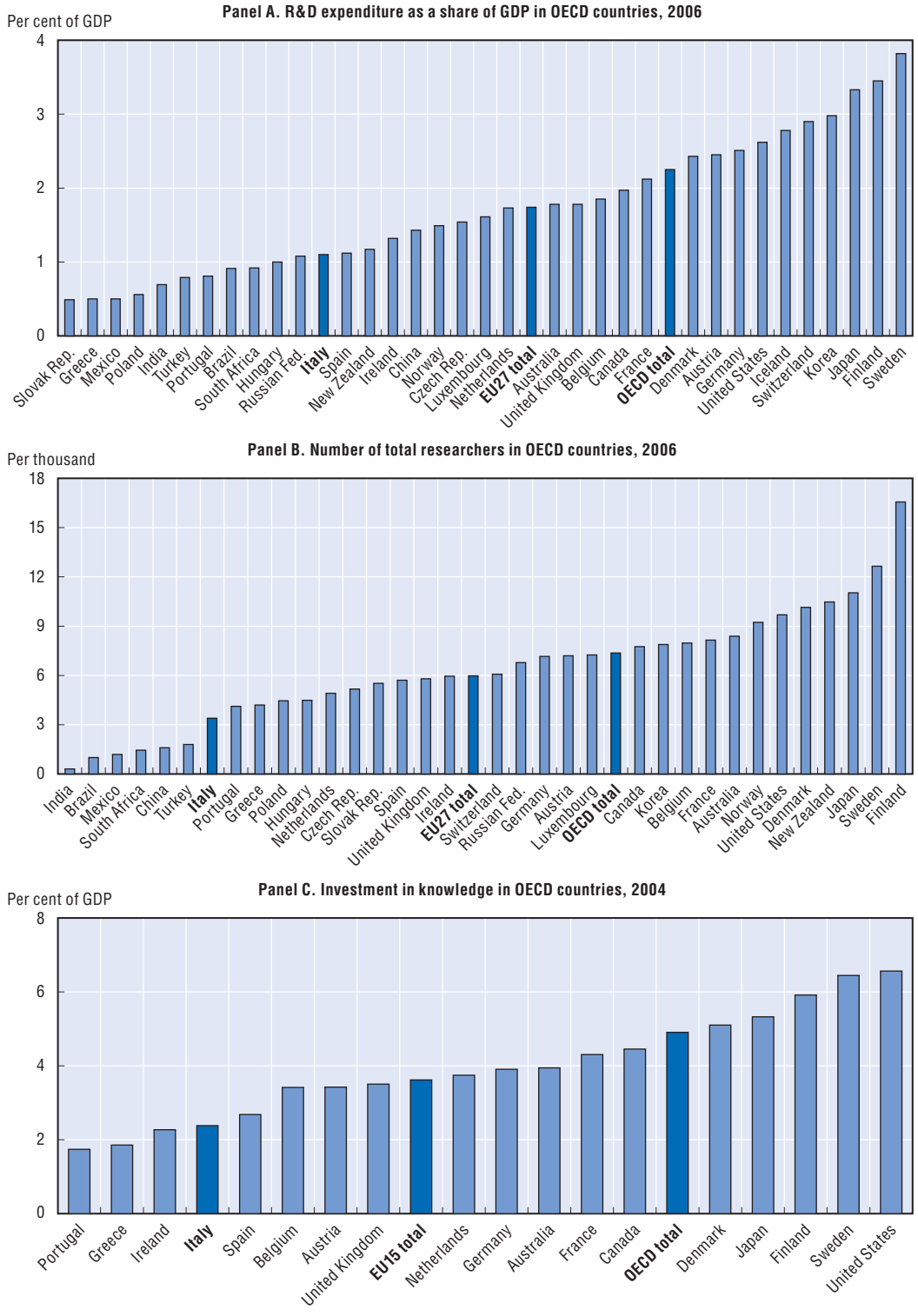
The impact of level in R&D investment

The slow introduction of ICT in many sectors in Italy may also be linked to its research and development effort, which is in fact another area where growth-related indicators are not favourable to Italy. The examples of Ireland and catch-up countries in central Europe show that a low level of R&D may not necessarily prevent strong productivity growth. But in a high income country such as Italy, especially where foreign direct investment is not currently playing the role in transmitting new ideas that it plays in those countries, technical progress is likely to be quite dependent on domestic R&D efforts. Expenditure on R&D in Italy is low overall: gross R&D total expenditure is slightly above 1% of GDP, compared with the OECD average of 2.3% (Figure 1.9a); this is true for both private and public sector research activity, with industry financing 40% and performing 50% of it. Italy is also among the OECD countries with the smallest number of total researchers, with less than 4 out of 1 000 employees being in this profession, less than half the OECD average (Figure 1.9b). Another indicator, of "investment in knowledge", which combines expenditure on R&D with that on total higher education and on software, also shows Italy underperforming: in 2004 it invested slightly above 2% of GDP in knowledge while the OECD area reached 5% (Figure 1.9c). Under-recording of R&D activity in small and medium sized enterprises, where it is often performed informally, may somewhat bias these figures down.

Measuring actual innovation is not, however, straightforward and different indicators may sometimes paint a different picture (see OECD, 2006a). The input indicators just mentioned unambiguously suggest a significant shortfall in effort, one important direct output indicator (apart from lower overall productivity growth) corroborates this: 0.00125 patent families are produced per thousand capita population, compared with an OECD average of almost 0.05, some forty times greater. Many studies have shown the strong impact of innovation on economic growth (see for instance OECD, 2003, for a comprehensive review). Del Monte and Papagni (2003) showed more specifically on Italian data that R&D activity is associated to faster growth, because it led the firm to successfully compete and thrive in product markets. Bronzini and Piselli (2006) also established a strong long-run relationship between regional total factor productivity, R&D, human capital and public infrastructure. Though human capital turns out to be the main driver, R&D activities produce significant regional productivity spill-over for neighbouring regions.

The literature suggests a number of reasons why R&D at industry-level is not extensively developed in Italy and why innovation is slow to propagate. One of the explanations lies with the small size of Italian firms and the consequent difficulty of

Figure 1.9. **Indicators of R&D efforts in OECD countries, various years**



Source: OECD Factbook 2008.

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meeting the up-front cost of R&D where there is only limited access to external capital. Ughetto (2008) for instance finds that Italian firms use very little debt to finance R&D, even though debt is the main source of external finance for Italian firms, in the absence of significant external equity. Innovation therefore has to be financed mainly through internal cash flow. Ughetto (2007) finds that small innovative firms are indeed subject to significant financing constraints, while larger companies investing in R&D have easier access to external financing.

In most countries, a significant amount of R&D effort occurs in universities or research institutions that are part of the tertiary education sector. In Italy this sector is underdeveloped; indeed, it has been a concern for some time that Italy suffers a net loss of young graduates through emigration and that few foreign researchers appear interested in working in Italy. In 2005, a decree authorised the Ministry of Higher Education to subsidise universities who wished to recruit researchers or professors from abroad, either foreign citizens or Italians who had worked abroad as researchers or in university education for several years; this programme has now ended, and it is not clear whether it had any permanent effect. Foreigners can also sometimes face obstacles in coming to work in Italy: for example the procedure for recognising foreign university qualifications can be cumbersome.

The role of education

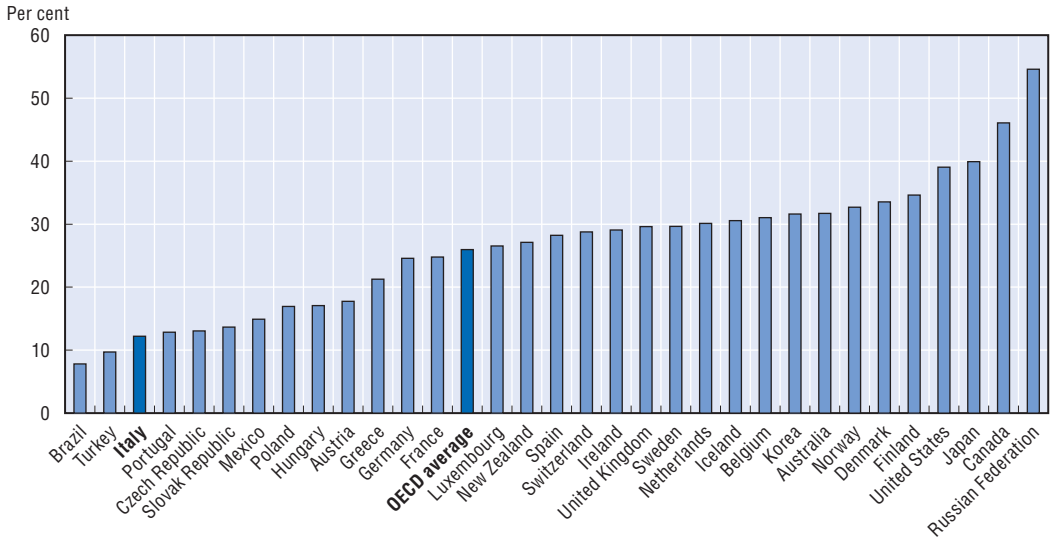
Apart from the specific effect of low levels of research and development activity, low overall educational attainment in Italy is also likely to affect economic performance (see Sianesi and Van Reenen, 2003, for a comprehensive review). Among the main established results, human capital, measured by years of education, has been found to increase productivity. A one-year increase in average education is associated with an increase in the *level* of output per capita of between 3 and 6%; some models interpret the effect in growth rates, with an extra year of education leading to an increase in growth of more than 1 percentage point. Over the short-run the empirical estimates of the change in GDP for a given increase in the human capital stock are of similar orders of magnitude in the two approaches. The impact of increases at different levels of education appears to depend on the level of a country's development, with tertiary education being the most important for growth in OECD countries. Education is found to yield additional indirect benefits to growth, in particular by stimulating fixed investment and technological development and adoption.

In addition to traditional growth explanations, other influences from education may include the importance of human capital for the successful development of new technology-based firms (NTBF). The initial qualification and skills of founders of NTBFs have been shown to be critical for the rapid growth of young firms specialising in edge-segments of the market. The role of human capital is both direct (providing the right managerial and technical competences for running a business) and indirect (facilitating the firm's access to external financing, which is usually more complicated for small firms). Colombo and Grilli (2008) show, analysing a panel of Italian firms, that access to venture capital financing increases with the education of NTBF's founders, and that firms financed through venture capital grow the most.[17] This is particularly significant given that venture capital is still relatively underdeveloped in Italy, as observed above (Figure 1.9), perhaps itself influenced by a vicious circle linking low educational attainment and inflexible financial markets. More generally, cross-country evidence, on a sample that includes

Italian firms, finds that management practices matter substantially for firms' productivity growth and a number of other business outcomes and education of managers plays a key role in efficient management (Bloom and Van Reenen, 2007; Bloom *et al.*, 2007).

The importance of these results is all the greater in view of the fact that the average level of educational attainment in Italy is among the lowest in the OECD area. Simple quantitative indicators of education show that only slightly more than 10% of the working age population has a tertiary degree (see Figure 1.10) compared with the OECD average of 26%; similarly, less than one person in three holds an upper-secondary degree versus the OECD average of two in five. The recent trend is more encouraging, nevertheless: Italian graduation rates in tertiary-A programmes (*i.e.* theoretically based) have almost doubled between 2000 and 2005, making Italy one of the fastest human capital accumulating countries (OECD, 2007a). Even if progress has been made, completion of tertiary studies remains insufficient: in 2006 the drop out was as high as 20% (stable from previous years). Duration of tertiary studies also continues to be extremely long, with 66% of graduates taking at least one year longer than the theoretical duration of the study programme (Universita e Lavoro, 2008). Both the drop-out rate and the duration of studies are significantly higher than in the OECD average.

Figure 1.10. **Tertiary education attainment in OECD countries, 2006**

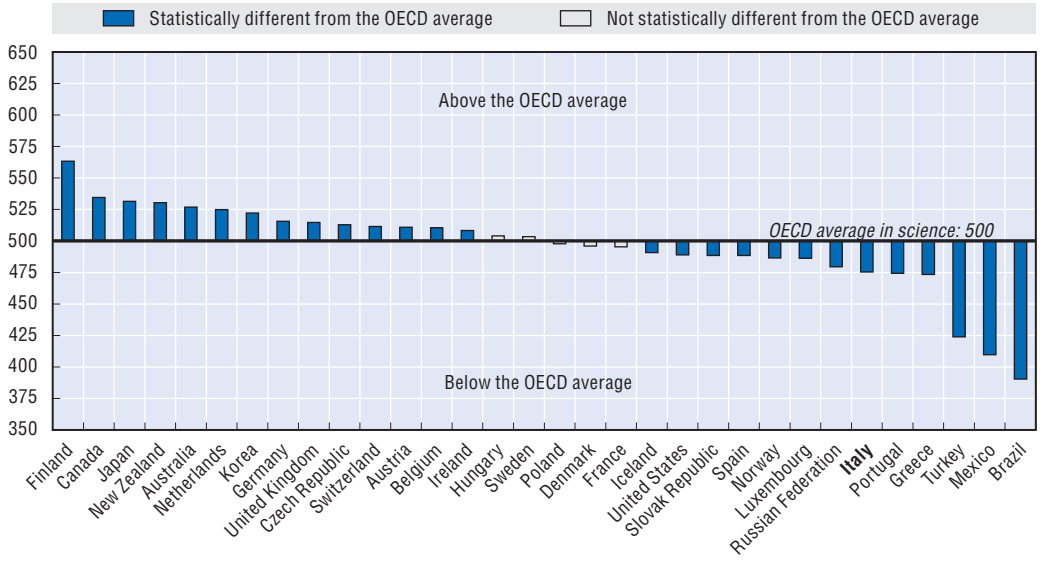


Source: OECD, *Education at a Glance*, 2008.

At tertiary level, available indicators cannot easily compare actual educational achievements across countries. For example, the hypothesis that Italian students may take longer than other countries to complete their degree-level studies but actually learn more as well cannot be directly tested, although indirect tests such as calculations of rates of return to education and/or wage premia suggest that the opposite is the case – the returns to higher education in Italy are rather low, so spending a long time in it is particularly inefficient (Boarini and Strauss, 2007). At compulsory school level, however, a number of indicators are available, notably the OECD's PISA[18] survey which shows that average educational achievement among 15-year olds leaves much room for improvement. According to PISA 2006, Italian 15-years old were in the 5-bottom performers, together with Portugal, Greece, Mexico and Turkey (Figure 1.11). While there is evidence that, as

compared with other countries, reading performance has significantly declined from 2000, Italy's relative performance in mathematics and science has remained broadly stable. However, Portugal and Greece have caught up with Italy between 2000 and 2006.

Figure 1.11. **Science performance of 15-year old students, OECD countries, 2006**



Source: OECD, *Education at a Glance*, 2008.

Another feature of Italian education is the wide regional variation in student performance. As both a cause and a consequence of long-standing regional imbalances in the labour market, schools and universities do not seem to produce the same results in the North and in the South of the country. Educational achievements measured at lower-secondary education level (PISA scores) show a difference equivalent to two years of schooling, with Friuli Venezia Giulia scoring as high as the best OECD countries and Sicily scoring as low as the least performing OECD countries (OECD, 2007b). Similar regional disparities are observed on quantitative indicators as well, as for instance the drop-out rate, the number of engineering and sciences graduates and life-long learning participation rates (Quaderno Bianco sulla Scuola, 2007 and ISTAT, 2007).

Immigration

A development related quite closely to the measurement difficulties mentioned above is the integration of large numbers of immigrants into the workforce. In practice this has been something of a success story for the Italian labour market and economy (OECD, 2005, Chapter 4). Up to the early 1980s very few immigrants were present as Italy was historically very much a country of emigration. But this situation changed in the mid-1980s. Between 1995 and 2002, OECD (2005) estimated that the non-EU population (whether resident legally or illegally) rose by over one million, nearly doubling, with immigration accelerating particularly after 1998 when large illegal flows of Albanians and then Romanians were added to the "traditional" inflows from north Africa. The non-EU population has probably risen by another million since then.[19] Without this immigration, the total population would have been stagnant or falling. By and large, non-EU immigrants were relatively unskilled: many of them were certainly absorbed initially into unskilled jobs, often for

reasons of language and/or because they were resident illegally, even though they may often come from among the most highly qualified in their home countries.

This episode was "successful" because, recalling that immigration was a new phenomenon for Italy in the 1990s, the immigrants were absorbed quite well into the economy, with an important contribution from the informal economy. Given the high official unemployment in Italy and the considerable rigidities in the formal labour market, one might have expected a significant, if transitory effect on native unemployment (Jean and Jimenez, 2007) this led to a certain expansion (or a slowing of the contraction) of certain labour-intensive industries and through composition effects might have accounted for some of the slowing in productivity growth. However, and paradoxically, the large informal labour market that already existed in Italy provided a route through which the very large inflows that occurred in some years could be quickly employed (OECD, 2005).

As the immigrants were largely absorbed into unskilled work, compositional effects could be expected to reduce the average level of productivity. The fact that Spain, whose experience with immigration was similar in many ways, also shows a similar pause in GDP per employed person is suggestive of at least some link between immigration and recorded productivity, though empirical proof of such a link is lacking. In both countries, immigration appears to have been responsible for at least part of the considerable increase in average participation rates, as employment rose faster than the working age population, so that GDP relative to that population barely slowed in Italy and grew quite respectably in Spain.

In addition, the sectors where immigrants are the most concentrated (low-skilled jobs but also certain industries, in particular agriculture, construction, certain manufactures such as textiles, hotels and restaurants, and personal home services) do not show a higher slowdown in productivity than in other sectors. Bearing in mind that, given the role of informal work, the data may not allow for identifying correctly immigrants' productivity, the slowdown in productivity seems to be quite generalised across economic sectors (Table 1.1). There is no correlation between the growth rates, or changes in them, in Italy and those in Spain, despite some similarity in their migration experience; this casts further doubt on the strength of a simple link between migration and productivity growth.

Further economic challenges

While economic growth shows rather disappointing performance, the Italian economy is facing a number of recurrent challenges, compounded by recent events. It is clear that sound economic growth would be required if the economy is to face these challenges successfully.

A first and recurring issue is the regional divide. Italy is characterised by the magnitude of its regional differentials between the North, Centre North and the South. This can make it difficult to see what *national* policies are appropriate for dealing with problems that vary significantly across regions. One response has been the strong trend towards decentralisation. This will be analysed in further depth, in Part 3 devoted to multi-level governance. This poses the challenge of how to fit structural policies to regional needs. Many services and also some regulatory policies are delegated to local government. In many cases this leads to better alignment of incentives but also has implications in terms of inequalities, economic and social disparities.

Second, the structure of population in Italy is ageing very fast and, despite a number of interventions to contain public expenditure for the elderly, the pace of adjustment remains slow. Ageing is the result of both increased life expectancy and a fall in the fertility rate, which is among the lowest in Europe. Recent projections by the Italian Ministry of Finance show that, even with the full implementation of the pension reforms, the share of pension expenditure in GDP will rise to over 15% by 2040 (compared with around 14% now and 13.5% in 2001). It will not return even to current levels (which are high by OECD standards) before 2050. Other age-related spending, on health and long-term care is likely to rise by much more than this. OECD (2006b) projected an increase in the share of such spending of between 4 and 6.5% by 2050 (similar to the increase expected in many other OECD countries); how to contain such spending increases, and how to share the burden between public and private expenditure, is a difficult issue. Continued immigration can potentially moderate the rate at which the population structure ages, but presents other drawbacks. Italy cannot rely on immigration to remove the need to face up to these challenges, but must continue to develop policies that improve the economy's ability to use existing resources more efficiently and to mobilise under-utilised resources of labour and capital.

On top of these issues, Italy faces the ongoing challenge of globalisation as well as the impact of the recent financial crisis. While the Italian economy may not have been in the forefront of countries concerned by the impact of mortgages and the burst of housing markets, its economy will have to cope with the implications of adverse international trends in terms of reduced opportunities for exports and falling domestic production. In addition, Italy is almost entirely dependent on imported energy. Italy is also particularly vulnerable to some of the swings in world energy and commodity prices seen in recent years.

Policy responses: The government's strategy for reinvigorating growth and competitiveness

The decade of the 1990s was in some respects shock therapy for Italy at the confluence of multiple political and economic challenges, domestic and external. Accumulated rigidities and practices of decades were re-assessed, and many were rejected. Increasing awareness of the excessive role that the state played in economic life led to policy and institutional changes. As the political landscape was redrawn, aspects of the centralised state were dismantled and statist economic policies were replaced with pro-market and pro-competitive policies.

This represented a turning point for Italy in economic policy. In that decade, Italy undertook ambitious reforms to set the foundations of faster sustainable growth. These reforms were well targeted, and were in part driven by the decision to join the monetary union. Regulatory reform was only one of many such reforms in Italy in the 1990s, but it was an essential one. Following the macroeconomic stabilisation programme of the early 1990s, regulatory reform was at the core of policy responses developed to address the underlying structural problems in the economy and the public administration.

As mentioned above, in more recent years, the Italian national strategy for quality regulation has benefitted from external drivers and pressure, at European level and beyond. The newly elected government is pursuing the agenda with strong political leadership. The appointment in 2008 of a Minister for Normative Simplification supports regulatory reform at the highest political level and provides impetus for implementation.

In addition, this is also supported by strong input from the Ministry of public administration, which has made a commitment to advance the administrative simplification agenda, strengthen evidence-based decision-making, and increase quality and efficiency of the performance of public administration officials, for example through reduced absenteeism by civil servants. This is complemented by a robust strategy for regulatory reform implementation. Legislative Decree 112/08 adopted in June 2008 (and converted into Law 133/2008) offers an indication of the political importance granted to regulatory reform, and simplification in particular, with strong action in terms of "cutting-laws", "cutting-burdens" and "cutting bodies" initiatives. These try to maximise efficiency and continuity in policy making by building on existing expertise supported by strong policy leadership.

All these initiatives follow worthy steps under the previous legislature, when the previous government started to give significant emphasis to liberalisation policies as a way to instil further flexibility in the economy and help it adapt to a fixed exchange rate.

Section 2. Regulatory Reform and Liberalisation Policies and their Contribution to Performance so Far

Positive links between regulatory reform and growth

Regulatory costs and risks facing businesses and citizens exert significant influence on business decisions in the microeconomy, such as hiring, firing, investing, marketing new products, and entering new markets. Regulatory costs and risks affect the performance of existing businesses by increasing production costs, the cost of capital, the value of assets, and opportunities open to businesses. Decisions by businesses not to seize market opportunities due to regulatory barriers are the efficiency costs of regulation, and are much larger than pure direct administrative costs.

In terms of analytical evidence, a growing body of work shows that regulatory reform and liberalisation oriented policies increase the level of output by boosting productivity and can have a direct impact on growth by enhancing investment and innovation. Further benefits are often found from increased employment. The empirical literature tends to support the argument (Conway *et al.*, 2006) that strengthened market forces stimulate innovation, especially in a "catch-up" model that seems best suited to describe the interactions among OECD economies where in many industries in most countries, increased productivity and growth can be obtained from introducing technologies, products or practices that are already known elsewhere (see also Aghion *et al.*, 2001; Gust and Marquez, 2003). In a competitive environment, an enterprise that fails to follow this path is likely to decline. One of the key mechanisms that has been identified as particularly important over the last two decades has been a clear link between competitive conditions and the introduction of ICT, which has an important contribution to growth. This is particularly significant for the case of Italy, a country in which use of ICT, both in the private and public sector, has been particularly slow to spread.

Liberalisation policies have direct effects on investment and productivity growth in particular industries, but their indirect effects are particularly important for key network and service industries. High costs or inefficient services in posts and telecommunications,

or in energy supply, or in professional business services, put other industries which depend on them as suppliers at a disadvantage against their competitors in other countries with more efficient network industries.

Market forces have also overall positive effects in terms of labour market. A growing number of empirical studies show that there are positive effects from product market reforms in terms of employment as well as labour productivity, following a survey by Bassanini and Duval (2006). Lower barriers to entry tend to curb market power and rents of incumbents and create opportunities for new firms. These effects tend to expand activity levels and labour demand. Lower product market rents also exert pressure on wage claims, helping to keep growth in real wages in check with productivity. The existence of a flexible labour market helps minimise the time the economy takes to adjust to such shocks, while an effective social safety net can alleviate the short-term social costs.

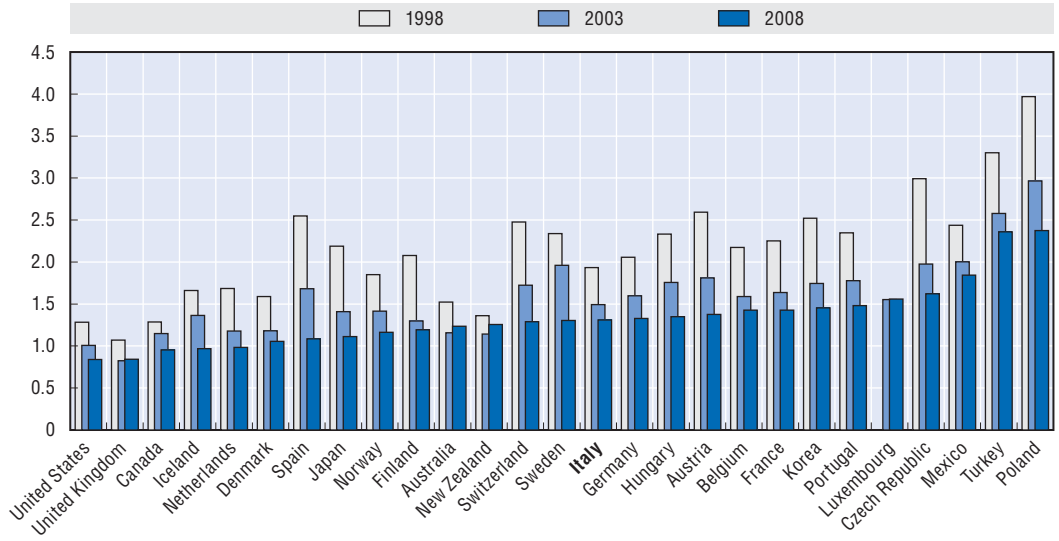
The effects of product market regulations are magnified by the interaction of such regulations with labour market settings that provide a strong bargaining power to insiders, suggesting that rent sharing tends to depress employment. Therefore employment gains from liberalisation policies are likely to be higher in countries that have rigid labour markets (Nicoletti Scarpetta, 2005). Interestingly, a recent study by Fiori *et al*. (2007), confirms these results for Italy estimating the impacts of changes, both in domestic regulation and in border barriers to investment: the systematic accounting of policy interactions shows that employment gains have been larger when workers' bargaining power was initially high, due to labour market policies. The conclusion is that product market deregulation and labour market deregulations can be both considered as substitutes and complements.

The Italian experience: Steep apparent progress with regulatory reform

OECD product market regulation (PMR) indicators have been developed to allow cross-country comparison of the degree to which some kinds of regulations restrict competition (Wölfl *et al*, 2009). These are based on detailed questionnaires covering selected general regulatory issues such as administrative burdens and treatment of foreign investors, as well as selected specific regulations in non-manufacturing (posts, telecoms and transport, water and energy supply, as well as commercial and retail distribution, and professional services). However, the manufacturing industry, largely open to international competition in most OECD countries, is heavily regulated in health, safety, environmental areas, but is less often subject to the kind of anti-market regulations contained in the OECD database.

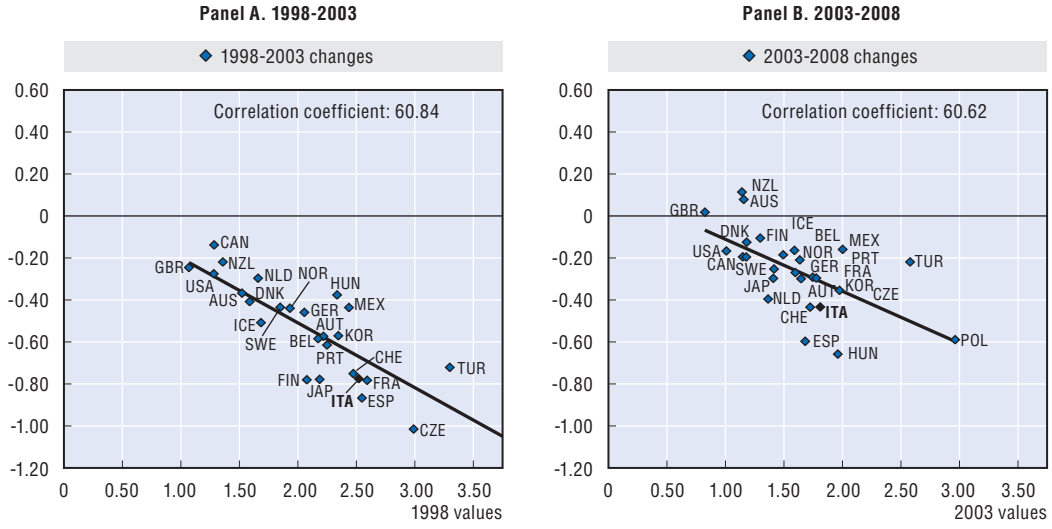
Italy, together with most OECD countries has been reducing the overall level of anti-market regulation over the past decade (Figure 1.12). A shift has occurred from regulations that reduce market activity to regulations that do not control market entry but that change the behaviour of the competitive enterprises in the market. This could be greatly welfare-enhancing, if social regulations are targeted and efficiently designed. Italy has followed this general trend. Since 1998, Italy has moved from being clearly in the group of countries with above average levels of regulation to a position in the middle group of countries, slightly below the OECD median. There is a tendency for countries with higher levels of regulation to move further than the countries which were already more liberal. This effect was stronger in the first part of the decade, as the example of Italy shows, whose overall index fell from 2.6 in 1998 to 1.8 in 2003, then to 1.4 in 2008, and as can be seen in Figure 1.13 for OECD countries in general.[20]

Figure 1.12. **Development of aggregate product market regulation since 1998**



Note: Level in index points, 0 = least and 6 = most restrictive.
Source: OECD Regulatory Database, 1998, 2003, 2007.

Figure 1.13. **Examining convergence in product market regulation**

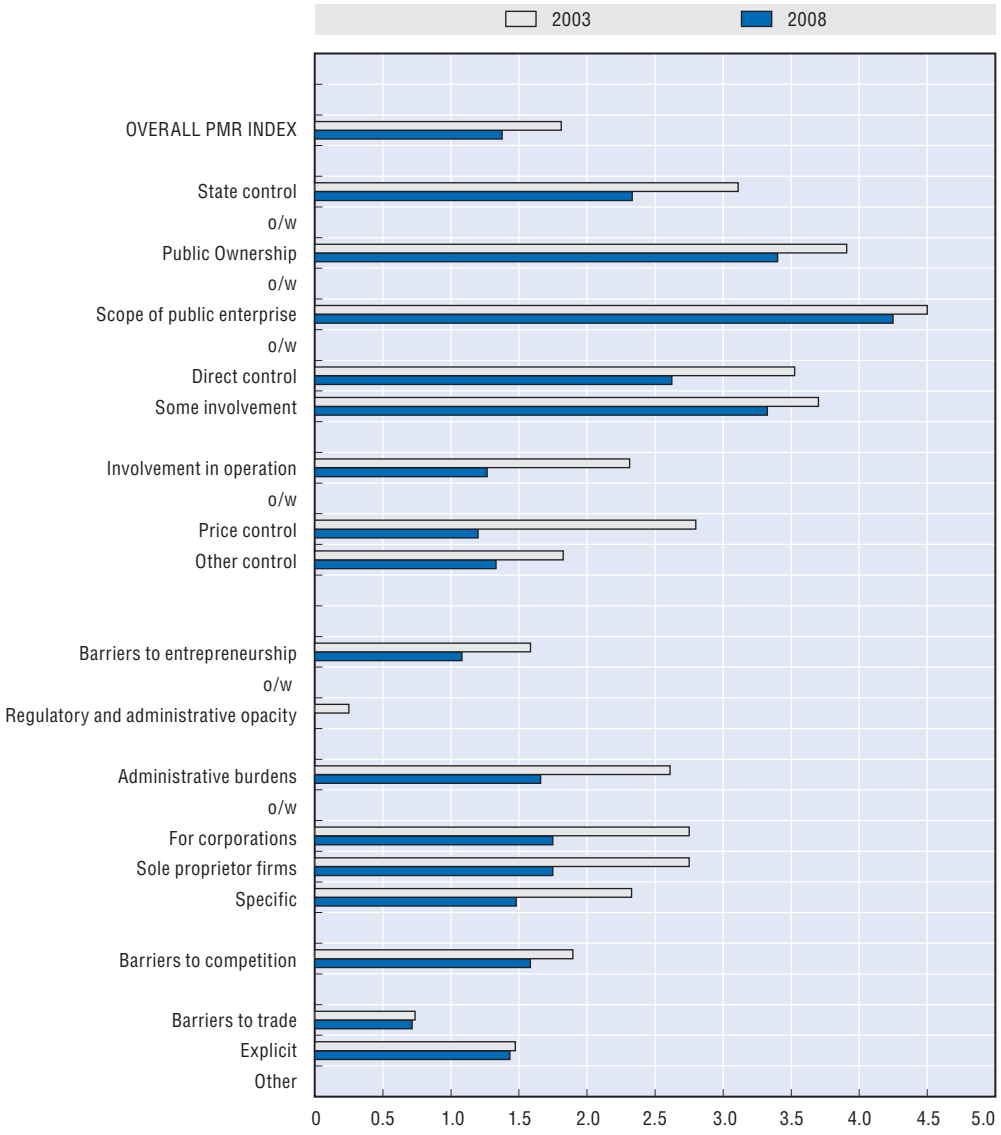


Note: Level and change in index points, levels within the range of 0 to 6, with 0 = least and 6 = most restrictive.
Source: OECD Regulatory Database, 1998, 2003, 2007.

Italy has experienced a significant reduction of the role of the state in the economy, even though this remains high compared with nearly all other OECD countries (Figure 1.14). Privatisation reduced overall public ownership and the government seems to manage its holdings with somewhat more "arms-length" methods than previously. The incorporation of EU directives on competition and market opening into Italian law has probably provided as much impetus to the improvement as spontaneous action by Italian governments, though the Bersani decrees of the late 1990s and of 2005-06 had important effects in areas such as retail regulation.

OECD REVIEWS OF REGULATORY REFORM: ITALY – ISBN 978-92-64-06725-7 – © OECD 2009

Figure 1.14. **Components of product market regulation indicators, Italy 2003 and 2008**



Source: OECD Regulatory Database.

Puzzling results in terms of perception and economic growth

While these data yield a positive outlook for Italian progress with regulatory reform, other widely used set of indicators paint a different picture. For example, the World Bank *Doing Business* data, examined in Chapter 2, show that significant time is still required in Italy to open a company, compared with the best performing European countries, or to solve court cases. Similarly, the global competitiveness indices from the World Economic Forum offer challenging perspectives on the overall perception of the Italian business environment by executive leaders in the private sector worldwide. This may also be consistent with the relatively low level of Foreign Direct Investment in Italy.

Several points should be noted. Overall national perspectives now fail to reflect the regionally diverse situation of Italy, where laws of 23 regions often offer a complex

environment for doing business at local level, as illustrated in Chapter 7. Another possibility is that existing OECD databases, such as the PMR, exclude key regulatory issues important in Italy. For example, the database does not measure the overall cost of regulation nor the impacts of regulations in the fast-growing areas of health, safety, environmental protection, and other social areas, which may be compounded by the effects of regionalisation.

Another possibility might be that regulatory reforms have not reached key regulatory constraints that continue to introduce inefficiencies and distortions in the economy. That is, Italy might have completed the easier part of the job, but important regulations that are more heavily protected by interests that might lose from more competition, remain on the books. Figure 1.14 shows that, of all of the various reforms measured in the database, Italy made less progress between 2003 and 2008 in removing barriers to competition, which can be very costly.

An implementation gap

The OECD PMR indicators are based on changes to formal regulatory requirements, but these changes have not yet translated into concrete changes in regulatory costs and risks for enterprises. This is supported by a pattern of lags and results below expectations. For example, one-stop shops have not worked as well as expected. Implementing investor protection in line with European standards has taken much time since institutional changes were needed (see below). Regulatory impact assessments have not been of high enough quality to detect unneeded regulations. In key areas, such as creating institutions and tools for controlling the flow of new regulations, and improving regulatory coherence between the national and the local levels of government, reforms have been adopted, but gaps remain in terms of implementation. It seems that regulatory ministries are unfamiliar with good regulation principles and tools promoted by reformers at the centre. Hence, formal legal reforms may not have yet significantly improved commercial incentives facing enterprises. This report supports the view that the implementation gap continues to be a challenge for Italian reformers.

A deeper understanding requires more assessments. Improving the regulatory function of government is part of the larger picture of public administration quality. The quality of public administration is an area where no comparable cross country data exist, yet there is consensus that the Italian public administration is generally slow at all levels and lacks transparency. The government recognises that there are serious shortcomings and the Ministry of Public Administration has launched wide-ranging reforms in 2008, with an "industrial plan" for re-organising the public administration and enhancing its efficiency. The main aim is to introduce and reinforce performance incentives among employees, and more transparency and merit-based decisions on recruitment and promotion.[21]

The impacts of such reforms on the regulatory environment are hard to assess. Regulatory programmes in other countries have adopted performance measures that have been useful in driving better results, shifting away from old and perverse measures such as the number of inspections performed and the value of penalties imposed to measures of good regulation, customer satisfaction, and policy results.

The case of civil justice

The need to accompany regulatory reforms with other reforms to the public administration is demonstrated by the civil justice system. Civil courts are very slow in

Italy. The average duration of cases at the lowest level of courts is 223 days (in courts before a Justice of the Peace) or 494 days (before a Tribunal), compared with 246 days in France and between 200 and 350 days in Germany. However, the average duration is 779 days in first instance appeals decisions against 459 days in France and 531 days for German regional courts. In total, the average length in number of days, 1 002, was the highest from the sample of European countries for which data are available.[22] There is an important regional variation within Italy, even at the lowest level of courts where the nature of the cases is likely to be homogeneous across the country. In 2006, the slowest district averaged 1 599 days while the quickest averaged 555.[23] As in many countries, presiding judges have no explicit incentives to increase throughout in their courts. Incentives faced by lawyers also tend to encourage longer trials: lawyers are paid for each judicial act, such as an interview or production of a document, and cannot be paid a fixed sum per trial nor on a contingency basis, so they tend to multiply the number of acts they perform.

Uncertainty over the outcome and the length of time court cases take has led to a dichotomy between small and large cases. The lower courts are overwhelmed by a large number of cases covering small claims. But larger claims, generally involving larger companies, are frequently settled through arbitration clauses that are written into many commercial contracts, specifically to avoid the problem of slow procedures in the courts. Such "privatisation" of civil justice represents a sort of response to slowness in public courts, but may add to private contract costs and is likely to be a barrier to the expansion of small firms, due to the high risks of contract enforcement.

Productivity is a phenomenon with many roots that lead to market regulation and competition

To sum up this discussion on the drivers of productivity in Italy, the reasons for slow productivity growth in Italy are numerous and their relative contributions are only partly understood. They include a labour market that creates more low productivity jobs than high productivity jobs, the sometimes cumbersome public administration, and low levels of education among entrepreneurs. The costs, risks and barriers thrown up by the regulatory environment and competitive conditions are pervasive across the economy and affect incentives, competitiveness, and FDI. In many areas, regulatory policy and practice lags far behind best practice in Europe and the OECD, though in others, such as the role of the Competition Authority, Italian practice is among the best. Often, Italy experiences an implementation gap, with a difference between formally recorded measures and their actual implementation which is hampered often by capacity issues within national administrations.

All of these factors, acting together, hamper the large numbers of medium-sized firms' adjustment to globalisation which in the past have been a strong point in the economy. Italy faces limited opportunities, as the country needs to further adapt to globalisation. The recent economic slowdown creates more challenging economic conditions but significant pay offs could be expected if feasible reforms are undertaken in several areas in terms of product market competition. Many of these reforms may not be politically easy to implement, but these potential gains put into perspective the cost of allowing the interests of certain groups or sectors to block reforms or delay implementation.

Section 3. Goals, Progress and Results

The recent period offers scope for hope, in terms of ensuring continued support for liberalisation policies at the highest political level and increased domestic consensus around the country's core economic challenges. Impetus for reform is strong and is reinforced by the crisis. The will to move ahead is based on a realistic assessment of strength and weaknesses as well as the desire to reap the fruits of simplification and measurement efforts undertaken to date.

This could open a new historical period, with more continuity, less faltering capacity and dispersion of efforts compared with the overall history. When one looks across the range of reforms government-wide and in specific policy areas and sectors, one finds success in some areas, disappointments in others, and short-lived success in other areas that did not survive the turbulent political climate. As a result, many citizens have in general not seen the benefits of the better regulation agenda. Ample confusion about what regulatory reform means in practice, leaving significant scope for organised and entrenched interests to slow down the reform process.

This report supports a more sustained, institutionalised, and long-term effort, which will be aimed to address the continuing regulatory problems and inefficiencies that reduce economic growth and the quality of life in Italy. Such an effort seems to be underway at this time building on the recent changes enacted by the government in 2008 as well as those of the previous legislature. However, unlike the earlier effort, the challenge today is to sustain the effort and integrate it into the fabric of policy making as a permanent role of good government in a context where all countries are moving forward.

From the 2001 to the 2008 review

The resurgence of regulatory reform in Italy in recent years provides an opportunity to address past shortcomings, and design a reform programme that produces sustained improvements in the day to day regulatory practices of the public administration.

There is little question that Italy's post-war regulatory regimes required, by the 1990s, fundamental rethinking and overhaul. The 2001 *OECD Review of Regulatory Reform in Italy* concluded that the Italian regulatory and administrative system was the source of heavy and often unnecessary bureaucratic burdens on the public and on businesses. Accumulated rigidities and practices of decades were weighing down the economy, and the state played an excessive and damaging role in economic life. The Italian system suffered from high regulatory inflation as well as ambiguity, contradictions, and overlapping layers of rules.

The reforms of the 1990s were an unprecedented and broad-scale effort to transform Italian regulatory practices into a market-oriented and citizen-friendly approach. They constituted the first substantial changes to the organisation and *modus operandi* of the Italian public administration since the creation of the unitary State in 1861, and hence resistance was strong. Significant changes occurred during the "Bassanini period", launched by Franco Bassanini, the Minister responsible for the public administration and the reform of the State between 1996 and 2001. Public administration reforms were accompanied by privatisation, decentralisation, and liberalisation, which aimed to transform the institutional and economic environment, and by building new institutions for better regulation. The OECD 2001 review stated that "Considering the starting point and

the difficulties of reforming when governments are short-lived, the progress is impressive".[24] Despite a third simplification law passed in 2003, this progress was not sustained, however, and the programme faltered until a range of new initiatives began in 2005, accelerating through end 2008.

Getting the job done: Building capacities for better regulation

Better Regulation is one of the most challenging tasks for the government. It is not an issue faced by a few regulators but, rather, by the entire public administration at all levels, which needs to be addressed from the top. The OECD 2005 *Guiding Principles for Regulatory Quality and Performance* urge countries to recognise that key elements of regulatory policies, policies, institutions and tools, should be considered as a whole. The principles call for "a dynamic approach to improve regulatory systems over time to improve the stock of existing and the quality of new regulations".

The regulatory reform agenda is among the most difficult task for the government because it extends across tens of thousands of regulatory instruments and hundreds of well-entrenched institutions handling highly technical matters, best known to the experts directly involved. A coherent programme spanning this enormous set of activities will surely fail without active and sustained political involvement in the reforms, supported by an expanding bipartisan consensus on better regulation across the main political parties. Political involvement must be supported on a day-to-day basis by a stable expert, and well resourced set of institutions at the centre of government that can promote, oversee, and enforce the regulatory reform commitments of the government. Neither the political nor the technocratic institutions can implement the regulatory reform agenda without the other.

The governments that are the most advanced in regulatory reform have, in recent years, focused on increasing oversight and quality control of national regulatory reform strategies through several methods:

Permanent and active institutions and processes for political oversight in the government and parliament.

A clear commitment and regulatory reform strategy that guide all affected parts of the administration in the same direction.

Effective and credible challenge functions from central regulatory reform units.

Increased individual ministerial accountability.

A system of planning and monitoring of progress in individual ministries.

Following good practice, the Italian government has taken steps in all of these areas to institutionalise political commitment and technical support in policy processes.

Political commitment: Strengthened capacities for better regulation supporting clear policy objectives

Political commitment is key to success for regulatory reform. The experience of other OECD countries confirms that the existence of a clear regulatory policy, backed up with appropriate institutional structures and resources, has two key benefits. First, it fosters policy coherence through a "whole-of-government" approach, with the capacity to act across the whole range of government activity, not just "one off" reform initiatives but all law and rule making over time. Second, regulatory policy works alongside, and in support

of, other core government policies for growth and social achievements such as competition policy, international market openness, structural reforms and sound fiscal and macroeconomic management.

Italy has now firmly established this agenda with clear political commitment. The government elected in 2008 gave strong political support towards Better Regulation, with two main drivers. First, the Minister for Normative Simplification has responsibility and the overall competence for Better Regulation, and, in particular, for the implementation of the "cutting-laws" mechanism (*taglia-leggi*). Second, the Minister for Public Administration and Innovation has the political responsibility for administrative simplification, the measurement and reduction of administrative burdens, technological innovation, as well as the reform and modernisation of the public administration. In 2008, this minister launched two "Industrial Plans" for the reform of the Public Administration in May and for "Innovation" in October. In 2009, a law proposal by Minister Brunetta has been approved by Parliament (Law 15/2009). This law aims to foster convergence of regulatory frameworks for terms of employment across the public and private sectors; improve the effectiveness and efficiency of the collective bargaining procedures; introduce internal and external performance assessments for staff and administrative entities in order to ensure international quality standards for the delivery of public services; enhance merit-based incentives and introduce a rigorous system for entrusting public officials with responsibilities.

A new institutional impetus

The institutional context has also significantly changed. The constitutional reform of 2001 re-allocated legislative competences across levels of government, and implied a fundamental re-thinking of the State's regulatory policies and its organisation. The reformed context also implied a multi-centric regulatory system, which calls for more global approaches.

The Better Regulation structures in the centre of government involve the units serving the Minister for Normative simplification, the Legislative Office, DAGL, through its overall planning and co-ordination function, as well as its regulatory impact analysis unit, and a specific administrative simplification office serving the Minister of Public Administration and Innovation. The conjunction of a strong centre with enhanced political commitment and co-operation, and responsible sectoral administrations with clear accountability mechanisms, has led to quick and concrete results. Within a few months, Italy has moved ahead accelerating normative simplification and administrative burdens reduction, fostering transparency efficiency and performance assessment, through Law Decree 112 in June 2008 and Draft Bills AS 847 and AS 1081 of June and October 2008.

Other steps were taken in the Autumn 2008 under the leadership of the Minister of Normative Simplification. As part of the government's swift response to sustain the economy, new important simplification initiatives were taken. In particular, Law Decree 185 of 29 November 2008 contained measures for simplifying the determination of energy prices in order to accelerate the pass-through of the reduction in oil prices in terms of final tariffs for customers. The Law Decree also included measures for reducing the administrative costs supported by enterprises, streamlining fiscal administrative burdens and procedures for storing documents. In December, Law Decree 200 repealed some 29 100 laws adopted before 1948 which had been implicitly abrogated by subsequent legislation but were still in force. At the same time, the Decree enacted the implementation

of the "*normattiva*" initiative, *i.e.* an open and freely accessible online database collecting legislation in force which is designed to become operational in 2009. This built on previous efforts conducted since 2001 by the Presidency of the Council jointly with the Parliament chambers, and co-ordinated by the Legislative Office (DAGL).

This acceleration which occurred in 2008 builds on recent changes over 2005-07 when a new drive for the regulatory reform agenda occurred, in the light of the mid-term review of the EU Lisbon Strategy as well as the attempt to find domestic remedies to boost competitiveness. As a result, an inter-ministerial Committee[25] was established in 2006 to drive simplification efforts. The inter-ministerial Committee reflected a wish to move away from a fragmented approach to return to a more integrated process, with opportunities to foster a collegial approach across ministries. The Committee also reflects the new constitutional setting after the 2001 reforms, including the permanent membership of the Departments of Regional Affairs and of European Community policies in the Committee.

In addition, a permanent board for simplification (*Tavolo permanente per la semplificazione*) was established in March 2007 as a consultative body to reach consensus on simplification issues among the institutional bodies and the social partners, represented by business associations, trade unions, as well as the Regions and Local Authorities.

While the new structures and instruments are still developing, they have the potential to considerably improve and strengthen the consistence and continuity of the reform agenda in the forthcoming years.

Besides the executive, Parliament has also actively promoted regulatory policies in the past decade. Since 1997, the Chamber of Deputies operates with reformed Rules of Procedures granting itself advisory and advocacy functions to improve the quality of the legal system, and a regulatory checklist. A horizontal advisory Committee on Legislation was created to underpin the work of the standing committees when preparing draft legislation, notably on the consistency, simplicity, clarity of drafting. The Committee on Legislation plays an important role also with regard to inter-institutional relations and co-ordination with sub-national levels of government and external actors. The related Observatory on Legislation informs the Chamber and the Bicameral Commission for Government Reform on legal quality issues. Finally, the Committee promotes the publication of the reports on the state of the legislation that each year take stock and assess regulatory activities in Italy (see Chapter 2 for more detail).

Sectoral regulators: A moving agenda

Several independent regulators exist in Italy for core sectors such as telecommunications, financial services and energy. They reflect the impact of EU directives and the move towards privatisation and market-based approaches for core services. These authorities are entrusted with significant independence, as well as with regulatory and quasi judicial powers, even if these do vary across sectors. Co-ordination mechanisms with the competition authority, AGCM, tend to operate smoothly.

However, this remains an issue of debate in Italy. Several proposals have been made over the years, some from Parliament, and one from the government in 2007, which would have created regulators for transport postal, and water sectors, and would have reorganised the financial services sector. This proposal would have brought some rationalisation of the governance structures. This led to a debate on the possible options for reforming these core governance aspects, some of which entailed the possibility of

greater political influence. However, the rejection of such options bears to the maturity of the political debate even if critical issues remain unanswered. Further maintaining and consolidating these sectoral bodies remain a core issue, including as a strategy to address the financial crisis, by creating conditions for long term confidence, while ensuring accountability and transparency in core policy areas such as financial services, energy and energy prices, and telecommunications.

Deploying tools for regulatory quality

Towards a simplified approach for regulatory impact analysis

Appropriate assessment of costs and benefits yield significant potential for improving the quality of new regulations. Efforts to embed RIA practices in the public administration have involved two trial phases lasting from 2001 to 2005. However, mixed results led to the search for a simplified approach, through a law in 2005 which revised the scope of application; decentralised responsibilities for carrying out RIAs; and "simplified" the methodology in order to ensure the widest recourse possible to RIA by the administrations. A new regulation elaborated in 2008 as part of the implementation of the 2005 law supports the simplified approach.

The "simplified" approach seeks to streamline the logical and procedural steps, consolidating previous Circulars of the President of the Council. It requires the administration to outline the "context" of reference; the coherence of the initiative in relation to the government's programmatic objectives; and the information used. Information on the consultations carried out as well as their results need to be provided. The absence of consultation needs to be justified. The new approach calls for proportional investigation, flexible methodological approaches, and transparency. While it could represent progress, it does not target RIA efforts, and wide-ranging exemptions can be granted.

However, the experience of Italy with RIA still leaves room for improvement. As a result, recent steps have tried to rejuvenate RIA. The "simplified" RIA approach could be a first attempt to address implementation challenges. Despite recent progress, internal co-ordination mechanisms for quality control are still developing. A unit has been established within the DAGL to accompany the process, which would be linked with systematic and formal public consultation. This will contribute to the evaluation of the likely impacts as well as to accountability. A transparent RIA process further enhances accountability. However, some of the methodological requirements may need to be made more explicit and more precise.

The example of the sectoral regulatory authorities offers a positive perspective, with examples of how useful a RIA system can be. The provisions of the Simplification Law 229/2003 formally extended RIA to the independent regulatory (with the exception of the Antitrust), management and control authorities, when they adopted regulatory acts. Moreover, the same law required the authorities to forward their RIA reports to the Parliament. While the authorities were free to choose the forms of RIA and methodologies that best suited their internal statutes and organisation, the obligation to forward RIA reports to the Parliament constituted a relative novelty among OECD countries. The energy and communication regulators (AEEG, AGCOM) have applied RIA to core regulations with significant impact with sound methodologies and careful economic assessments,

including sophisticated market analyses. This may also be related to capacity issues, as smaller regulatory authorities remain behind in terms of RIA procedures and practices.

However, challenges remain if the new simplified RIA system is to be applied to a few hundred government acts each year, without specific targeting. The need for centralised quality control remains: just as budget estimates must be controlled by the budget authorities to ensure honesty and consistency, RIA must be controlled by a central unit. This is necessary to provide appropriate incentives. Investment in staffing and training is also part of the implementation gap. A sectoral regulatory ministry such as the Ministry for Environment, which produces regulations of major significance to the private sector, does not have any unit dedicated to economic analysis. RIAs are still often prepared late in the process, after a proposal has been drafted, whereas they would be more useful if prepared earlier. As a result, it is no surprise that RIA continues to be largely perceived as a procedural burden by the majority of the regulators, limiting its added value. While the relative strengthening of the core units, including the USQR[26] represents an improvement, further steps are certainly necessary to make RIA an effective element of the regulatory process, particularly in terms of consolidating capacity in sectoral ministries.

Making Italy's regulations transparent, cradle to grave

The transparency of regulatory regimes – from cradle to grave – is one of the central pillars of effective, low-cost, and low-risk regulation. Ensuring transparency means making regulations more secure and accessible, and the processes of decision making more accountable. Most OECD countries have specific and mandatory mechanisms to ensure regulatory transparency to sustain legal certainty, predictability, and legitimacy. Typical transparency mechanisms include standardised processes (administrative procedures) for making and changing regulations, consultation with stakeholders, effective communication of regulations and plain language drafting, publication and codification to make rules accessible, and controls on administrative discretion.

While forward planning and publication of the upcoming regulatory agenda exist in many countries, the Italian institutional set up still lacks these features. Planned legislative proposals are not systematically published, for example. Some attempts have been made to improve the situation. In 2007, the government adopted a political and programmatic planning process listing all the actions of commitment, deadlines, the kind of intervention, and the responsibilities envisaged by the government. However, Italy's reformers could still consider the examples of the US Unified Agenda of Federal Regulations, Canada's Departmental Regulatory Plans, and the European Commission's annual Strategic Planning and Programming (SPP) process as good practices that would boost the transparency of its regulatory programme, and assist stakeholders in preparing for effective consultation.

Enhancing consultation with stakeholders affected by regulatory decisions is key to the quality of regulations. Practices have occasionnaly improved in Italy. A 1999 reform law called for better consultation and established the *Osservatorio sulle semplificazioni* for consultation on simplification initiatives. The Third Simplification Act of 2003 required "organs responsible for active political and administrative guidance to identify stable forms of consultation and participation" with economic and social stakeholders. Good consultation practices and information resources have been launched in some areas. The Department for Public Administration and *Confindustria* signed a Protocol in March 2006 and now the most important business organisations, such as *Confartigianato*, CNA, *Confcommercio*, are consulted in all the phases related to the measurement and reduction of

administrative burdens. The Communications Regulatory Authority (Agcom) and the Regulatory Authority for Electricity and Gas (AEEG) have also developed consultation practices that are very close to the best international standards.

As part of its simplification initiatives, the government has sought to improve procedures for consultation. A *Tavolo permanente per le semplificazioni* established in 2007 has operated through working groups. The Code for Digital Administration of 2005 offers an opportunity for developing a more open consultation culture using online consultation. The first experiences with online consultation are encouraging. The consultation launched on the 2008 Simplification Action Plan generated some 1 200 comments and recommendations from stakeholders within a month. This suggests a large incipient demand by economic operators, NGOs and citizens to participate more actively in decision making. In July 2008, an Inter-Institutional Agreement was signed between the Minister for Normative Simplification and the President of the National Counsel for Economy and Labour (CNEL) to enhance consultation with stakeholders for simplification and regulatory reform. As specified in the Agreement, CNEL provides support to the Minister during the examination of the themes connected to regulatory reform and normative simplification in the economic and social fields. It also provides advice and support through the participation of the members of the economic and social categories. This kind of consultation aims, among others, to identify the normative simplification proposals that could bring benefits for the country's economic growth and development – also taking into account the results of the burden measurement programme. Recently, the Ministry of Public Administration has conducted electronic consultation with interested economic stakeholders for the adoption of the subordinate regulations to Law 15/2009.

Yet there still is no general requirement in Italy for ministries and regulatory agencies to consult with stakeholders on regulatory decisions. The interaction between central administrations, regions, local authorities and social partners tend to be based on informal negotiations behind closed doors, under the so-called "concerted process". There are no formal legal requirements to publish the results of consultations, reveal the parties consulted, or provide feedback.

After adoption, regulation needs to be transparent and easily accessible to all users, including businesses, citizens, courts, and potential investors. Italy conforms with good international practice by using online codes and information for low-cost access. All Italian laws and subordinate regulations as well as the judgements of the Constitutional Court have to be published in the Official Gazette (*Gazzetta Ufficiale*), available online. The Digital Administration Code of 2005[27] made a contribution towards diffusing the practice of converting, transmitting and publishing legal and administrative acts into electronic format. Since 1999, the programme "regulations on the net" (*Norme in rete*) has operated as a single access point for acts issued by the public administration. However, as of 2008, the core reference database with a search engine on Italian regulations was operated by a private operator due to the lack of corresponding public provision, according to the Minister for Simplification to Parliament in the autumn 2008. This situation has been addressed by Law Decree 200 which will allow for an open and freely accessible online database collecting legislation in force to be available by mid-2009.

Improving the interface with the EU in terms of new regulations

Italy has made significant progress in recent years to improve the interface between the government and the EU, following the "*La Pergola*" law established since 1989. The EU

enlargement in 2004 and the enhanced competences conferred upon the EU since the mid-1990s required an improvement of the channels through which Italy participates in EU normative procedures. The gaps observed in the past in terms of complying with the transposition and implementation of the EC law required a reorganisation of the process, which was made by the 2005 Buttiglione Law, which introduces a two tiered process, with a so-called "ascending phase", referring to Italy's participation in the process of framing Community and EU decisions; and a "descending phase", referring to the transposition and implementation of Community directives into the Italian legal system. Whereas the process was decentralised and unco-ordinated before, under the new setting the Inter-ministerial Committee for European Community Affairs (*Comitato intermministeriale per gli affari comunitari europei*, CIACE), co-ordinates the Italian position on all EU dossiers.

The impact of the reforms introduced by the Buttiglione Law on the descending phase has remained limited. The implementation of EC legislation is performed through the annual omnibus European Community Act (*Legge comunitaria*), which includes all the principles and criteria for delegating powers to the government. Since 2005, in case of emergency, EC obligations can also be implemented through lower level regulations to ensure prompt compliance with urgent obligations. Regions and autonomous provinces can directly implement the EC directives in the matters under their exclusive competence. However, after the constitutional reform of 2001, Art. 120 of the Constitution states that the State has "substituting powers" (*poteri sostitutivi*), should the regions and the local authorities fail to comply with EC law or rulings of the European Court of Justice. Since the 2007 Budgetary Law, the State may also ask the same entities, including the municipalities, for damage compensations equivalent to the financial burdens and the fines accorded by the Court in cases of proven infringement.

One other important tool to co-ordinate the transposition of European norms is the EUR-Infra, an electronic national archive of all documents related to infringement procedures launched by the Department for Community Policies in 2008 (*http://eurinfra.politichecomunitarie.it/ElencoAreaLibera.aspx*) (see Chapter 2, Box 2.6).

With the adoption and implementation of the 2005 law, Italy has made impressive progress. The country has committed to establish systematic and relatively close inter-institutional co-ordination on the descending phase. This has contributed to closing the transposition deficit, which has fallen from 2.7% to 1.3% in 2007 – in line with the EU average (1.2%). In January 2008, open infringements amounted to 198, the lowest number in the past five years.

The other key feature is the co-ordinated policy response that has been promoted by the institutional and organisational frameworks. Further clarity and human resources would help in making it more effective. The system is based on the credibility and the moral suasion of the CIACE, and the agreements reached are voluntary and political. The recent provisions included in the Budgetary Law go nonetheless in the right direction.

Drastically cutting the number of existing laws

Italy has given a long standing priority to normative simplification. The priority given to normative simplification is only matched by the accumulated set of legal and regulatory instruments over the years. This has been recently addressed in a spectacular way through the "guillotine clause", introduced by the 2005 Simplification Act. A single Legislative

Decree, Law Decree 112/08, issued in June 2008 repealed some 7 000 laws, bringing down the total number of censed State legislation to about 14 600, from 22 000 previously.

The guillotine represents one of the most ambitious attempts to revise the regulatory stock since the creation of the Italian State in 1861. The guillotine helps to address the gap created by the revision of Title V of the Constitution, further to which a number of State laws are no longer legitimate because of the changed allocation of competences between the State and the regions. The choice to use an innovative and powerful instrument such as the guillotine clause speaks for the ambition and the commitment of the government to streamline and avoid overlapping legislative intervention.

This built over years of careful efforts, with an inventory undertaken by the administrations with the co-ordination of the USQR and the support of the *Centro Nazionale per Informatica nella Pubblica Amministrazione* (CNIPA). The so called "cutting-laws" (*taglia-leggi*) mechanism involved first a stocktaking of the State legislation in force, establishing the boundaries of the areas of the State's legislative framework under the responsibility of each Ministry, highlighting the inconsistencies related to the various legislative sectors. Early findings had been presented to Parliament in December 2007, with an estimate of 22 000 laws, of which approximately 7 000 going back to the period 1860-1969.[28]

The idea was to review all the norms adopted by the State before 1 January 1970,[29] with a view to identifying those considered essential to be maintained in force. Any legislation adopted before 1970 and not considered to be indispensable would be automatically repealed. The government should also simplify and reorganise comprehensively the various legislative areas through specific sectoral codes, and corrective or restorative acts (*decreti legislativi correttivi*) to ensure that effective and smooth implementation.

The limits are that many of the repealed laws were explicitly classified as useless, obsolete or already implicitly repealed. Therefore, while progress is impressive, its actual economic impact may be more limited. The effectiveness of the cutting-laws mechanism will be put to a more significant test when simplification initiatives will be carried out on more relevant legislative acts.

Besides the *Taglia Leggi*, Italy has also used several approaches since 1990 to consolidate its legal apparatus. The *testi unici* served to consolidate, while also helping to reduce the scope of laws (de-legislation). The mixed sectoral codes (*testi unici "misti"*) also helped for sectoral consolidation. As this was not sufficient to offer a clear and easy understanding of the regulatory stock in a given policy area, these were replaced by sectoral recasting codes (*codici di settore*) by the Third Simplification Act (Law 229/2003).

Beyond the introduction of the guillotine mechanism, the State Council confirmed that the recourse to the *codici* helped reform sectoral regulation,[30] recognising at the same time the codes tended to rigidify the legal source for simplification. Another aspect is linked to increased regionalisation, which drastically reduced the capacity of the State to intervene to rationalise substance and/or procedures in areas of non-exclusive State competence.[31]

Measuring and reducing administrative burdens to enable a business-friendly environment

The measurement and reduction of administrative burdens stands high on the agenda of regulatory reform in Italy, besides "normative simplification", reflecting EU-wide as well as overall OECD trends. Cutting "Red tape" has become a priority on the government

agenda. This is particularly important for small businesses, which constitute the backbone of Italy's economy: 4.5 million registered SMEs exist, of which around four million with less than four employees. This is also important in Italy, as burdens result from the proliferation of legal sources. The multiplicity of the sources of new regulation (partly due to the constitutional reform) and above all the great variety in the number and length of the obligations make the reduction of administrative burdens a high policy priority.

A legacy of significant burdens imposed on Italian businesses

A wealth of estimates is available, both in terms of traditional domestic sources and in terms of comparative international data, point to the extent of the problem. Available estimates from various sources, amount to around EUR 10 billion, EUR 15 billion following a survey by Union Camere. This means an average annual cost per business of about EUR 11 800, *i.e.* the cost of a part-time employee. A breakdown of the data according to the size of the firm reveals that micro- and small enterprises are over-proportionately affected by compliance costs. Costs for firms with 50-500 employees are only three times higher than costs firms with less than 10 employees.[32]

In terms of specific aspects and procedures, Italy was rather above average in terms of burdens on start ups, as only six other OECD countries imposed more burdensome procedures on start-ups than Italy even if Italy has significantly reduced the number of days it takes to set up a company, according to the World Bank's *Doing Business* reports. Italy has also significantly reduced the costs for start-ups since 2003. The adoption of the April 2007 Bersani Law, did cut these costs further. However, Italian experts suggest to consider some of these results with caution,[33] as other non-observable or non-measureable factors may intervene, and these measurements do not include all the costs as well as the benefits of the regulations. The type of firm concerned may also play a role, as for example the World Bank sample considers a typical firm in manufacturing located in Rome with some 200 employees. In fact, many Italian businesses are micro and small enterprises mostly located in the North-Eastern regions active in the services sector.

Swift progress in measuring and cutting red tape

Cutting red tape has been for a long time on the top of the policy agenda in Italy. This is confirmed by the OECD indicators on regulatory management system quality, which testify of the intensity of Italian efforts, compared with other countries.

Italy has fully engaged in a comprehensive programme to measure administrative burdens, following the methodology of the Standard Cost Model, pioneered by the Netherlands. The Italian version, MOA (*Misurazione degli oneri amministrativi*) has been conducted in a way that took account of the Italian business structure and that minimised the cost of the exercise. This involved a partnership with ISTAT.

This process which had been initiated under the previous legislature has been confirmed and expanded by the new government. The comprehensive Legislative Decree 112/2008 enabled a full-fledged adoption of the measurement for all areas under national responsibility, in compliance with the EU commitments. Measurement is not an end in itself and it has also led to concrete action: the measurement of administrative burdens has provided clear leverage for burden reduction. The 2007 Simplification Action Plan had fixed a target similar to the one agreed upon at the EU level (-25%) to be achieved at national level by 2012. The government also committed to achieve an equivalent national target for the reduction of administrative burdens by 2012 for State legislation.

The measurement and reduction of burdens in the regions and at local level is managed through specific agreements. Law Decree 112/2008 (see Box 2.1, Chapter 2) required each ministry to outline detailed reduction plans, for which guidelines were issued by the Minister for Public Administration and the Minister for Normative Simplification. Public monitoring and evaluation mechanisms are planned to periodically assess the performance of the management, and administrations are required to timely publish progress and results online. The government is also entitled to adopt de-legislation measures to speed up simplification procedures reducing burdens.

Further to the results from the measurement, simplification measures have been introduced by Law Decree 112/2008 on privacy, controls and labour policies. It is estimated that these sole measures only may provide a reduction of burdens of around EUR 4.1 billions, *i.e.* 59% of the costs caused by the old procedures and 25% of the overall burden already measured in Italy.[34] More generally, if the following phases confirm the success of the early results, this system could help to strengthen intra-institutional co-ordination, fostering the use of expertise and the involvement of stakeholders in the reform process.

Coupling e-government and ICT tools with innovative re-engineering initiatives

The use of e-government tools in particular has exploded in recent years, and Italy could become a leader in Europe in using such tools to replace complex procedures. In fact, e-government and ICT tools are a natural complement to simplification strategies. The e-government initiatives in Italy are co-ordinated by the Department for Innovation and Technologies, led by the Minister for Reform and Innovation in Public Administration and they rely on the activity of the CNIPA (*Centro Nazionale per l'Informazione nella Pubblica Amministrazione*) (see Chapter 2). In addition to e-government as such, the "industrial plan" launched by the Minister for Public Administration in October 2008 is innovative for it shifts governmental action towards a demand-driven innovation approach. Among the first results was the launch of the Friendly Networks project (*progetto reti amiche*) aimed at improving and diffusing the provision of public services to the citizens.

Recent measures have been introduced to increase the operability of one-stop shops (*sportelli unici*). Several efforts have been made to re-engineer administrative practices and reduce delays, through targets for reducing procedural times, "silence is consent", self certification and "start of activity" notices. The authorities are aware of some of the shortcoming of the experience with one-stop shops to date, with uneven diffusion and functioning across the country, thus reducing the usefulness of the tool. New legal measures (Law Decree 112/2008) will facilitate significant improvements, while an overall platform has been organised to provide online access to information and services for businesses. A single notification process for business start-ups with a second generation of one-stop shops ("SUAPs") are designed to facilitate the adoption of the service directive. New procedures should facilitate the submission of information related to hiring and firing by employers, the change of residence status for citizens as well as formalities for migrants.

This requires significant efforts over a number of years. Resources for the corresponding bodies and programmes, including CNIPA, have been increased over 2008-10, in order to abolish to the extent possible, the exchange of paper between national administrations. All the recent reforms have the potential to deliver significant improvements. However, it will be important to follow up on the implementation and assessment, as institutional heterogeneity, and complex administrative environments could reduce the effectiveness of the intended measures.

Changing actual perceptions and following up on implementation

While all government initiatives are very impressive, it is often challenging for governments in Italy as well as in other countries to close the gap with perceptions and ensure that businesses and citizens actually feel the improvements. This is particularly the case in Italy due to the cumulated burdens and the complexity of a multi-layered environment. Italy is not alone in this, as many other European countries also have to cope with the streams of EU regulations. As a result, businesses in Italy may not have felt fully the relief that could be expected from investments in simplification. Similar gaps in perception have also been observed in other countries, such as the United Kingdom, following an audit of the Better Regulation Executive's (BRE) activities or the Netherlands.

Another complicating factor may be that some reforms have had incomplete effects. The "silence is consent" practice, the "start-of-activity" notices, and the evolution of the one-stop shop system, are examples that may also be related to the multi-level aspects. As illustrated in Part III, dissemination and implementation of the tools remain fairly uneven across the country. Municipalities are the institutions responsible for the implementation of one-stop shops, but political factors and the lack of financial and skilled human resources have limited its diffusion at the local level

Another factor may be linked to the instruments used, as many simplification initiatives have often focused more on streamlining the structure and the procedures rather than on actually removing unjustified obligations, as the second proved more difficult to achieve. The provisions contained by the various legal acts went in the right direction (in the sectors concerned), but were sometimes too broad. The nature of the regulatory system, with a high number of norms of different legal status, lack of explicit reference to each other, also makes the task difficult.

Co-ordination of government action supporting e-government is also important. The efficiency of the public administration in providing e-services does not depend in fact on clear and coherent legal bases only, but also and foremost on the training of administrators and users in electronic literacy as well as the diffusion of adequate structures and technologies on the territory. All these factors contribute to efficient governance, in which co-ordinated and targeted reforms and investments in many policy areas seek to bridge the "digital divide". The decentralised nature of the Italian system represents a real challenge in this respect, which can only be counterbalanced by significant investment in co-ordination.

Protecting competition and consumers

Italy is making progress in eliminating numerous protections, impediments and distortions to competition that reduce productivity and hamper growth. Despite beneficial steps made in the past several years, the Italian economy still needs to address a number of issues, such as removing constraints on competitively structured industries, including retailing, or professional services. As in other EU countries, Italy faces the issue of implementing reforms involving privatisation, separation and regulation in electricity, gas and telecommunications. The Italian Antitrust Authority stands in the midst of these efforts, continuing to strengthen its role as guardian of competition in the economy.

Strengthening antitrust as a bulwark for a more productive economy

Antitrust policy in Italy has steadily advanced over the past two decades, and today the Italian Antitrust Authority, AGCM, is well placed at an international level. Italy's

competition law, enacted in 1990, is based on the EU framework. The Authority's emphasis on economic factors in its application of the common prohibitions against restraints and abuse of dominance and in merger control facilitated harmonisation with EU competition policy. The termination of the special jurisdiction of the Bank of Italy in the banking sector, means that power to apply competition law in all sectors finally rests with the Authority.

Although a number of issues remain, long-overdue regulatory reforms have corrected or eliminated many of them since the previous 2001 OECD Report. The Authority has concentrated much of its attention, appropriately, on promoting competition in major infrastructure sectors. Other significant steps in recent years included two packages of reforms introduced in June 2006 and January 2007 by Minister Pier Luigi Bersani that improved transparency, consumer choice and freedom of competition in a wide range of sectors, including bakeries, banking, insurance, retail trade and restaurants, taxis and pharmaceutical products and services (see Box 1.1).

Box 1.1. **Opening up the Italian market: Recent liberalisation reforms**

The wide-ranging Bersani reforms took on many interest groups who were reaping substantial rewards from barriers to market competition. The strategy was that it was easier to challenge many at once than one at a time. The changes made by the two reform packages include:

Professional services: Rules setting minimum fees and banning advertising are repealed, and controls on multi-disciplinary practices are relaxed.

Retail distribution: Limits on promotional sales are dropped, and approval of new store locations should not impose requirements about minimum distance from others or range of products supplied. These steps bolster a 1998 reform that made it easier for small shops to open up.

Bakeries: Bakeries no longer need special authorisation to relocate, and they may sell other food products for immediate consumption.

Pharmaceutical products: Pharmacies no longer have a monopoly on selling "over the counter" products, retailers may discount the prices of those products and a wholesale distributor may now run a pharmacy.

Taxicabs: Limits on the number of taxi licences are lifted, and other aspects of regulation by municipalities are made more flexible, to promote new entry.

Insurance: Exclusive distribution arrangements and mandatory minimum prices are prohibited.

Notary services: Notary certification is no longer needed for transactions in used cars.

Financial services: To make it easier to change service providers, customers can close bank accounts (and change banks) with no charge if their bank changes its contract terms, prepayment fees for mortgages are abolished and mortgage contracts can be transferred between banks, and liability insurance is no longer subject to long-term contract commitments.

Personal services: Licensing hurdles for tour guides, driving schools and real estate sales are lowered, and hairdressers and barber shops can stay open longer.

Antitrust enforcement measures have improved in some of the directions recommended by the 2001 Report, notably stronger sanctions and more flexibility in sanctioning to permit adopting a formal leniency programme, and consumers are

benefitting as a result. The Authority now has the power to order interim relief pending its final decision. Where there is a *prima facie* violation and a risk of serious and irreparable damage to competition, the Authority may order interim relief.

To take effective action against horizontal collusion, the 2001 Report called for strengthening the Authority's hand, by authorising larger fines, enough flexibility in setting fines to support an effective leniency programme and means for assessing substantial fines against violations accomplished through associations. In February 2001, the Parliament approved a bill that anticipated some of those recommendations. The reference for determining the level of fines is no longer the relevant market affected by the restraint or abuse; instead, it is now the undertaking's total turnover. The Authority may impose a fine of up to 10% of that figure. Italy's basic sanction system is now generally comparable with the systems used by the EU and many other European jurisdictions. Responding to the courts' demand for transparent justification for the amounts assessed, the Authority has relied on the criteria and guidelines issued by the European Commission for setting fines under its similar powers. The Authority still does not have the tools to levy substantial fines on associations or to fine the members directly where their associations have violated the law.

The 2001 Report recommended giving the Authority the power to ensure that corrective advertising accomplishes that goal, of correcting the mistaken impressions that the deceptive advertisements had conveyed. A presidential decree of 11 July 2003 setting out procedures for enforcing the law about misleading and comparative advertising now empowers the Authority to order corrective advertising, including setting the medium and formalities of the corrections to be sure they are effective. Other legislation gives the Authority the power to impose fines against misleading advertising, to investigate advertising claims *ex officio* and to issue commitment decisions in advertising matters.

Postal services, a sector for which Italy has not yet formally established a regulatory body, have been the object of several cases about abuse of dominance. This investigation was concluded in February 2008 when the Authority accepted commitments from *Poste Italiane* to tender for concessions in 70 urban areas and to maintain contract relationships in order to preserve potentially viable post-liberalisation competitors. Restrictions imposed through associations of professionals generally escaped enforcement until the 2006 Bersani Decree, because of authorisation by other rules or regulations. Now, however, enforcement against anti-competitive "self-regulation" among professional service providers has been facilitated by the Bersani reforms, which eliminated some of the regulatory protections. In 2007, a veterinary association abolished its minimum fees and its rule against advertising, and it renounced disciplinary proceedings against those who advertised or charged fees that were not on the approved schedule. In exchange, the Authority dropped its law enforcement investigation.

Adoption of a formal leniency programme in 2007 should further strengthen enforcement against clandestine horizontal collusion. The first result of this programme was announced in May 2007. Firms in the particle board industry were fined EUR 31 million for fixing prices, setting output quotas and co-ordinating input purchasing. However, enforcement against agreements reached through associations continues to be hampered by weak sanctions or legislated protection.

Merger control is now the sole responsibility of the Authority. Ministries play no role, and courts are involved only if a decision is appealed. The Authority's decisions are based

on the competition issues involved in the transaction, and other policies are not considered. Since the end of the special regime about banking, the Authority's most important merger decisions have involved financial markets. The Authority has permitted bank combinations subject to conditions, typically the divestiture of retail branches and other measures to maintain retail-level competition for deposit services, small-business lending, asset management and insurance in local markets where post-merger concentration would otherwise have been too high.

The Authority combines its antitrust duties with consumer protection responsibilities about advertising and unfair competition. The consumer code, enacted in 2005, unifies the treatment of consumer issues. The code recognises the dual importance of ensuring that advertising is not misleading, to protect the interests of consumers and to protect the public interest in fair competition among enterprises. Since 2005, the Authority has had the power to impose fines against misleading advertising. European Community directives on unfair practices were transposed into Italian law in 2007. These measures bring Italian rules into line with the European model about misleading advertising to consumers and businesses.

Deceptive and comparative advertising represent a large part of the Authority's workload, measured by number of actions – several hundred per year. Since 2005, the Authority dealt with 385 advertising cases, finding 344 violations and imposing fines of EUR 7.7 million. Three sectors were most at risk for misrepresentation: telecommunications, tourism and "pseudo-pharmaceutical" diet products. Over 90% of the challenged telecoms ads were found to be in violation. Major gaps in information about "camouflaged" costs, technological limits on services, deadlines in terms of service or other hidden obligations misled consumers. Fewer cases dealt with tourism, but the rate of violation was even higher (19 out of 20), mostly from fraudulent website descriptions of resort facilities. Several dozen cases tackled the perennial false promise of weight loss without dieting or exercise, claims that were often targeted to particularly vulnerable consumers.

Even with this new scope, the Authority continues to be relatively understaffed. With an authorised ceiling of 193 positions, plus contract employees, the Authority remains smaller than the enforcement bodies with similar jurisdictions in similar-sized member countries, such as France or the UK. This point which was part of the 2001 recommendations, has remained unaddressed.

Class actions on behalf of consumers may become more important. An amendment to the Consumer Code, effective in mid-2008, introduced into Italian law a procedure for awarding damages to a large group of individual consumers in a single action. This revision expands the relief available in consumer class suits; now, such suits can seek an order to correct future behaviour, but not damages for individual consumers.

Challenging issues in specific sectors, professional services

Regulations in some sectors or policy areas may result in immunities and market distortions. Here, Italy made substantial progress in implementing the key reform recommendations of the 2001 OECD Report. The two packages of Bersani reforms in 2006 and 2007 removed many of these constraints (see Box 1.1). In the area of professional services, the Bersani reforms abolished minimum prices, relaxed some constraints on advertising and forms of business and reduced regulations of exclusive rights to perform

certain services. Assessing the impact of these reforms requires careful analysis. The Italian Antitrust investigation on professional services was just concluded in March 2009, with conclusions in line with the following analysis. Notably, the reform of minimum prices or fees does not necessarily mean the elimination of all price regulations, for the decrees that set minimum prices for all services still exist, but they are no longer binding.

The general principle of "necessity and proportionality" had been proposed by the Italian Antitrust Authority in 1997 as a standard for regulation of professional services. This principle was also suggested by the European Commission (OECD, 2006a). Applying the principle in this context means that regulation should be limited to addressing market failures, externalities and public goods produced by certain professional services. In this respect, the principal market failure to be corrected concerns asymmetry of information between professionals and consumers.

Conceivably, regulation of maximum prices might prevent service providers from charging uninformed consumers more than their services should be worth, or from padding their bills by performing services that are unnecessary. But price regulation, particularly in the form of minimum fee schedules, is neither necessary nor sufficient to address these problems. Most countries now do without it: OECD data on product market regulation in 2007 show that price regulation in professional services is found in only three other countries.

Typically, minimum or fixed prices are defended by professional service associations with the argument that price competition would undermine quality and reduce transparency, and would thus harm consumers. But no causal link has been shown between regulated prices and the quality of service. In addition, consumers of professional services are not in a position to quickly and easily determine whether the price comports with the quality of the service. However, there are other ways to ensure transparency, such as publication of historical or survey-based price information by independent parties such as consumer associations (OECD, 2008, Ennis). Another way is to allow a wider range of advertising of professional services.

Other sectoral issues

Another defining feature of the implementation of liberalisation policies in Italy is the multi-level regulatory structure of the country. A number of issues arise from local-level regulations which have implications for liberalisation and market competition, an issue discussed further in the section below on multi-level governance. While competition is a national principle, relevant for national regulations, local and regional authorities have significant regulatory powers for areas such as retail trade, energy or transport. These are also confronted to conflicting policy objectives, including urban planning, equity of access, safety that may also conflict at times with the necessity to preserve market forces at the local level. The main issue is that a given policy area such as energy or transport, involves in fact the interplay of environmental, labour related or urban regulations, which pertain to different levels of government. The superposition of various regulatory approaches across policy areas and levels of government result into significant complexity and delays for implementing reforms.

Media firms are subject to several special rules. Regulations prohibit acquisitions by media companies that would result in control of over 20% of the total circulation of daily newspapers in Italy or 50% of inter-regional copies. In publishing, Italy like many other

jurisdictions sets special rules about retail pricing. The numerous exceptions to this general rule still limit price competition for school texts.

Reform in road transport is coming slowly. Compulsory trucking rates were finally abolished in 2005. The Authority had been calling for this reform for a long time. The Authority remains worried that the industry may still be able to collude, because the law permits exchange of information in order to create a reference index about changes in costs, especially fuel costs. Entry is still not determined by market forces. The number of trucking licences is regulated, and in issuing the licences, the Minister of Transport is to ensure that supply matches demand. This may give the Minister of Transport scope of limiting entry and protecting incumbents. However, recent variations in the price of gas may have had significant impacts on the sector, leading to cautious approaches.

Communicating with government and public about the need for liberalisation

Among the most important regulatory reform roles of antitrust authorities is competition advocacy. In a sense, the antitrust authority acts as a watchdog within the government itself. Advocacy is a strong feature of the Italian Antitrust Authority, which was already complimented by the 2001 review. Since then, output of advocacy opinions and reports by the Authority has sharply increased. In 2005, the Authority issued some 40 advocacy papers, followed by 47 in 2006 and 65 in 2007; by contrast, in 2004 there were only 12.

The Authority's renewed advocacy activity began as part of the shift in strategy by the newly constituted Authority in 2005. It continued in support of the liberalisation policies announced in 2006. Some of the Authority's comments since then target local regulations that undermine the pro-competitive intention of these reforms. The Bersani reforms represented major steps toward implementing core recommendations of the OECD 2001 Report. They represented a bold attempt at eliminating unnecessary regulatory constraints on competition about price, entry, and quality, which cannot be justified as the best way to serve public interests.

Nearly 400 sector studies and advocacy filings by the Italian Competition Authority, over a period of 15 years, laid the foundation for these 2006 and 2007 reforms. The reforms mirror recommendations from the Authority's repeated findings about issues arising from sector regulation. Showing that liberalisation would directly benefit consumers was one of the motivations behind the Bersani measures. The Ministry of Economic Development has monitored marketplace reactions and estimated the impact of some of these changes. Significant reductions in prices accompanied the reforms of pharmaceutical sales, mobile phone charges and airline fare advertising. Notary fees for transferring used vehicles dropped simultaneously with reform, perhaps in anticipation of it. Market effects of the other reforms are more difficult to isolate. Based on experience to date from five of the reforms taken together involving mobile phone charges, fees for used vehicle transfers and mortgage prepayment, pharmaceutical sales and airline fare advertising, official Italian figures produced at that time estimate that the reforms may have yielded between EUR 2.4 billion and EUR 2.8 billion of annual savings for Italian consumers.

Ensuring quality regulation in a multi-level governance context

Many OECD countries are engaged in the difficult process of managing regulatory policies across various levels of government, irrespective of the status of their constitution. As the case of Italy illustrates, boundaries between federal and unitary countries are

becoming blurred. The country has experienced a trend towards decentralisation and devolution of competencies over the past 60 years. Even if regions were only formally established in 1970, they are now key actors of the regulatory landscape.

This also reflects the situation of a country with a significant economic divide between the North and Centre North and the South. While the economy as a whole only records modest productivity gains, over 1995-2005 many of the southern regions have experienced negative growth in GDP per worker over that period, even though their GDP per capita was already significantly below Italian average, which is close to the OECD average (see Part III for more detail).

In this context the 2001 constitutional reform resulted in a new allocation of regulatory competencies between the State and the regions, with implications for regulatory reform and liberalisation policies. Regulatory reform is facing an increasingly complex array of regional and state competences, where responsibilities become fragmented and where significant co-ordination is required to preserve policy coherence.

From a general perspective, the incentives and capacities of sub-national governments are often different from those of national governments, and regulations are often the instruments through which these different agendas are implemented. In some cases, regulations adopted at local levels are more efficient, because they reflect local conditions and preferences. In other cases regulations adopted at local levels are less efficient, because they are inconsistent with other parts of the country, are duplicative, or are based on inadequate understanding of regulatory impacts on others. Improving regulatory quality is more complex in a more decentralised system because high-quality regulation at one level is not necessarily matched by corresponding efforts at the other level.

Some countries may even experience the risk of fragmentation of the internal market, with losses in efficiency due to economies of scale and lack of competition at local level. In other countries, various restrictions at local level may generate economic rents and monopolistic situations, with losses in efficiency. Aside from decentralisation, concessions, licences, and other rules may impact competition in many sectors in local services, retail distribution and local transport.

The issues of local public services are of economic significance in Italy, due to relatively high costs of services and incomplete liberalisation (see Part III). The Antitrust Authority has documented many services subject to regulatory constraints on entry, pricing, product and service quality at the local and national levels. New rules and institutions to encourage competition and modernise government purchasing procedures and make them more efficient were set out in the 2006 *Code for public works, service and supply contracts*. Given the superimposition of various normative acts over time, the devolution process too has contributed to the proliferation of regulations and regulators.

In Italy, the reform of Title V of the Constitution formalised and accelerated the decentralisation process, empowering not only the regions but to a great extent also the local authorities. The process has had implications for Italy's domestic regulatory environment. The issue is also compounded by the economic divide between the North and the South, which could lead to different regulatory priorities and strategies, further dividing the regions.

Over the past decade, the Italian authorities have managed three simultaneous phenomena. First, they have had to enhance policy co-ordination and coherence between the centre and the sub-national levels. An institutional framework of conferences has been

established to facilitate such task. Second, because of the international pressure, globalisation and EU-related competitiveness objectives, Italian authorities have embarked on liberalisation initiatives and programmes to boost the development of less performing regions, with a special focus on the *Mezzogiorno*. This has created the need to develop coherent and comprehensive policy making, which requires evaluating and trading off policy objectives. Third, the evolution of multi-level governance has been accompanied by a parallel debate over the need to improve the quality and effectiveness of regulation and the decision-making processes. In some areas, the regulatory reform agenda is driven by central administrations. This has been the case for instance for legislative simplification, the measurement and reduction of administrative burdens, and the reduction of the time needed to complete administrative procedures. In other areas, some regions have pioneered some good practices. Examples of *ex ante* impact analyses in some regions as well as *ex post* evaluation practices are points in case.

In general terms, competences were distributed as follows. Where having 20 different regional laws seems impractical, competences were allocated to the concurring competence at the national level. This is the case of transport and navigation networks; energy, foreign trade and R&D. Where just a national framework seemed to be sufficient, competences were attributed to the exclusive competence of the regions (*e.g.* local development in the industrial, commerce, handicraft and tourist sectors). On the other hand, the national government enjoys legislative powers in matters that have a highly "transversal" nature, such as competition policy, environment and financial resources. As a result, the 2001 reform favours the integration of competences among levels of government rather than their strict separation. This approach means that systems of co-operation, co-ordination, and information sharing are critical to the efficient operation of regulations in the new regime.

Despite the added complexity, processes of decentralisation of powers also offer opportunities for fostering innovation; introducing more liberal and competitive practices in markets; and improving the quality of the services provided by public administrations to the citizens. The chances for this seem reasonable. At the regional level, there is growing acceptance of principles of good regulation in policy making. The Fourth Simplification Act for 2005 mandated that the State, the regions and local authorities sign agreements on regulatory quality and simplification. The first agreement of this kind was signed in March 2007, and set out commitments for RIA, consultation, and other regulatory quality tools. The government of the XVI Legislature is also committed to carry forward federalism and simplification simultaneously, with the aim of exploit synergies from these two processes that lead to better provision of public services to the citizens and enterprises. The eleven new statutes, or regional constitutions, adopted by regions include provisions directly related to the quality of the regulatory process and regulations. Overall, 16 articles and 55 paragraphs cover these issues, indicating that the debate on regulatory policies has penetrated to some degree below the national government. These actions suggest that benchmarking of business environments among regions could well stimulate competition for quality and the diffusion of best practices. Some regions, such as Veneto, are very advanced in terms of one-stop shops and administrative simplification practices.

The Italian apparatus for co-ordination is well developed compared with many other countries. Co-ordinating institutions are built into the "Conference" system, which consists of three distinct co-ordination bodies: a Conference of State-regions; a Conference of State-municipalities and other local authorities; and a Unified Conference of State-regions-municipalities and local authorities. A "Permanent Table for Simplification",

created in 2006, is composed of representatives of the Inter-ministerial Committee, the local governments, and the stakeholders. The *Accordo* extends to the regions the 25% reduction target in administrative burdens by 2012, which was adopted at the central level.

However, despite the energy and activity involved in decentralisation, the lack of coherence remains and the co-ordination bodies are still mostly advisory. The safeguards against fragmentation, and inefficiency building up in the decentralised regulatory system remain partial. Local regulation still has the scope to result into competition abuses in multiple sectors. The regulatory quality tools are still at an early stage, and often capacity issues are faced that limit scope for implementation. Consultation practices at the regional levels fall far short of international good practices, and commonly consist of *ad hoc* closed negotiation and hearings which seem vulnerable to abuse and capture by local interests. Skills and capacities for better regulation are probably even weaker at sub-national levels than in the national ministries. Only around 250 civil servants and managers have been trained in 15 regional administrations since 2002, a tiny fraction of the effort that is needed to bring these tools to the regions.

Another issue lies in the fact that local governments are simultaneously owners of businesses and regulators of businesses. Local public monopolies particularly in public utilities persist in a number of sectors, with implications for consumers and tax payers. The trend seen in other countries is that local governments can use regulation to protect their monopolies, rather than diversifying consumer choice and bringing in new investment to compete with existing monopolies. These local services sector appear to be regulated by a piecemeal approach in which nationally held principles, such as competition, face difficulties in the application and implementation at local levels. Managing the conflicts of interest inherent in regulation and ownership remains a challenging task. As discussed in Part III, several attempts have been made to resolve this issue of local public services, but laws are still pending approval in Parliament.

Section 4. Regulatory Reform: Strengthening the Foundations for Future Growth

Previous sections have provided diagnostics with progress and challenges to reform in Italy in the context of the recent economic performance. The challenge for Italy is now to set a strategy to move forward and making the case for it. Therefore, it is crucial to see what results Italy could expect to see from further investments, political and financial, in regulatory reform. Are the economic benefits of further regulatory reform sufficient to justify the various social, political and transition costs? This section will provide some quantification of the likely impact of reforms on future growth, before laying out elements that could be embedded in the strategy to address the crisis and consolidate the foundations for future growth.

Assessing the potential benefits of reforms

General aspects

Based on the understanding of the effects of regulatory reform in other countries in periods of economic change and restructuring, it seems likely that the benefits of

properly implemented regulatory reform in Italy should be significant. This has to be considered in the challenging economic context generated by the financial crisis in 2008. Almost entirely dependent on imported energy, Italy is also particularly vulnerable to some of the swings in world energy and commodity prices seen in recent years. Boosting or even maintaining economic performance will require an ever more flexible and competitive business sector. As all OECD countries, Italy faces the ongoing opportunities and challenges of globalisation. A dynamic economy needs to be able to adjust its production structure to meet changing patterns of domestic and world demand, to maintain competitiveness and to exploit its comparative advantages to best effect. Continued immigration can moderate the rate at which the population structure ages, but Italy cannot rely on immigration to resolve these challenges. The sustainable approach is to continue to develop policies that improve the economy's ability to use existing resources more efficiently and to mobilise under-utilised resources of labour and capital. Regulatory reform is one of the most important of those policies for countries facing the challenges of ageing.

One way to gauge the effects of future reforms could be to look at the documented results of specific reforms that have already been completed. Italy has invested considerable resources in the past ten years. However, as noted in Section 2, the process of reform has been continuous, and sometimes incomplete, which makes it difficult to find empirical evidence on the impact of single reforms. Issues related to implementation may also reduce or delay visible benefits. Another issue is the role of the informal economy, which represents a significant share of the Italian economy. It may represent a way of escaping burdensome and over restricting regulations, but has significant draw backs as informality also has its cost.

From a general perspective, the logic of regulatory reform is soundly based in classical microeconomic theory, and has been supported by a body of international empirical research extending back to the 1960s, and across many sectors and many countries. Most of the initial empirical evidence came from the United States, and from sectors gradually opened to competition, such as communications. In fact, in some of these sectors, there is ample evidence of the benefits brought to Italy by the modernisation of the regulatory framework for communications for example.

Whatever their benefits, regulations can affect the productivity performance of an economy in many ways. If regulations efficiently correct market failures, they increase productivity by empowering consumers to make better choices, increasing competition in the market, or reducing negative consequences of production. Regulations can also negatively influence the productivity of existing firms by reducing incentives to invest, to adopt the leading technologies available in the market, and to innovate. They can raise entry costs, curbing competitive pressure and hindering the reallocation of resources across sectors producing different goods and services and, within each sector, across firms with different productivities. To the extent that a lack of competitive pressure results in higher prices, this can generate trickle-down effects into downstream sectors by raising the costs of intermediate inputs, particularly in services industries where import competition is limited.

The connection between regulatory reform and productivity growth is empirically supported. There is accumulating evidence of a persuasive link between regulatory reform and sustained economic growth, as evidenced by the OECD's growth study and the OECD

database on product market regulation, among many other studies. The OECD database seeks to measure, over time, regulatory barriers to competition in product markets. The data show that there has been clear progress in removing regulatory barriers to product market competition since 1998, as countries with relatively restrictive policies move toward the regulatory environment of the more liberalised countries. Conway *et al.* (2006) and Arnold, Nicoletti and Scarpetta (2008) present empirical evidence for a negative relationship between specific kinds of product market regulation and productivity growth in OECD countries. Countries that have reformed their product markets by opening these to competition have experienced an acceleration of productivity over the 1990s, compared with slowdown or stagnation elsewhere.

The results of a specific quantification exercise

This body of work can be used to estimate future results of certain kinds of regulatory reform in Italy. By applying the findings of these works to the new vintage of OECD product market indicators, it is possible to provide illustrative calculations of the impact of regulatory reforms on economic performance in Italy, as illustrated by the modelling approach presented below. The model takes into account certain specific conditions in Italy – notably the distance between levels of productivity in different industries and that in the corresponding industry leader country; but it is based on the assumption that the reaction to policy changes is the same in all countries.[35] The simulations thus show the expected reaction of the "average" OECD country to the simulated policy changes. Work to date cannot distinguish likely different reactions across countries.

The modelling approach

This section presents the results of four sets of simulations:

A first exercise assesses the impact of changes in product market regulation in Italy in the recent past on productivity growth.

A second set of simulations estimates the potential effect of adopting "best practice" regulation in all non-manufacturing sectors of the economy on future labour productivity growth.

A third group of simulations is similar to the second except that it adopts a less ambitious benchmark, setting Italian policy to that of the 75th percentile among EU countries in 2007.

Finally, a fourth group illustrates the benefits from the adoption of best practice in regulating specific sectors, namely professional services, electricity and gas and retail.

Overall, the results show that changes in product market regulation to date should have had a strong impact on labour productivity; they also show that Italy nevertheless has still more to gain in continuing to pursue regulatory reform, even though its position has improved considerably. As shown in Table 1.2, the gains from reforms are sizeable in all scenarios, including those looking at gains from further deregulating product markets. The rest of this section presents some detail from the simulations.

Evaluating the impact of past reforms

To provide a flavour of how important past reforms have been, the first simulation assesses the comparative gains from reforms adopted between 1998 and 2007. Taking the whole period from 1998 to 2007, implemented reforms should have increased labour

Table 1.2. **Summary of simulations**

Simulation		
Estimating the impact of past reforms	2% *This figure refers to the cumulative effect for nine years (1998-2007)*	
Estimating the impact of future reforms *The figures below refer to the cumulative effect for ten years (over the period 2007-17)*	***Impact to best practices***[2]	***Impact to EU 75th percentile in 2007***[3]
Adopting regulatory best practices in all non-manufacturing services	14%	14%
Adopting regulatory best practices in the professional service sector	7%	7%
Adopting regulatory best practices in the electricity and gas sector	3%	2%
Adopting regulatory best practices in retail	5%	5%

1. In the counterfactual no reforms are adopted between 1993 and 2007.
2. Best practice refers to the country with the lowest product market regulation in 2007.
3. Best practice refers to the product market regulation of the EU 75th percentile in 2007.

productivity by 2%, of which 0.36% is accounted for by policy changes between 1998 and 2003, 1.60% over 2003-07. This compares with current national accounts estimates of essentially zero productivity growth over this period. These gains are rather small, considering the relative large falls in the aggregate PMR indicator over this period, though they might be less surprising given the absence of any growth in actual average labour productivity over this period. However, the model in Conway *et al.* (2006) is very sensitive to the precise sectors to which the regulatory changes occurred and their links with the rest of the economy.[36]

Aligning the regulatory framework in non-manufacturing sectors to international best practice

Turning to the challenges ahead, the next set of simulations aims at estimating the possible gains from future reforms. Because the model is based on "catch-up" behaviour, a baseline estimate of what productivity growth in each country would be in the absence of policy changes is required, usually based on an interpretation and extrapolation of recent trend productivity growth in different countries; for Italy this baseline assumes that labour productivity in Italy would rise by around 5.9% over the next decade. Starting from a highly ambitious scenario which aligns Italian regulatory standards on OECD best practice in all non-manufacturing sectors,[37] the model predicts that Italy could expect an additional increase in productivity of 14% over the next decade (Box 1.2). Assuming this were translated directly into real income gains, it would be equivalent to the growth in per capita GDP experienced between 1988 and 2007 (recalling that productivity growth over the last decade has been nil).

Box 1.2. **The model used for the simulations**

The set of quantitative simulations presented here evaluates the labour productivity impact of a hypothetical regulatory reform in non-manufacturing sectors, on the basis of an empirical model of labour productivity based on the work of Aghion and Howitt (2006) and Conway *at al.* (2006). The model is estimated on industry-level panel data for 20 sectors across 20 OECD countries, over 1981 to 2003. Given the dynamic nature of the model so that there is a gradual adjustment of productivity to reforms, the impact is calculated over a time period of 10 years after the reform.

Box 1.2. **The model used for the simulations** *(cont.)*

The simulations proceed in two steps. First, the simulated policy changes are defined at the level of sector-specific regulation indicators for each non-manufacturing sector. These changes in service sector regulation measures are translated into the corresponding knock-on effects for each sector of the economy, including manufacturing sectors, on the basis of input-output relationships between different sectors of the economy. This approach captures the idea that a sector that relies relatively heavily on inputs from a given non-manufacturing sector is likely to be affected relatively strongly by changes in that non-manufacturing sector. These knock-on effects are measured by the indicators that are referred to as regulation impact indicators in Conway *et al.* (2006). Unfortunately, the specific legal or regulatory changes that are behind movements in the indicators cannot easily be identified.

Second, the impact of this reform on labour productivity growth is simulated for each sector of the economy using a dynamic empirical model. More precisely, an estimate of the reform impact is obtained by comparing the model predictions on labour productivity outcomes both with and without the hypothetical regulatory reform. In the empirical model, labour productivity growth in a given sector and country depends on its ability to keep pace with the growth of the same sector in the country with the highest sector-specific level of labour productivity (the productivity leader) by either innovating or taking advantage of technology transfers. The prospects of catching up with the productivity leader are affected by the policy environment in follower countries. In particular, Aghion and Griffith (2005) stress the role played by institutions that promote (or hinder) firm rivalry and/or entry of new firms in raising (or curbing) incentives to enhance productivity. In the model presented here these institutions are proxied by the OECD indicators of anti-competitive regulations described earlier.

There is growing evidence on the particular role of industries that are intensive in the use of information and communication technologies (ICT) for productivity growth, and to some extent the recent disparities in productivity growth across OECD countries reflect differing degrees of adaptability across countries to recent technology shocks in ICT (Triplett and Bosworth, 2004, OECD, 2003b, van Ark *et al.*, 2002). To allow for this particular role of ICT-intensive sectors, the model distinguishes between the effect of regulation on ICT-intensive and non-ICT intensive sectors. Indeed, the empirical findings obtained in the estimations suggest that there is a stronger effect of regulation in ICT-intensive sectors.

The labour productivity effects of the simulated regulatory reform are calculated for each sector separately, and then aggregated to a weighted average at the economy-level. The estimation equation used in the empirical model is the following:

$$\Delta \ln LP_{ijt} = \delta \left(\Delta \ln LP_{ijt}^{\text{leader}}\right) + \sigma\, \text{prodgap}_{ijt-1} + \gamma_1\, PMR_{ijt}^{\text{ict}} + \gamma_2\, PMR_{ijt}^{\text{non-ict}} + \alpha \left(PMR_{ijt-1} * \text{prodgap}_{ijt-1}\right)$$

$$+ \text{country/industry dummies} + \text{time dummies} + \in_{ijt} \text{ with } \in \sim N(0,\Sigma).$$

In this equation, the indices i, j and t denote countries, industries and years, respectively; LP denotes labour productivity; prodgap is the "productivity gap" – which is measured as the (log) ratio of the level of productivity in each country or sector relative to that of the productivity leader – and PMR is the regulation impact indicator of anticompetitive product market regulation. Country, industry, and country-industry fixed effects are included as appropriate so as to account for unobserved time-invariant factors affecting productivity growth in a particular sector or country (*e.g.*, natural endowments or location). Time dummies are also included to control for global productivity shocks in any given year.

The same simulation exercise has also been undertaken for a number of other OECD countries. The potential benefits that Italy could reap from aligning its product market regulation to international best practice are relatively high compared with other countries. Denmark and Finland, for example, would only gain half as much from this policy reform, while Sweden has hardly anything to gain from aligning to international best practice. Spain, Belgium and Portugal, however, could achieve similar improvements in labour productivity from such a policy reform as Italy. Cross-country differences in the potential benefit of a reform can be due to differences along three dimensions: how far a country is away from international best practice in regulation on average, in which sectors regulation is particularly behind and the industry structure of the economy.

Table 1.3. **The potential effects of improving regulation in the future**

Percentage increase in productivity over 10 years

	Sectors simulated:	All sectors		Electricity and gas		Retail		Professional services	
	Degree of reform:	To 2007 best practice	To EU 75th percentile	To 2007 best practice	To EU 75th percentile	To 2007 best practice	To EU 75th percentile	To 2007 best practice	To EU 75th percentile
Italy		14.1	13.7	2.6	2.5	4.9	4.8	7.4	7.3
Belgium		15.8	15.6	3.5	3.5	11.9	11.7	4.4	4.3
Canada		14.4	14.1	5.6	5.5	7.8	7.6	8.5	8.3
Denmark		8	7.3	2.6	2.3	5.4	5.1	3	2.6
Finland		6.8	6	2.1	1.8	4.2	3.9	1.8	1.3
France		10.3	10	1.4	1.3	7.4	7.2	1.9	1.8
Netherlands		8.3	7.4	3.2	2.8	4.8	4.3	4.9	4.2
Portugal		12.2	11.8	3.8	3.6	7.2	6.9	4.3	4.1
Spain		13.9	13.8	4.5	4.5	10.9	10.8	5.1	5.1
Sweden		1.6	7.7	0	0	0	0	0	1.2
Total		**11.4**	**10.9**	**2.6**	**2.6**	**6.9**	**6.4**	**4.2**	**3.7**

It is asking a lot for a country to adopt best practice to all sectors. A perhaps more realistic simulation analyses the effects of a regulatory reform in which Italy were to perform relatively well compared to what other EU countries have managed to achieve: this second set of simulations assumes a scenario in which Italy catches up to the 75th percentile of all EU countries in 2007. The expected productivity increase turns out to be essentially the same as in the previous exercise. Italy could still gain an additional 13.75% increase in labour productivity over the next 10 years if it undertook such a reform. This suggests that continued efforts to reform in all areas can pay off, as long as Italy moves closer to those countries which are among the best performing in the EU.

There are two reasons for this somewhat surprising result. First, countries near best practice in particular sector indicators are somewhat bunched in the actual level of regulation. The 75th percentile is thus not always very far from best practice even though it may be some way down the ranking. On the one hand this means that the absolute effort required for Italy to get the 75th percentile may not after all be much less than that to reach best practice; on the other hand, it shows that a significant number of countries have managed to get close to best practice, so that it may not be so difficult for Italy after all. The other reason is more directly related to the model. Since it is based on catch-up, and the tendency to catch up is stronger the further a country is from best practice, this introduces some non-linearity into behaviour so that the effect of moving the last few percentiles is less than that of moving the first few.

Besides reducing regulatory barriers in all sectors at the same time, further simulations have also been undertaken to evaluate the impact of moving to best practice in selected non-manufacturing sectors taken on their own.[38] This exercise may be helpful to establish reform priorities and gain a notion of where a reform may have the largest impact. Distinguishing professional services, the electricity and gas sector, and retail distribution, the simulations show that thorough reform of professional services is likely to give larger gains in Italy than in most countries and also that in Italy it would give the most significant effects of the three sectors considered; this mainly reflects the relatively poor regulatory policy currently in effect in Italy compared with that in other countries. Aligning regulation in this sector to international best practice or to the EU 75th percentile without any reform in other sectors would increase overall labour productivity by just over 7% over the next 10 years.

In electricity and gas sector regulation, aligning on international best practice is predicted to increase labour productivity by 2.6% over the next 10 years. This number is only slightly smaller if the reform brought Italy to the 75th percentile of the EU countries instead of international best practice (2%).

Finally, reforming only the retail and wholesale distribution sectors to the level of international best practice or the EU 75th percentile, while leaving all other sectors of the economy unchanged, would result in a 5% higher labour productivity after 10 years.

To sum up

These projections about the effects of regulatory reform on national productivity should be considered as illustrative of potential benefits, while the margin of uncertainty is significant. Economic changes occur in a highly complex and dynamic environment, and the effects of any one group of reforms can be hard to distinguish. Yet the experience of Europe and the OECD membership as a whole provides the most relevant set of data on which to project results for a country like Italy.

The reasons for slow productivity growth in Italy are certainly complex, as outlined in Section 1. It may reflect the combined effects of labour market institutions, informal practices as well as the sometimes cumbersome public administration. Other factors linked to the educational system, R&D and innovation or financing for SMEs, which fall beyond the scope of the current study, would also certainly play a role. All these factors may impact the capacity of the large number of medium and small-sized Italian firms to adapt to globalisation.

However, all this should not obscure the fact that the regulatory environment and competitive conditions are playing a key role. Italian practices still have significant scope for improvement in a number of policy areas, even if in some, such as the constitution and role of the Competition Authority, or the Cutting Laws exercise, they are now among the best. The illustrative simulations presented above show the significant payoffs in terms of economic growth that could be obtained from further investment in regulatory reform: labour productivity could be as much as 14% higher after ten years if feasible reforms were undertaken in a number of relevant areas. Despite recent progress, significant gains for example could still be obtained from thorough reform of professional services regulation. While many of these reforms may entail significant political costs, these have to be considered in the light of the potential gains as well as the opportunity costs of allowing the interests of certain groups or sectors to block reform.

Moving forward the reform agenda

The primary conclusion and political message of the thorough economic analysis undertaken above is that regulatory reform has great potential to address many of the core challenges faced by the Italian economy from a structural perspective. Substantial progress in improving regulatory practices could yield very large benefits for the country. The scenarios above show that, under realistic circumstances close to good European practices, Italy could experience a burst in productivity gains, setting the stage for a more competitive, innovative, and flexible private sector through which the native entrepreneurship of Italy would once again assert its strengths.

While previous sections of this report have addressed the relevance of regulatory reform to the underlying causes of slow growth in Italy, this section will focus on those reforms that can help Italy better face the crisis as well as manage the economic and social challenges ahead. In the context of the economic crisis, the Italian citizens and businesses are also calling for emergency responses. Experience in other countries suggests that, if regulatory reform is slow and uneven, promising much and delivering marginally, difficulties will remain. On the other hand, a coherent and well implemented programme of reform could help Italy better overcome the crisis, improving its relative performance compared with other Eurozone economies, attracting investors and empowering its entrepreneurs to compete and create better-paying, more productive jobs. In the financial crisis environment, the need for change is obvious as Italy is facing increased competition and shocks from technologies and globalisation, together with energy supply threats. Regulatory reform offers a number of options for managing change, improving flexibility and contributing to increased resilience in times of hardship. The Korean example shows that ambitious regulatory reform contributed to a rapid recovery after the 1997 financial crisis, setting the stage for a rebound in economic growth amidst rapidly diffusing technological innovation and helping its major companies to become world leaders in a number of sectors. Other examples of countries successfully overcoming a significant financial crisis also exist in Europe, as illustrated by Sweden, which in the mid-1990s was able to restore higher long-term growth after a significant crisis in its financial sector.

Policy areas for regulatory reform in Italy

This report analyses a range of policy areas where regulatory reform and the application of quality regulatory principles, can be expected to make a strong contribution to the Italian economy and society. These policy areas are based on the pivotal OECD 2005 *Guiding Principles for Regulatory Quality and Performance* that have been adopted by all OECD countries as a guiding framework for regulatory reform (see Box 1.3).

Some of the policy areas are analysed in detail as part of the background chapters prepared for the study, and summarised in Part II and Part III of the report, which include a detailed set of recommendations. This section presents only the key findings.

The policy areas highlighted for attention include among others:

Maintaining the impressive administrative simplification programme, ensuring that removal of old burdens is not offset by adoption of new burdens.

Making better use of quality regulation tools, such as consultation, regulatory impact assessment.

Maintaining investment in capacity, and pursue efforts to modernise public administrations.

Improving the efficiency of the system of civil justice.

Promoting market competition in the multi-level regulatory system. This includes strengthening competition policy as a key tool for the development of an efficient internal market (Part II, Chapter 3, Competition Policy).

Improving the performance of key service sectors such as retailing, transport and professional services.

Box 1.3. **OECD 2005 *Guiding Principles for Regulatory Quality and Performance***

These Principles capture the dynamic and ongoing whole-of-government approach to implementation of regulatory quality. They are based on the 1995 *Recommendation of the OECD Council on Improving the Quality of Government Regulation,* on the *Report on Regulatory Reform*, welcomed by Ministers in May 1997, and on the existing set of country reviews. They include the following key points:

Adopt at the political level broad programmes of regulatory reform that establish clear objectives and frameworks for implementation.

Assess impacts and review regulations systematically to ensure that they meet their intended objectives efficiently and effectively in a changing and complex economic and social environment.

Ensure that regulations, regulatory institutions charged with implementation, and regulatory processes are transparent and non-discriminatory.

Review and strengthen where necessary the scope, effectiveness and enforcement of competition policy.

Design economic regulations in all sectors to stimulate competition and efficiency, and eliminate them except where clear evidence demonstrates that they are the best way to serve broad public interests.

Eliminate unnecessary regulatory barriers to trade and investment through continued liberalisation and enhance the consideration and better integration of market openness throughout the regulatory process, thus strengthening economic efficiency and competitiveness.

Identify important linkages with other policy objectives and develop policies to achieve those objectives in ways that support reform.

These will be discussed below while the specific issues faced from a multi-level governance perspective, which represent a unique challenge will be addressed in the next following section.

Maintain the impressive administrative simplification programme, ensuring that the removal of old burdens is not offset by the adoption of new burdens

Italy has deployed an impressive array of simplification initiatives, which have produced significant benefits for citizens and businesses. In particular, Italy has developed quite an innovative approach based on the Standard Cost Model, and first results are encouraging. This tool offers the potential for maintaining pressure in terms of administrative simplification for years to come.

This will represent a challenge as the accumulative burden of administrative procedures does not seem to be declining, but rather increasing as a result of new

regulations adopted either at national or EU level. This implies that simplified and eliminated procedures are replaced by ever more new ones. This recommendation will need to be considered in relation to others, particularly those concerning consultation and RIA. Simplification needs to be accompanied by rigorous controls on the introduction of new procedures, using RIA, consultation, and central review. Otherwise, reducing regulatory burdens may become like the task of Sisyphus while an ever increasing array of new regulations and burdens would fall back on citizens and entrepreneurs.

Make better use of quality regulation tools

Foster the adoption of Regulatory Impact Assessment through a targeted approach

Regulatory Impact Assessment is not simply a formal process, through which regulations are justified *ex post*. The OECD 2005 *Guiding Principles for Regulatory Quality and Performance* champion RIA as one of the key processes for rational, balanced and evidence-based decision-making. OECD indicators for regulatory management systems show that RIA is correlated with most dimensions of quality for regulations *ex ante*. Even in countries such as Switzerland or Sweden where full-fledged RIA is not implemented yet, significant steps exist, through SME tests, or business burdens test, assessing *ex ante*, before a regulation is adopted, its likely impact on businesses in terms of red tape and regulatory burdens.

As mentioned in Part II, RIA is still in an early stage in Italy. Other EU countries have had similar experience, which may also be linked to a specific reluctance to limit political discretion *ex ante* concerning the development of new regulations and new laws, even though huge efforts need to be deployed *ex post* to minimise burdens and limit the impact on businesses. The new simplified RIA system elaborated in 2008 will still need to be put to test, but issues of resources, quality control mechanisms and integration with consultation are likely to arise again.

RIA will need to be coupled with targeted efforts (Part II), with better articulation with strategic and forward planning at the level of the government agenda. This would allow deploying a regulatory programme on a yearly basis, with corresponding resources made available to the ministries for *ex ante* assessment. The core units, including the unit serving the Minister for Simplification, could play a pivotal role for allocating such resources, as without a fresh infusion of funds and skills in sectoral ministries, RIAs may not be in a position to improve the design of regulatory policies.

A targeted approach would help build skills and support over time. Fewer, well-structured and analyses, including considerations of costs and benefits as well as regulatory burdens, may yield greater impact, and demonstrate the potential of a well performing RIA system.

The other key element is quality control and incentives for RIA, which need to be introduced, despite sensitivities to preserve ministerial discretion. Sectoral administrations will continue to have full charge of regulatory work in their field and will be responsible for carrying out RIAs. However, they will have to justify the costs and benefits of their intended laws and regulations, through a "RIA network", where the DAGL plays a key role to ensure that costs and benefits have been properly assessed (and without judging as such the opportunity of the regulation or the law in itself). Such mechanisms would enhance co-ordination and ensure quality control (for further detail, see Part II, chapter on quality regulation).

Adopt good international practices for stakeholder consultation

The assessment of the impact of new regulations and laws, in terms of overall costs and benefits, and regulatory burdens, need to be closely co-ordinated with consultation. Consultation has the capacity to reveal information from stakeholders, pointing to unanticipated issues and helping to avoid major mistakes. The OECD 2005 *Guiding Principles for Regulatory Quality and Performance* insist on the role of transparent and non-discriminatory regulation.

Several platforms exist in Italy to ensure consultation, at national and regional level. Efforts have been made to adapt to decentralisation and devolution. However, online consultation, with a formal and regular practice, is still far from being the norm. Many consultations remain *ad hoc*, performed through selected channels and stakeholders, and with a lack of consistency. Consultation, which in Italy is closer to "concertation", has so far not been connected to impact assessment procedures. However, there is also reason for optimism. Business representatives consider that the situation is improving. Recent government initiatives demonstrate greater attention and more openness to hearing the viewpoints of the stakeholders. The current consultative bodies, including for example the Roundtable for Simplification, also have improved consultation practices, although they have so far operated without formal mandatory and public guidelines.

The adoption of a clear, government-wide consultation policy that mandates minimum standards for consultation on all regulatory decisions with effects on businesses and citizens could have a spectacular effect. It could for example follow the standard set out by the European Commission in its 2002 consultation guidelines as a benchmark. It would be important for it to apply not only at national level but also at regional levels, in a way that would reflect a shared commitment by the state and the regions. Consultations should be carried out on all legislative proposals and major regulations, including transposition and implementation measures, as early as possible. In particular, consultation should entail explicitly addressing issues related to the identification of the problem, the definition of causal links, and the spelling out of possible policy options, as related to the process of impact assessment. This could also rely on on-line mechanisms.

Partial steps are already being taken in this direction. The 2008 regulation establishing a simplified RIA includes consultation as one of the primary phases of that process in the future. It will be important that the related guidelines clearly set quality criteria and minimum standards in that regard. The Government is considering extending the standard consultation period (up to eight weeks), and publishing various documents on the web. The USQR has elaborated a set of "Guidelines for online consultations" that, if implemented well, could significantly contribute to the standardisation of consultation. The energy regulator (AEEG) has integrated repeated consultation in its practice of carrying out impact assessment.

Maintain investment in capacity, and pursue efforts to modernise public administrations

Issues of capacity are a recurring challenge faced by Italian administrations. The Ministry of Public Administration is currently making bold attempts to professionalise public services, increase responsiveness to the public, reduce absenteeism, calling for rigorous and professional standards. The regulatory reform agenda has also been affected

in its day-to-day operations by the current status of some of the administrations. The Minister for Public Administration launched an "industrial plan" for the re-organisation of the public administration which is based on four pillars: meritocracy, efficiency, transparency, and innovation. He also launched an action plan aiming at reforming the public service contractual model. These measures have the potential to effectively tackle the challenges faced by the Italian public administrations and turn them into a modern and efficient public service apparatus.

Positive steps have been recorded also in redesigning and underpinning the central Better Regulation structures, as discussed above (for more detail see Chapter 2). The appointment of an *ad hoc* Minister for Simplification and the related strengthening of the structures underpinning its activities is an illustration. These are positive changes and the new department currently involves an administrative staff of up to around 30 staffs. While this represents an encouraging signal, it may need to be complemented by parallel moves to increase the resources allocated to the DAGL, which has an official oversight function for RIA.

From a broader perspective, and despite the recent improvement, the level of capacity and staffing in Italy remain more limited than in some other neighbouring countries. Given the complexity and the priority of the administrative simplification agenda, the resources required to pursue the improvement of new regulations, through RIA oversight, consultation may still require further expansion in the future. The fact that this is a "structure of mission", with a mandate limited to the legislature presents a risk for the implementation of regulatory reform in the long-term as a permanent feature of government and regulatory activity, allowing for long term investments and gains. In the UK, a country similar in size and development to Italy and which is in the forefront at EU level, the Better Regulation Executive has 70 professional staff. Beyond Europe, in the United States, the Office of Information and Regulatory Affairs has more than 50 full-time professionals. The features of the Italian administration involve the recourse to highly qualified external consultants, which are useful, but cannot fully substitute for internal investment in professional staff.

There is also still scope for further deploying control mechanisms to strengthen accountability in the various layers of the regulatory process, across the various ministries. The mandates require performance targets that are measured, monitored, and enforced by the Minister for Normative Simplification supported by the USQR, and the Minister of Public Administration supported by UANAS. This may represent of the most difficult elements of the regulatory reform agenda, because it may face administrative inertia. However, firm and effective oversight is one of the preconditions of success in this field. The regulatory guillotine and the Standard Cost Model reforms are well suited to Italy because they lend themselves to quantitative targets for results.

Another core issue is the co-ordination between the DAGL and the Ministry for Simplification which is a crucial aspect. The DAGL is uniquely placed in the Centre of Government, to play a co-ordinating role in terms of the government agenda, and the assessment of new regulations. Smooth co-ordination with other units in charge of regulatory quality is therefore essential for success. Integration between administrative simplification and other efforts to digitalise the administration is another core aspect, which can be resolved through the excellent co-ordination between the Ministers for Normative Simplification and for Public Administration.

Enable sectoral ministries and agencies to implement reform

Most of the work on regulatory reform is done by the sectoral ministries and expert bodies themselves, following guidance and processes established by central oversight units. Further investments are needed at several levels. Resources in line ministries are often insufficient for these institutions to carry out their functions, assessing the intended but also unintended effects of planned regulations. Incentives, roles and responsibilities also need to be strengthened, as well as relationships with the centre.

Staffing is a critical constraint on the success of the reforms. Economic and analytical skills are still scarce in some line ministries. Here as well, the option to draw from external consultants, while an understandable response to the current setting, will not satisfy the need to build long term know-how within the administrative apparatus itself.

Capacity building within government is essential if reforms are to succeed. Investments in training and information resources are conditions for the effective application of regulatory tools. In Italy, investment in training could still be improved, relying on existing structures [*e.g.* National School for Public Administration (*Scuola Superiore della Pubblica Amministrazione* – SSPA), FORMEZ (*Centro di Formazione Studi*)].

Sectoral regulatory authorities are also part of the institutional framework for quality regulation. Over the past few years, a debate on the nature, role and degree of independence of the authorities has taken place in Italy. The recent law proposal on independent authorities is a positive attempt that could help modernise and rationalise the institutional framework for these authorities. However, it is awaiting adoption. Mixed ideas are permeating the domestic debate, some of which could reduce the independence of these authorities to make key regulatory decisions. Yet, this independence is a key factor to ensure clarity for long-term investment in much needed infrastructure. Efforts to reduce regulatory costs and risks, should lead to a rejection of proposals that would increase political discretion for regulatory decisions in the services and infrastructure sectors. Further facilitating a consistent approach to regulatory authorities, as envisaged by the draft law, could help to legitimise the institutional design of such bodies, and boost their ability to regulate well in the long-term interests of consumers. Their extension to some sectors, such as transport or postal services, would also have the scope for improving and clarifying the regulatory framework.

Speed up due process in judicial proceedings for civil cases

The need to correct the serious delays has been acknowledged in several Italian national reports which have proposed a series of reforms to change the economic incentives, streamline the demand for justice, while adjusting supply mechanisms. Many ideas have been advanced and some steps are currently being taken, including demand-side financial incentives. Italy has already dealt with the problem in administrative law, where fast track procedures were established to cut the backlog of cases.

The "Green Book on public expenditure" published by the Treasury in September 2007 suggests tackling the excessively small size of the bailiffs: a quarter of the Italian courts employ less than 10 judges in 2007. The consequence is that the same judge has to rule on both civil and criminal cases, reducing specialisation and productivity. The Online Civil Trial initiative (*Processo civile telematico*) sponsored by the Ministry of Justice, launched as a pilot project in seven courts, may help speed up proceedings and facilitate access to documentation by the parties through ICT, thereby reducing costs. Other solutions would

reduce demand for judicial review, including arbitration procedures, financial incentives to reduce petty cases. Another issue is the supply-side incentives, with payment mechanisms for lawyers, as identified by ISAE reports. However, tackling this aspect requires long term action, with significant political costs.

This is certainly a very challenging and difficult field, where Italy has now become aware of the issue, as well as some potential solutions. Reforms of the bankruptcy law also have had positive effects on businesses. Without singling out any one of them in this report, it is recommended that Italy place a high priority on developing and implementing reform measures that enable all businesses, large and small to resolve their civil disputes more quickly and at lower cost.

Further strengthen enforcement and application of competition law in all sectors

Competition and regulatory issues arise in Italy as in any other OECD country in many sectors and across all levels of government. However, the specific features of the emerging multi-level system of governance represent a specific challenge. Barriers to competition, either from private firms or government regulation, undermine the free entry and exit and the flexibility that Italy needs to gain the path to a higher productivity growth. Further details on these aspects are presented in Part II.

Italy's Antitrust Authority has benefitted from several improvements in enforcement powers recommended by the OECD 2001 Report, but some aspects of the provisions about sanctions might still be improved. Authorisation of a modern leniency programme was a very important step against horizontal collusion. Another step to make enforcement more effective would be stronger sanctions against associations that are a vehicle for anti-competitive agreements. The very low fines that the Authority has been able to assess against cartels organised through industry associations shows that this issue still needs to be addressed. A further, more ambitious step would be to consider strengthening deterrence by imposing sanctions on individuals. The principal sanction to enforce compliance and deter violations of the Competition Act now is a civil financial penalty against an infringing enterprise. There is no provision for sanctions against individuals, even in the case of repeated violation, resistance to the Authority's orders or individual active participation in a violation. Several other member jurisdictions have moved recently to adopt individual or criminal penalties against hard-core cartels.

Finally, the Authority, as many Italian administrations, faces resource issues. The statutory cap on the Authority's personnel level has been raised, but only to accommodate some additional responsibilities. The Authority still has comparatively few personnel resources to handle its policy and enforcement responsibilities, compared with some similar-sized countries, such as France or the UK. In addition, the multi-level and decentralised governance system, may call for greater monitoring of a larger array of regulations across the country.

Facing up the challenges of multi-level governance

OECD countries are facing the challenge of multi-level regulatory governance in a context of growing decentralisation, irrespective of their constitutional and political settings. In Italy, the reform of Title V of the Constitution has accelerated the devolution process, empowering the regions and the local authorities. Quasi-federalist features have been introduced while some of the methods and approaches of a unitary State remain. The

findings of this 2008 Review complements and confirms previous analysis undertaken in 2006 (OECD, 2007c), with broader analysis of key sectors such as commercial distribution, local transport and retail, including full consideration of the issue of local public services. These are all discussed in Part III of this review.

Over the past decade, Italian authorities have had to manage at least three simultaneous phenomena. First, further to the constitutional changes, they had to cope with the need to enhance policy co-ordination and coherence between the centre and the sub-national levels. An institutional framework of conferences has been established to facilitate such task. Second, because of the international pressure (globalisation) and EU policy objectives (the Lisbon agenda), Italian authorities have embarked on liberalisation initiatives and programmes to boost the development of less performing regions, with a special focus on the *Mezzogiorno*. This has created the need to develop coherent and comprehensive policy making, which requires evaluating and trading off policy objectives. Third, the evolution of multi-level governance has been accompanied by a parallel debate over the need to improve the quality and effectiveness of regulation and the decision-making processes. In a number of areas, the regulatory reform agenda has been driven by central administrations. This has been the case for instance for legislative simplification, the measurement and reduction of administrative burdens, and the reduction of the time needed to complete administrative procedures. In other areas, regions have taken a pro-active attitude and have pioneered some good practices. Examples of *ex ante* impact analyses in some regions as well as *ex post* evaluation practices (in the context of the CAPIRe project) are points in case.

The processes of decentralisation offer opportunities for fostering innovation; introducing more liberal and competitive practices in the markets; and improving the quality of the services provided by public administrations to the citizens. Overall, processes have increased the awareness of the need to advance on the reform pattern. Growing acceptance now exists at the regional level to include principles of good regulation in policy making. In addition, there is greater potential to introduce benchmarking practices among regions, thereby stimulating the diffusion of best practices.

Co-ordination between levels of government

Strenthening co-ordination and institutional mechanisms

Since 2001, regions have been conferred substantial legislative powers in a number of sectors. At the same time, they are now much more involved in transposing and implementing EU legislation. Sectoral analyses reveal that the devolution process has led to a proliferation of both regulatory sources and the bodies involved in the regulatory process. Over the years, Italy has experienced an increase in the number of legislation affecting any given sector, which often hindered a smooth application of free competition and liberalisation. Because of the intricate regulatory maze, it is often difficult for economic operators and the citizens to get a sense out of the legal environment regulating a specific sector.

At the same time, all levels of government in Italy are investing in new co-ordination mechanisms to cope with the needs of the new governance in Italy. The system of conferences has been established and a variety of fora set up to facilitate the co-ordination of legislative and executive authorities. Agreements and memoranda of understanding have been signed, notably on simplification and regulatory quality. Horizontal co-ordination

has been also promoted. The activities of the Inter-regional Legislative Observatory, for instance, or more specific initiatives such as CAPIRe are precious experiences. As a result, Italy is now widely equipped in terms of co-ordination mechanisms, to adapt to its new system of multi-level governance.

It is essential that enhanced co-ordination mechanisms address the needs of the new governance in Italy, building on the progress of recent years. The country might consider setting up clear and formal regulatory agreements and co-operative arrangements, supported by financial incentives, and away from loose forms of co-ordination that are currently in place. The Australian example of the National Competition Policy in the mid 1990s shows how effective financial incentives and mechanisms can be to move a regulatory reform and competition oriented agenda.

This review has highlighted a number of areas where the co-ordination system may be further improved. These include the number and competences of the various institutions involved, which may lead to overlapping and missed opportunities for policy coherence and synergy. Moreover, at present no clearly defined monitoring system is in place to ensure the correct and timely compliance by all the parties of the agreements. The State does not monitor directly the implementation of national legislation across the territory, and it does not have the power to oversee the liberalisation policies and regulatory reform agendas in the regions. For their part, the regions have not fully exploited the potential of horizontal benchmarking.

The interaction between the State and the regions has been framed also in relation to transposing and implementing EU law. Evidence from this review suggests that further attention could be given to the co-ordination of the official position of the Italian government with the regions and the local authorities, and the interests put forward by trade and professional associations and non-governmental organisations. It is important to strike a balance between the request of the regions to be fully involved in all activities of the CIACE and the necessity to proceed speedily to the formulation of the official position and the co-ordination of the actions at the national level. As to the stakeholders, forms of consultation have been introduced and reinforced. Greater efforts could nonetheless be made to bring the public administration closer to those eventually affected by EU legislation and be more responsive.

Capacity building

The need to strengthen capacity is key to make multi-level governance successful. Issues of capacity highlighted at national level also exist at regional level. Multi-level governance is also facing capacity and training issues, particularly in the smaller and disadvantaged regions. This may further exacerbate regional differentials. Adequately skilled staff at all levels remains an indispensable condition to implement reforms successfully. Training is an area where better co-ordination and a more efficient allocation of resources may prove useful. The Department for Development Policies (DPS) has made the improvement of administrative capacity in Southern regions one of its main priorities. The specific initiatives launched in this respect should be sustained. The work of FORMEZ, notably on introducing RIA in the regional administrations of the South, and the support provided by CNIPA and other national bodies are positive examples.

The system would also significantly benefit from a more structured mechanism for sharing data and information both vertically and horizontally. National observatories (such

as the one created in the sector of public local transport) and other research centres at the national level may be valuable vehicles to enhance capacity building across the country, in particular in smaller and poorer regions.

Ensuring policy coherence and effectiveness

Policy formulation needs to take into account a variety of objectives, which sometimes may be contradictory. Policy coherence is a fundamental feature for ensuring effective governance, especially in a multi-level context. By addressing Italy's regional development policies, the regulatory reform agenda, the provision of local public services at local level as well as liberalisation initiatives in various sectors, this review highlights the need for strategically enhancing policy coherence, for which the central State bears overall responsibility. Some margin of manoeuvre still exists in this respect to further develop the efforts to narrow the national liberalisation, regional development and regulatory agendas. All these policies contribute to the overall objective of boosting the country's competitiveness. To this end, the related institutional frameworks and procedures should be streamlined, and the instruments harmonised.

At the same time, the regions maintain key legislative competences, and sub-national regulators may face divergent policy objectives. A typical example is the trade off between urban planning concerns and the need to liberalise the retail sector. As the analysis of the local public services and transport shows, resistance by monopolistic structures to reform may be difficult to overcome because of the close net of interests existing between local administrations and the providers of infrastructures and services.

A clearly defined monitoring system is not yet in place to ensure the correct and timely compliance by all the parties with the agreements between national and sub-national authorities, which remain loose. National authorities do not have the power to oversee the liberalisation policies and regulatory reform agendas in the regions. One of the options would be to strengthen observatories, with structured mechanisms for sharing data and information both vertically and horizontally. National observatories (such as the one created in the sector of public local transport) and other research centres at the national level may be valuable vehicles to enhance capacity building across the country, in particular in smaller and poorer regions. They would also allow for strengthened benchmarking of regulatory quality across the regions, providing additional incentives for change.

Incentive and sanction mechanisms for reforms

Regional development policies in Italy are a good example of linking policy objectives with evidence-based logics. Recent experiences with the national performance reserve scheme and, above all, the new system of outcome-based indicators have refined such an approach. Setting measurable targets contributes to clarify the objective, design adequate policy strategies and employ adequate instruments, and better communicate the results. Another good practice introduced consists of conditioning the allocation of funds to the actual performance of the regions. This premium mechanism constitutes a remarkable leverage for administrations to comply with the agreed targets and deadlines.

Reforms in other sectors may benefit from applying similar incentive mechanisms. In the case of regulatory reform, for instance, part of the budget of public administrations could be linked to their achievements in the reform agenda. This would encourage the implementation of tools and procedures for higher quality regulations and administrative

effectiveness. Discussions in this respect are ongoing both at the national level and in some regional administrations.

Design and implement regulatory reform in a multi-level context

Consultation, communication and transparency

In recent years, Italian regions and local authorities have increasingly used the Internet to communicate with the public. Regional statutes and the existing normative stocks are usually available online. A number of websites facilitate access to relevant information for businesses.

Nonetheless, the interface between regulators and the regulated is still under-exploited. This review reports a widely diffused but heterogeneous use of consultation modes among public administrations. Consultations are carried out by almost the entirety of regulatory bodies, but they are still not mandatory and rarely systematic. Regulators do not dispose of formal guidelines to improve practice and assess consultation performances. Recourse is often made to negotiated and not fully open practices, such as *concertazione*. This form allows to achieve widely shared compromises and enhances acceptance, and it may facilitate subsequent implementation. However, *concertazione* remains potentially more open to regulatory capture especially at lower levels of governance.

As a result, taken as a whole, the numerous consultation initiatives carried out at the regional and the local levels have not always generated a flow of transparent, timely and targeted information for economic operators and the citizens. To enhance stakeholders' participation it may prove useful to integrate current practices within a formalised and more structured consultation approach based on widely accepted and harmonised principles and minimum standards. Consultation might benefit from a greater integration of other regulatory reform tools, such as legislative programming, RIA, and *ex post* evaluation. These tools could be instrumental in moving away from a legalistic approach and towards forms of open and evidence-based dialogues with the regulated. This would help administrations respond more easily to the demands of the citizens and to adapt to market conditions in a more flexible and timely manner.

Administrative simplification and e-government

Administrative simplification, notably through e-government, is considered by many OECD countries as a tool to achieve better government. It helps governments meet the challenge of responding to public demand for more responsive, efficient, effective and participatory government (OECD, 2003c; 2005a). Over the past years, the heterogeneous dissemination of e-government tools in Italy and their diverse degree of performance are to be balanced with the remarkable achievements obtained in some jurisdictions. Italian authorities may consider focussing on promoting the diffusion of the good practices as evenly as possible across the country.

Fostering e-government cannot be reduced to the provision of computers to public offices. It requires a re-thinking of the organisation of the administration, its procedures and activities. It implies the adoption of ICT to complement and, where appropriate, replace hierarchical models through approaches based on the decentralisation of responsibilities. The underlying rationale should be the openness, effectiveness and efficiency of a client-oriented and performance-based administration.

One aspect of this process refers to simplifying the interface between the public administration, and businesses and citizens. Progress has been made in the past years, especially with the creation of one-stop shops and the diffusion of self-certification practices. However, potential for improvement still exists in many public administrations in Italy to further streamline the procedures and internal co-ordination within the administrations themselves. Redundant or unnecessary procedures should be systematically repealed.

The success of administrative simplification measures in changing the logic of public administrations depends to a great extent also on the availability of adequate human resources as well as on overcoming the so-called "digital divide". Continued efforts to train and requalify the existing personnel would help meet the first condition. Actions in that respect may range from improving the general computer literacy to higher level training both on the technical and the managerial fronts. In modern societies characterised by fast changing and diffused information, public managers have to learn how to control, administer and use the knowledge that their administrations need to get and have to provide. Links with educational policies are desirable. Information campaigns on e-government could also be carried out to increase the transparency and the communication within the public administration itself and to the system as a whole.

Create incentives and sanctions to stimulate reforms

Regional development policies in Italy are a good example of linking policy objectives with evidence-based logics. Recent experiences with the national performance reserve scheme and, above all, the new system of outcome-based indicators have refined such an approach, where Italy is in the forefront of OECD countries. Setting measurable targets contributes to clarify the objective, design adequate policy strategies and employ adequate instruments, and better communicate the results. Another good practice introduced consists of conditioning the allocation of funds to the actual performance of the regions. This premium mechanism constitutes a remarkable leverage for administrations to comply with the agreed targets and deadlines.

Reforms in other sectors may benefit from applying similar incentive mechanisms. In the case of regulatory reform, for instance, part of the budget of public administrations could be made dependent on achievements in the reform agenda, such as consultation, transparency, implementation of one-stop shops.

Build political momentum and consensus for reform

Besides all the specific policy areas as well as the multi-level dimension outlined above, which need to be addressed, countries also need to build institutional foundations for sustained reform, including strengthening active political involvement, building the regulatory quality functions, and building capacities in the ministries. This is clearly one of the key aspects underlined by the OECD 2005 *Guiding Principles for Regulatory Quality and Performance*.

Italy has experienced clear and strong political commitment to regulatory reform and simplification in the current as well as the past legislature. This has enabled the country to make quantum leaps, such as through the Guillotine and cutting law initiatives of the current minister for Simplification or the Bersani decrees of the previous government. This shared and bipartisan ambition will need to be maintained in the long term.

Maintaining active political involvement in a broad-based regulatory reform agenda

A sustained, institutionalised, and long-term effort is needed to address the continuing regulatory challenges faced in Italy. Beyond short-term policy debates, the challenge today is to sustain the effort and integrate it into the fabric of policy making as a permanent feature of policy-making government. This will require strong, active and continuous political attention to the problem over the next several years. The appointment of the Minister for Normative Simplification and the renewed initiatives by the Minister for Public Administration represent very positive and encouraging signals. They have the potential to provide political stimulation and guidance to the reforms. In order to keep momentum, it would be opportune to adopt formal, binding, strategic and programmatic documents outlining the objectives, modalities, and deadlines of the reform agenda. The use of the annual Simplification Action Plan model in the past went in the right direction, even though the readability of such plans could still be improved. Programmatic documents, if well defined and accompanied by clear targets have the potential to create more coherence in strategy and organisation, and more effective political and strategic guidance from the centre of government.

Maintain consensus on core regulatory reform objectives

The current programme of regulatory reform, particularly as it has developed over the last couple of years, contains the basic framework of an effective programme. The concepts and many of the reforms, particularly on the competition and simplification sides, are consistent with good practice. Italy has made substantial progress in implementing the key reform recommendation of the 2001 OECD Report to eliminate unnecessary regulatory constraints on competition about price, entry and quality. The two packages of the liberalisation reforms in 2006 and 2007 removed a number of the constraints at national level. They did so in a way that showed how reform benefits consumers, shifting the terms of debate about reform priorities.

However, vast swaths of the national regulatory system still need to be addressed by the concepts and tools of Better Regulation. Implementation remains a challenge, which may have been underestimated until now, and might require more capacity, more people, and more investment to get the job done. The interplay of national and regional competences, as well as the EU regulatory agenda, further complicates the task of the Italian authorities.

Beneficiaries could be numerous, from workers, to citizens, entrepreneurs and consumers. The large number of potential beneficiaries from better regulation has enabled other governments to move on regulatory reform programmes, under bipartisan agendas, assembling coalitions of reform allies – across party lines and across ideologies. Such coalitions are essential to effectively communicate the reasons for reform to the public, to discuss how the risks and costs of reform will be managed, and to develop a momentum of reform that reduces the capacity of special interests to block reforms that are in the national interest.

Communicate with the public about the reforms, their rationale, and their benefits

Answering their objections and overcoming their resistance will also require a communication strategy aimed at the media and the public, patiently and persuasively explaining the reforms, their benefits, and their rationale. When reform faces specific

interests, governments need to lift their marketing efforts to counterbalance the influence of adverse parties. In some aspects, the Antitrust Authority's programme of policy study and advocacy offers interesting opportunities. Opinion surveys are also a possibility. By sharpening public appreciation for the reform impulse, they may have laid a foundation for larger-scale changes. Likewise, countries that have used the regulatory guillotine strategy have explicitly budgeted for a national communications campaign to explain to the people in need for the reform and what they should expect from it. Such a campaign solidifies political commitment, reduces resistance, and attracts allies. Belgium's Kafka initiative is a good example of communication in another country facing challenges which are slightly similar to Italy.

Administrative simplification and other broad-based reforms are certainly more difficult to communicate. Better publicity of the potential benefits of reforms, through active communications campaign, would help to bring the results of reforms to the forefront of the public attention.

Conclusions

In times of crisis, Italy is better equipped to deal with tomorrow's challenges. Much progress has been made, building on the efforts of recent consecutive governments. However, persuading citizens, administrations and businesses of the need of reform is a key aspect and a challenging task in a tense public policy context. While a sense of crisis exists in the country, it has long remained diffuse and captured by political divides, while strong local social networks where buffeting the impact for single individuals as part of family networks. Beyond the current crisis, Italy will need to find new sources of economic growth, fighting the slow erosion of relative living standards, and offering increased opportunities to its younger generations. This is critical to address the combined effects of ageing, labour market trends and rapid rise of new economies.

The OECD experience of reform offers many opportunities for hope, as it is overall a positive one. Reform policies reinforce each other. Policies aimed at increasing market forces in one sector, may help to generate positive change, increasing the viability of later reforms in other sectors where opposition was initially stronger. It may be an issue of timing and opportunities, where governments should be encouraged to direct their efforts towards new and clear frameworks, with sustained effects over time.

Multi-level governance certainly offers new opportunities and challenges for Italy, as it is well suited to the structure and history of the country, but also includes potential costs. It is therefore very important to see how multi-level governance can be put to work efficiently and effectively, through stronger agreements and use of economic incentives. Italy needs to adjust its regulatory system as a whole, both to new economic circumstances and to face the continuing pressures of the EU agenda. Bold attempts and significant progress have been made in this field in recent years. However, timing of parliamentary procedures and the need to conduct formal consultation with regions certainly represent significant challenges in terms of due process and attention to regulatory quality.

Another issue concerns all the services and policy areas that are significantly devolved to local and regional authorities, including local public services, or core economic sectors such as commercial distribution, transport and energy, which are key to the economic future of the country and its competitiveness. Energy has been subject to significant recent

debate and proposed actions, but these need to be considered in the complex interplay of local and nation-wide regulations which frame the energy sector, including environmental and social consequences. Local transport is key to the attractiveness of the various territories and the success of Italian clusters and metropolitan areas.

The need to build further infrastructure as well as address the shortcomings of energy supply are part of the government's broad long-term agenda for growth. The government has taken significant steps in this respect recently. The speed of some major infrastructure projects is also an issue, in terms of coping with pressing needs and providing high speed train and interconnected territories. While recent government initiatives represent praiseworthily efforts, it will be important that they be accompanied by streamlining regulatory processes and increased institutional efficiency in order to avoid significant delays. Accelerating the pace of change may also improve regulatory processes and increase certainty and transparency.

Recent and bold attempts made in terms of simplification and liberalisation bode well for the future. Italy has significant capacities to move ahead, and the EU agenda provides here clear support for domestic initiatives. The progress made in cutting redundant and unnecessary laws is impressive. Reform and the vigorous application of regulatory quality principles on new regulation have the potential to make a significant contribution to Italy's economic development in a wide range of policy areas, as illustrated in this report. Seizing these opportunities facing the political costs but also the benefits ahead in terms of restored economic growth, is the policy challenge that faces Italy in the years to come.

Notes

1. European Commission (2006), communication from the Commission, "Economic reforms and competitiveness: key messages" from the European Competitiveness Report COM(2006)697/final, Brussels, 14 November.
2. See *http://ec.europa.eu/governance/better_regulation/index_en.htm*.
3. European Commission (2006), communication from the Commission to the spring European Council, "Time to move up a gear: The new partnership for growth and jobs," Brussels, p. 9.
4. Emma Marcegaglia (Confindustria) and Federica Guidi (Giovani imprenditori), Il Sole24 ore 7/6/08.
5. Some of the analysis in this section is also presented in the OECD (2009), *Economic Survey of Italy* as the analysis was prepared jointly.
6. For a discussion of the challenges of raising employment rates for older workers in Italy, see OECD (2004a).
7. The OECD 2008 *Employment Outlook* shows that effective legal protection against discrimination may be significantly weaker in Italy than in most countries: while the basic legal provisions are similar, there is little provision for protection of a person who actually makes a complaint, or of witnesses, and this may explain why complaints are rather few. While reinstatement is a right in the case of unfair dismissal, rights to any additional monetary compensation are unclear so the incentive to complain is probably low.
8. Some of the analysis in this section is also presented in the OECD (2009), *Economic Survey of Italy* as the analysis was prepared jointly.
9. A recent revision to the method for breaking export values into prices and volumes made a significant difference – relative prices, while still rising, have risen by much less than previously estimated.
10. They have been relatively active in Romania, for example. Significant numbers of Romanians moved to north-eastern Italy to work in manufacturing industry, probably helping some companies to remain in low value-added production longer than otherwise, but the links between

the countries now seem to have partially reversed as Italian entrepreneurs are among those active in Romania itself, moving some low value-added production out of Italy.

11. Ichino (2008) mentions a number of examples, including an unsuccessful attempt by the Swiss-Italian rail company Ti-Lo (*Treni regionali Ticino-Lombardia*) to introduce working conditions – and pay – for its Italian workers similar to those for its Swiss employees, the opposition to a foreign takeover of Alitalia, and other examples in which choices that were at least potentially Pareto-improving for Italian workers could not even be offered to them.

12. Probably only around a quarter of the labour force is covered by Article 18, taking account of the large number of workers in small companies or self-employed, or in the public sector, though the latter have similar protection in practice. An economist advising the government on labour market reform was assassinated, supposedly because of his advocacy of the abolition of Article 18, in March 2002. A number of other labour market experts involved in policy discussion at the time are still under police protection.

13. Total factor productivity calculations are a way of adjusting simple output-per-head figures for the influence of the capital stock. They depend on assumptions for the form of an aggregate production function, and on reasonable data for the capital stock or flows of capital services.

14. Specific threshold effects due to labour regulation do exist, but in practice they are relevant only for very small firms – those with fewer than 16 employees. Such firms are subject to less costly penalties for certain kinds of dismissal than larger firms. However, although some studies have shown that this does act to reduce average firm size, the effect is very small, barely noticeable, in fact (Schivardi and Torrini, 2004), in a study using a longitudinal database of firms between 1986 and 1998, estimate that removing the threshold effect would increase average firm size by only 1%.

15. See *e.g.* Foster, L. Haltiwanger, J. Krizan, C. J. (2006), "Market Selection, Reallocation, and Restructuring in the US Retail Trade Sector in the 1990s", *Review of Economics and Statistics*, November 2006, v. 88, iss. 4, pp. 748-58. Griliches, Z., H. Regev (1995), "Firm Productivity in Israeli Industry: 1979-1988", *Journal of Econometrics,* January 1995, v. 65, iss. 1, pp. 175-203, Bartelsman E., Scarpetta, S.; Schivardi, F. (2007). Comparative Analysis of Firm Demographics and Survival: Evidence from Micro-level Sources in OECD Countries, *Industrial and Corporate Change*, June 2005, v. 14, iss. 3, pp. 365-91.

16. This annual economic survey (OECD, 2005) devoted a chapter to corporate governance issues. See Micossi (2008) for one perspective, also Ichino (2008).

17. However, the authors find that venture capital financing has a positive impact on firms' success which is not due to founders' education, but has most likely to do with the true added-value in terms of networks, resources and skills of venture capitalists.

18. Programme for International Student Assessment.

19. A number of important origin countries (notably Romania, also Poland) have become EU members, and changes in official population numbers are complicated by the regularisations of illegal immigrants, when sharp rises in official population statistics do not necessarily imply such large increases in the true population.

20. Comparison of numerical values of aggregate indicators can be difficult because it is hard to know how to weight the many detailed indicators that compose the aggregates. Various weighting schemes have been tried, without any method being obviously superior; the 2007 indicators now used a system of equal weights. For a discussion of this and other issues related to the latest product market regulation indicators, see Wöfl *et al.* (2009).

21. To encourage transparency, the Ministry of Public Administration announced that ministries should publish the salaries of senior officials on their websites, and does so itself for 9 of its officials (as of 26/09/2008). Few other ministries have followed suit.

22. 2004 figures. See Bianco *et al.* (2007); CEPEJ (2006).

23. Istat data, quoted in Bianco *et al.* (2007).

24. OECD (2001), *OECD Review of Regulatory Reform in Italy*, p. 176.

25. Inter-ministerial Committee for administrative simplification and quality regulation policies *(Comitato interministeriale per l'indirizzo e la guida strategica delle politiche di semplificazione e di qualità della regolazione)*.

26. Even if its size has been scaled down in 2009.

27. See Legislative Decree 82/2005.

28. See Presidenza del Consiglio (2005), *Relazione al Parlamento sull'attuazione dell'Art. 14, comma 12,* della legge 28 novembre, No. 246 *("taglia-leggi")*, of 14 December 2007, p. 22. The report estimates that 5-15% of the approximation error is due to the incomplete or incorrect classification of the legal acts by the different database systems.

29. This is the date when the regions, foreseen by the 1948 Constitution, were introduced in Italy.

30. See Consiglio di Stato, *Parere sullo schema di decreto legislative recante il Codice dei diritti di proprietà industriale*, Adunanza generale 10548/04 del 25 ottobre 2004. On the opinions given by the State Council on the first *codici* scrutinised, see G. Savini, "I pareri del Consiglio di Stato sui primi schemi di 'codice di settore'", in *Iter Legis*, No. 4, 2005, p. 5. On the merit of recasting trhough the *codici*, see F. Patroni Griffi, "La 'nuova codificazione': qualche spunto di riflessione", in M.A. Sandulli (2005), *Codificazione, semplificazione e qualità delle regole*, Milano, pp. 75-80.

31. See A. Natalini (2003), "Legge 29 Luglio 2003; No. 229 – Il commento", in *Giorn. Dir. Amm.*, No. 10/2003, p. 1007 ss.

32. See Centro Studi Unioncamere (eds), *Rapporto Unioncamere 2007*, *Temi chiave e sintesi dei principali risultati*, 2007, pp. 44-45.

33. See P. Dubini and A. Melchiodi, "Misurare la competitività dei sistemi economici: L'indicatore Doing Business", in *Economia & Management*, forthcoming.

34. See "*Relazione al Parlamento sullo stato dell'amministrazione*", report of the Parliement on the state of administration.

35. This is a necessary assumption to allow the use of econometric estimation on a relatively small sample.

36. At the time of writing, it is hard to identify the particular sectors which explain the difference between this backward looking simulation and the forward-looking ones discussed below.

37. Note that there is not one single country that has the least restrictive regulatory policy in every single sector, so that this simulation would actually imply bringing Italy at the forefront of regulatory practices of all OECD countries.

38. Note that the effects reforming single non-manufacturing sectors are not simply additive in the simulation model. In fact, the sum of the impact of the single-sector reforms is larger than the expected impact of a thorough reform of all services sectors, due to the non-linearities and the catch-up process built into the empirical model.

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PART II

Regulatory Policies and Outcomes

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Chapter 2

Government Capacity to Assure High-quality Regulation

This chapter assesses government capacity to assure high-quality regulation in Italy, including regulatory institutions, tools and policies. It discusses capacity for reform, including the mechanisms in the executive and the role of Parliament, as well as sectoral regulatory authorities and the co-ordination with the European Union. The chapter analyses the transparency and predictability of the regulatory framework. It discusses the strategies for improving the quality of new regulation in Italy, including Regulatory Impact Analysis and the search for alternatives. Finally, it discusses the strategies for improving the regulatory stock. This covers the recent progress with legislative simplification and the introduction of the "Guillotine Clause". It also reviews recent efforts towards administrative simplification, including the measurement and reduction of administrative burdens, and efforts coupling simplification and ICT innovation.

Introduction

The reforms on which Italy has embarked since the 1990s constituted the first of a series of substantial interventions on the organisation and *modus operandi* of the Italian public administration. An important phase was the so-called "Bassanini period", named after Franco Bassanini, the Minister responsible for the public administration and the reform of the State between 1996 and 2001. In 2001, the OECD carried out a first assessment of the initiatives launched as part of its *Regulatory Reform Review of Italy* (OECD, 2001).

The 2001 Review considered that the Italian regulatory and administrative system was the source of heavy and often unnecessary bureaucratic burdens on the public and on businesses. It was characterised by high regulatory inflation as well as aggravating factors: ambiguity, contradictions, and overlapping layers of rules. These factors generated uncertainty about market rules. The reforms in the 1990s were an unprecedented effort to transform Italian regulatory practices into a market-oriented and citizen friendly approach. They were accompanied by a process of privatisation, decentralisation, and liberalisation, which transformed the institutional and economic environment, and which also involved institution building through better regulation. After four years of reforms, in 2001 the progress made was considered to be "impressive" (OECD, 2001). The 2001 Review made, however, a number of strategic recommendations to accelerate, broaden, deepen, and sustain the Italian regulatory reform programme. This report assesses the progress made by Italy in the light of these recommendations in terms of better policies, institutions and regulatory quality tools.

Assessment must note an important change in the context of regulation in Italy. The reform of Title V of the Constitution radically changed the regulatory and administrative environment, towards a multi-level governance system, in which regulation is devolved and fragmented across various institutions. The OECD recognised the fundamental impact of the constitutional devolution in its 2007 study, "Italy: Ensuring regulatory quality across level of government". This change is also acknowledged in the current review, which will address the multi-level governance aspects in a separate chapter.

This chapter assesses progress made since 2001, but it adopts a broader perspective. The constitutional reform has reduced the relevance of one-to-one comparisons of the current situation with the pre-2001 framework. Therefore, the chapter will discuss recent developments of regulatory policies that have taken place since 2001 and assess them in the light of best international practices as well as the OECD 2005 *Guiding Principles for Regulatory Quality and Performance*. The structure of the chapter is the same as the 2001 Review, and includes a final section on assessment and recommendations.

Regulatory policies

The OECD 2005 *Guiding Principles for Regulatory Quality and Performance* call on countries to recognise that key elements of regulatory policies, policies, institutions and tools, should be considered as a whole. These principals also call for "a dynamic approach to improve regulatory systems over time".

Regulatory reform is an explicit, dynamic, continuous and consistent "whole-of-government" policy to draft, update, apply and enforce high-quality regulations and foster public understanding of these processes (OECD, 2006a). It seeks to ensure that decision making meets the needs and expectations of citizens, economic agents and stakeholders in the most legitimate, proportionate and cost-effective manner and keeps the impact of unexpected/unintended consequences to an accepted minimum. Evidence from OECD countries shows that regulatory reform boosts economic growth, improves the competitiveness of export and upstream sectors, and enhances flexibility and innovation in the supply-side of the economy. As a result, jobs are created and the vulnerability to economic shocks is reduced. Regulatory reform also strengthens the protection for health and safety, the environment and consumers. Finally, regulatory policies sustain processes of market liberalisation, de-centralisation as well as globalisation (Conway *et al.*, 2005; Czaga, 2004).

Drivers of reform in Italy: Regulatory policies driven by simplification efforts

The Italian national strategy for quality regulation has benefitted from external drivers and pressure. Recent international reports, by the OECD and other economic organisations such as the World Bank, the Institute of Management and Development, and the World Economic Forum, have shed light on the importance of the regulatory framework for economic competitiveness and growth. Throughout the years, Italy has participated in various international projects aiming at benchmarking national performances and sharing best practices, particularly at the European Union's (EU) level.

Since 2002, the European Commission has embarked on a major "Action Plan for Better Law-making".[1] Measures to improve the EU regulatory environment were consolidated in a programmatic Inter-institutional Agreement signed by the European Commission, the European Council of Ministers and the European Parliament in 2003. In the framework of the re-launch of the Lisbon Strategy in 2005, the EU requested that each member state produce and implement national plans for competitiveness and growth. The plans were designed to encourage progress in each member state, including competitiveness policies: administrative simplification, education policy and R&D investment, social and labour policies, structural policies, as well as macroeconomic and public spending policies.[2] Better Regulation principles and tools are part of the policies that should be enhanced to achieve "growth and jobs" (European Commission, 2005). One of the key aspects promoted by the EU is improving the co-ordination of regulatory policies among the member states and between these and the EU institutions. To this end, for instance, a high-level group of national regulatory experts was established to advise the Commission on its general strategy to simplify and improve European legislation and to facilitate the development of better regulation measures at both national and EU level.[3] All these recent developments had a significant impact on Italy.

The main objective pursued by the Italian authorities has been to improve the competitiveness of the national production system, especially further to the re-launch of the Lisbon agenda at EU level. In particular, greater emphasis has been put on linking simplification to the initiatives aimed at liberalising economic activities and modernising government. At the same time, better regulation has been pursued to increase legality and boost the confidence of consumers, workers and businesses.

In Italy, regulatory policies have been mainly driven by the need for simplifying in both legislative and administrative terms. Legislative simplification is one of the pillars for regulatory reform, and it has become a priority at the European and national level. It aims

at replacing a complex, inconsistent and opaque legislative stock with one that is simpler, more transparent and coherent.

Recent developments

In the most recent past, efforts have significantly intensified and regulatory reform has been supported by a broad, by-partisan logic. The institutional setting that was set up at the end of the XIV legislature has been confirmed, consolidated, and fully enacted. The Government of the XVI legislature has advanced the regulatory reform agenda substantially and rapidly. In terms of *structure*, it has propelled the agenda with strong political leadership, with two main drivers. First, the appointment in 2008 of a Minister for Normative Simplification reflects OECD recommendations for strengthening support for regulatory reform at the highest political level and provides impetus for implementation. Besides this office, the Minister for Public Administration has injected strong input and commitment to advance the administrative simplification agenda, enhance evidence-based decision-making (notably through measuring and reducing administrative burden), and increase quality and efficiency of the performance of public administration officials. Initiatives by the Minister of Public Administration have for instance led to a significant decrease in absenteeism by civil servants.

A robust *strategy* for regulatory reform has been implemented. The new climate launched by the Italian Government is embodied by the Legislative Decree 112/08 adopted in June 2008 and converted into law in August of that year (Law 133/08). As an indication of the political importance granted to regulatory reform, and simplification in particular, not only the title of the law explicitly mentions these policy areas, but also a specific chapter was devoted to them – a novelty for a budgetary law (*legge finanziaria*). The Legislative Decree 112/08 made three key areas of intervention operational: the "cutting-laws"; the "cutting-burden"; and the "cutting-bodies" initiatives. The Government's new strategy also includes strengthening the interface between actions aimed at improving the quality of regulation and initiatives dedicated to enhancing the outputs of the public service. For instance, there is now a closer connection between the evaluation of top managers and the achievements of the objectives set to their services in terms of regulatory reform (see Box 2.1).

In addition, the most recent initiatives include a Directive by the Presidency of the Council from 26 February 2009, which aims at a broad definition of the framework for regulatory reform. This involves setting up a perspective encompassing regulatory quality to consolidate the existing tools in Italy (RIA, ATN, VIR, see infra). The goal is to present for the

Box 2.1. **Moving up a gear in Italy's simplification agenda: The DL 112/08**

With the adoption of Legislative Decree 112/08, the government signalled its commitment to advance regulatory reform, and simplification initiatives in particular, in a decisive and speedy manner. Such an approach testified of the rooted awareness that simplification not only allows for clarity and transparency, but it contributes to the overall competitiveness of a country. More in general, better regulation is considered in Italy as a fully-fledged policy that goes beyond sectoral needs and agendas. The approach also drew from the experience and efforts made in the recent past by Italy in advancing the agenda following a by-partisan and comprehensive line. The rapidity with which the decree could be designed and adopted speaks for the preparatory work done by the previous legislatures.

Box 2.1. **Moving up a gear in Italy's simplification agenda: The DL 112/08** *(cont.)*

The Legislative Decree 112/08 reinforced and made operational three key areas of intervention:

The "cutting-laws" mechanism (*taglia-leggi*) – Art. 24 concludes the first phase of the guillotine mechanism (*i.e.* the inventory) by repealing some 7 000 old laws. As such, by itself it has reduced the Italian legislative stock by one third, bringing the number of State legislation in force down to 14 600.

The "cutting-burden" mechanism (*taglia-oneri amministrativi*) – Art. 25 foresees completing the measurement and reduction of administrative burdens (MOA) by 2012; designing programmes to achieve the target of -25%, involving each ministry as well as the individual top managers responsible for that policy; and introducing fast-track procedures. Calculations carried out in the first part of 2008 estimated the amount of burdens affecting five key areas of regulation of the Italian economy to be over EUR 16 bn. The simplification measures introduced by the DL 112/08 are expected to cut about EUR 4.1 billion (or -59%) in the labour sector, only.

The "cutting-bodies" mechanism (*taglia-enti*) – Art. 26 abolishes all those public administration bodies that do not provide economic services and that are staffed by less than 50 employees. All other bodies that are not explicitly declared or justified will also be closed (exceptions are listed by the law).

In addition, the "cutting-paper" provision (*taglia-carta*) – (Art. 27) by itself is expected to save EUR 500 million. All these initiatives are implemented and closely monitored by the Minister of Normative Simplification and the Minister of Public Administration.

first time an organic and coherent framework for the policies for better regulation. While this represents a step towards redefining the flows, its effectiveness to discipline the complex machinery of government and public administrations will have to be assessed over time.

At the same time, two comprehensive programmes for reforming the public administration – two proper "industrial plans" – have been launched by the Minister for Public Administration. The "Public Administration Industrial plan" seeks to enhance accountability and modernise the public service by shifting away from procedural aspects to concrete outcome-oriented actions. The goal is to increase the productivity of the public administration, through:

Optimising labour productivity, notably by rewarding merit, improving performance criteria and staff appraisal, and restoring the role and tasks of managers;

Reorganising public administration, in particular by introducing the concept of task mobility, focusing on quality and "customer satisfaction", optimising the use of publicly-owned real estate; and

Supporting and enhancing sponsoring and project financing so as to optimise the use of financial resources.

The plan involves the use of better regulation tools, and is underpinned by the Departments for Public Administration, the National School of Administration, the CNIPA, the Italian Agency for Collective Bargaining for the Public Sector (ARAN), and the FORMEZ. As a result of change, administrations are invited to move away from single experiments towards a logic of standardisation, with services for citizens and enterprises through a number of new initiatives. The Public Connectivity System (SPC) is being implemented

with a back-office meant to realise complex projects aimed at citizens and enterprises that require the collaboration of several central and local governments. The SPS will allow the public administration to interact with citizens as a single window with a one-stop shop. The implementation of broad band will be accelerated trough the digitalisation of services to citizens and enterprises. The resources need to be raised with project financing and co-financing. In addition, the "Friendly Networks" project (*reti amiche*) will provide a system for the delivery of public services to citizens through the contact points of post offices, tobacconists, banks in agreement with the Italian Banking Association, pharmacies, large retailers. These networks will be made complementary to each other and to the one of the public administration. The Friendly Network project involves no additional cost for the administration and will allow citizens to access public services in their own neighbourhood in a user-friendly way.

As a part of the reform programme, measures have been launched towards establishing a performance-based evaluation system. Acknowledging a certain lack of accountability among managers and civil servants and the sub-optimal quality of performance measurement, the Council of Ministers adopted a draft law enabling the Government to adopt decrees to enhance productivity and efficiency in the public sector. One of the main innovations would be the setting up of a central body in charge of defining and disseminating performance-based quantitative and qualitative methods, as well as monitoring their implementation. The Law 15/2009, Brunetta Law, will also establish performance assessment mechanisms for staffs and structures of the public administration.

In order to improve labour productivity, a Protocol was signed by the Government and five civil servants trade unions (CISL, UIL, CONFSAL, UGL, USAE) in October 2008, closing all open basic wage agreements for 2006-07 and defining all the basic wage agreements for 2008-09. On the basis of this protocol, the Government plans to strengthen the role of performance assessment in the definition of additional wages, and devise a structural reform of the collective bargaining system for the public sector to be implemented as from 2010. Law 133/08 of August 2009 included a number of provisions that allow to better link wage increases to the budgetary performance of the administrations.

Before these most recent reforms, an attempt had been made to organise an Action Plan on Simplification and Quality of Regulation in 2007, shifting away from annual "simplification laws". The plan served as the central tool defining the main objectives of regulatory quality and simplification, the bodies responsible, the action to be taken, the criteria to be used, and the time required to achieve strategic objectives. The Plan also attempted to provide a unified framework for the overall body of legislative and administrative initiatives adopted by the Government that had a relevant impact on simplification. This included measures for reducing administrative burdens (setting a target of a 25% reduction by 2012); reducing procedural times (setting a 25% times reduction target); administrative process reengineering and e-government tools; legislative simplification and guillotine; facilitating the use of RIA for central administrations; building a national system for regulatory quality indicators; improving the co-ordination of better regulation policies between the central and local government and consultation with stakeholders. For each action, the Plan defined the main objectives, the responsible administrations, the time framework envisaged. The original ideal was for each Plan to be designed and implemented on the basis of broad consultations with the Regions, local governments and social partners. Consultations were carried out on the implementation of the 2007 Action Plan. The USQR and the

Department of Public Administration were charged of monitoring the implementation of the Plan. The government reported to the Parliament on the provisional results achieved in the framework of the Action Plan in November 2007 and in March 2008 (Presidency of the Council of Ministers, 2007 and 2008). This allowed to achieve some results[4] and to foster the diffusion of ICT in the public administration.

However, the action plan was also very complex, and was not easily communicable to the public. It absorbed significant efforts that remained partly internal to the administrations. Maybe, the resources for integration and co-ordination with other governmental policies were not fully matching the ambition of the plan. The political consolidation achieved recently aims to fill some of the gaps of the previous apparatus by providing a clear steering function to the reform efforts on the better regulation agenda.

Box 2.2. **Monitoring OECD recommendations: Political commitment to outcome-based regulatory reform**

In the 2001 Review, the OECD invited Italy to consider:

"Improving the transparency of, and commitment to, regulatory reform by adopting, at the highest political levels, an explicit policy on regulatory quality that is obligatory for all ministries, with measurable targets for reducing regulatory and administrative burdens. Adopt in the policy the principle that costs should be justified by benefits. Agreement by the Parliament and the regions with the policy would boost its benefits for Italy (OECD, 2001)."

In the light of the current review, Italy appears to have worked towards satisfying this invitation. Especially in the most recent period, a regulatory policy is being shaped that finds expression in dedicated structures both at the political and technical level – not least through re-centering the leadership for regulatory and administrative reform along the couple Minister for Normative Simplification – Minister for Public Administration. As a formal, strategic and programmatic tool, the Action Plan model allowed for simultaneous and consistent and co-ordinated action, implemented by the administrations in an integrated manner. The principle of assessing benefits against the costs of regulation, formally adopted in 1999, has not been fully enforced yet. The creation of the *Tavolo per la semplificazione*, the online public consultations on the implementation of the 2007 Action Plan as well as on the identification of possible further simplification areas ("*Le tue idee per semplificare*") were steps in the right direction.

Regulatory institutions and capacity

Regulatory reform mechanisms in the executive

OECD 2005 *Guiding Principles for Regulatory Quality and Performance* call on countries to "commit to regulatory reform at the highest political level". Political commitment is necessary not only to instil credibility in the overall reform agenda and to boost individual initiatives. It is also essential because it help counter and offset the structural tendency by public administrations to resist innovation and undergo mere inertial change. While this applies generally, each country must design and manage the reform according to its specific institutional and political setting.

Italy has taken such an approach notably with the appointment of a Minister without portfolio responsible for Normative Simplification at the outset of the XVI Legislature. This Minister is in charge of co-ordinating initiatives such as the *taglia-leggi* process. The Minister

closely works with the Minister of Public Administration and the one for the Implementation of the Programme with regard to relevant aspects of administrative simplification and evaluation practices and monitoring of central administrations' performance. The co-ordination of the measures aimed at simplifying the legal environment concerned by the Directive EC/2006/123 (the so-called "Services Directive") are also part of the new portfolio. In addition, the Minister takes care of inter-institutional relations. In addition to this ministerial appointment, the Presidency of Council of Ministers has now strengthened its Better Regulation structures, which operate in different areas:

- The Unit for Simplification and Better Regulation (USQR) and a newly created Structure for Normative Simplification, both providing support to the Minister for Normative Simplification:
  - The Unit for Simplification and Regulatory Quality (*Unità per la semplificazione e la qualità della regolazione*, USQR), builds on recent changes established by the previous legislature, and is now chaired by the Minister for Normative Simplification. The USQR now supports the Minister for Simplification with an extended mandate. The Unit consisted originally of up to 20 senior experts chosen among academics, State lawyers and counsellors of State, appointed part time, but this has been scaled down in 2009. The USQR is assisted by a technical secretariat of up to 14 people which became operational in March 2007. The Unit functions as a senior advisory board, involving high-level external experts, and serves as a transmission belt between the political arena and the more technical dimension of the reform agenda. The Unit prepares the annual Action Plan for simplification, jointly with the Departments of Public Administration and of Innovation and Technologies, as well as the annual Simplification Act. This Unit follows on earlier attempts to establish a *Nucleo* and an *Observatory* for simplification, as part of the first wave of regulatory reforms at the end of the 1990s.
  - The new structure for simplification is a dedicated department (*Struttura di missione*) created to assist the Minister for Normative Simplification, providing technical and organisational support, inputs on the preparation of simplification acts, and checks the conformity of legal acts with the national simplification targets. The new Department is composed of an administrative staff of around 30 people. The Vice-Secretary General of the Presidency of the Council of Ministers co-ordinates both the Unit and the Department.
- The Legislative Office (DAGL *Dipartimento per gli affari giuridici e legislativi*, DAGL) is a key element of continuity since 1988. Its responsibilities were enhanced under the recent directive adopted in 2009. The DAGL is headed by a Councillor of State and its deputy is a member of the highest Court in the judicial system (*Corte Suprema di Cassazione*), where they serve as experts and lawyers of the State. The DAGL serves as a focal point to manage the agenda of the Council of Ministers. It supports the government advising on the appropriateness of legislative drafts with the legislative offices of each ministry. The DAGL also checks whether the criteria justifying fast-track and urgent procedures are met. It co-ordinates normative matters with the independent authorities, relevant parliamentary bodies, the Constitutional Court and the State Council, as well as across levels of government. Moreover, the DAGL carries out analytical work on normative matters. The DAGL also includes a Regulatory Impact Analysis Unit, which has been charged with assessing Regulatory Impact Assessments since March 2000, through a specific unit. This task has been further consolidated by the new regulation on RIA of 2008.

- The Administrative Simplification Office (UANAS), which gives support to the Minister for Public Administration and Innovation. This structure of the Department for Public Administration is dedicated to administrative simplification activities. Jointly with the Unit for Simplification, and the sectoral administrations, UANAS serves as a co-ordination platform for the implementation of the measurement and reduction of administrative burden. It is supported by a "task force MOA", the *Scuola Superiore della Pubblica Amministrazione*, and the ISTAT. The Minister for Public Administration avails itself of its collaboration with the Department for Innovation and Technologies for the definition and implementation of measures related to the information society.

The recent changes are the latest of a series and reflect the evolution in the political context and the institutional design for better regulation in Italy throughout the past decade. Elements of continuity have accompanied significant organisational changes, as evidenced by the DAGL and USQR. However, the institutional context has also significantly changed following the 2001 constitutional reform (see Part III, Chapter 6). This reform re-allocated legislative competences across levels of government, and implied a fundamental re-thinking of the State's regulatory policies and its organisation.

The experience in 2005-07 led to setting up an Inter-ministerial Committee (*Comitato interministeriale per l'indirizzo e la guida strategica delle politiche di semplificazione e di qualità della regolazione*) in 2006, which was conceived with a view to provide strategic guidance for simplification and regulatory quality and to serve as an instrument of regulatory policy co-ordination at the national level. The Committee was located at the heart of the executive and was chaired by the President of the Council of Ministers (who delegated the Minister for Normative Simplification). In addition, a permanent board for simplification (*Tavolo permanente per la semplificazione*) established in March 2007 is intended to facilitate consultation on projects related to simplification.

A number of independent institutions participate in the normative process, as indicated in the 2001 Review. Among them, the State Council (*Consiglio di Stato*), which is also the supreme administrative tribunal and a controller of legality, advises on administrative and legal affairs and reviews all secondary regulations approved by the Council of Ministers. The Court of Accounts (*Corte dei conti*) plays a control role on the government's regulatory powers. The Constitutional Court's role in the normative process has been further highlighted by the numerous legal disputes which have arisen since the reform of Title V of the Constitution.

Assessment

Overall, the new institutional design at both political and expert levels is closer to OECD best practices than previous frameworks. In particular, it reflects an acknowledgement by Italian governments of the need to maintain active political commitment to regulatory reform. The bodies that are close to the centre of the government, including the structures for administrative simplification and the USQR, provide leverage when preparing and underpinning inter-ministerial initiatives. The appointment of a Minister explicitly charged with legislative simplification, entrusted with the leadership of both the Inter-ministerial Committee and the USQR, and with significant co-ordination functions represents significant progress. The renewed input for reform by the Minister for Public Administration, notably on matters of measurement and reduction of administrative burdens and on the evaluation of public service's performance, completes the promising picture. This strategic approach is a valuable condition for

fostering policy coherence and maintaining continuous input to Italy's regulatory reform agenda, while maintaining responsibilities at a lower and decentralised level. This should help foster a "whole-of-government" approach to regulatory reform, while mobilising expertise for reform where sectoral know-how is most readily available.

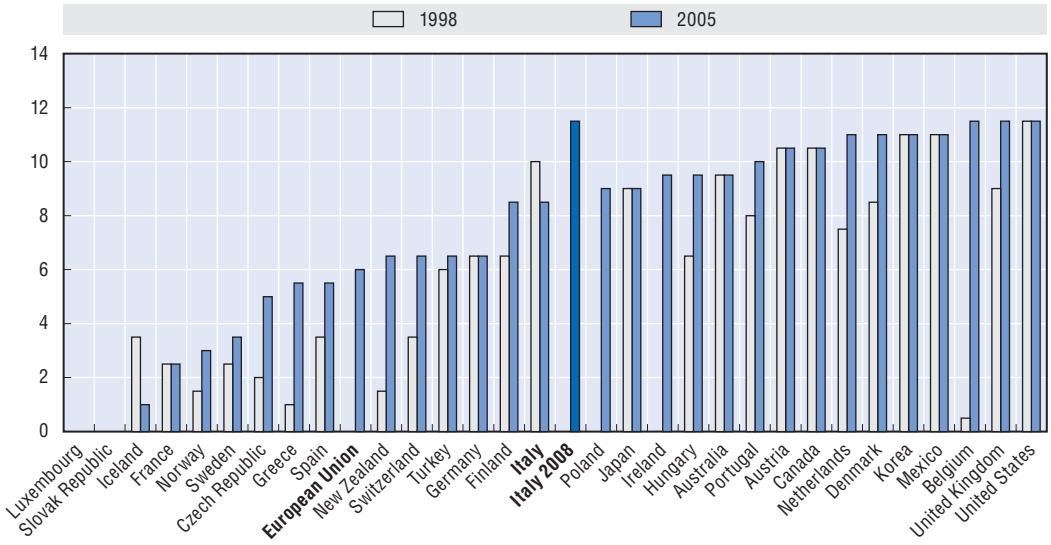
The *struttura di missione* attached to the Minister for Normative Simplification, the USQR and its secretariat provide technical support. Since the USQR was also brought under the remit of the new portfolio, this meant that the overall amount of resources dedicated to regulatory reform and simplification at the centre of the government considerably increased. The changes also implied an enhanced political visibility and relevance of these bodies. However, they are a temporary structure (although with an undetermined mandate), which differs from the situation of many OECD countries, where regulatory oversight and co-ordination bodies are permanent structures within governmental structures. The DAGL continues to serve as an important body for legislative affairs and as a key gatekeeper in the overall agenda of the government.

The Inter-ministerial Committee, which has been active during the XV legislature, has reflected a wish to move away from the rather fragmented approach of regulatory policies of the past. Following the decisions to dismantle the *Nucleo per le semplificazioni* and the *Osservatorio* in 2002, there had been a reduction of the institutional capacity for regulatory quality oversight between 1998 and 2005, as suggested by the OECD regulatory management system indicators. However, these indicators were based on data prior to the establishment of the Inter-ministerial Committee in 2006, which reflected the need to create a central body injecting political leadership and operational guidance to regulatory policies. The recent organisational changes are likely to contribute to consolidate Italy's efforts to give the reform agenda consistency and continuity in the forthcoming years, as updated data for 2008 reflects (see Figure 2.1). As a result, Italy is brought back to a situation that is comparable with other relatively advanced countries.

While the current framework does not exactly match regulatory quality oversight as in countries such as the UK or the US, possibilities for oversight do exist in Italy: the meetings taking place before the Council of Ministers (the so-called *pre-Consiglio*) act as a form of a central gate-keeper of the Government's agenda, where issues of regulatory quality can be taken into account. The Council of Ministers cannot discuss a document not examined by the pre-Council.[5] In a way, it is similar to the Canadian Treasury Board. The DAGL acts therefore as an important filter on legal and analytical matters, even though its filtering function is not expressly acknowledged and not fully linked to the RIA process (see the section on RIA below). In addition, the State Council plays a scrutiny and advisory role. Its opinions are not binding for the Government, but they weight is enhanced by the fact that the Council can later intervene as the highest administrative Court to assess sub-legal regulations, an approach very similar to the French model. As a result, the executive normally takes them into account.

The new setting nonetheless still presents some challenges in terms of co-ordination. The strengthening of the co-ordination and incentive mechanisms by making operational administrations directly responsible for the development of plans for the measurement and reduction of administrative burden hints to a good practice. On legislative matters, however, co-ordination between the activity of the DAGL and those of the Ministry for Simplification is a crucial issue. The fact that the reform effort is supported by formally "temporary structures" differs from the situation of many OECD countries. More generally,

Figure 2.1. **Institutional capacity for managing regulatory reform, 1998-2005**



Note: The score on the chart reflects the following answers:

	Weights:
Do formal training programmes exist to better equip civil servants with the skills to develop high quality regulation?	if yes, weight = 0.5
If the answer is "yes":	
– Does this include training in how to conduct regulatory impact analysis?	if yes, weight = 0.5
– Does this training include use of alternative policy instruments?	if yes, weight = 0.5
Is there a dedicated body (or bodies) responsible for promoting the regulatory policy and monitoring and reporting on regulatory reform and regulatory quality in the national administration from a whole-of-government perspective?	if yes, weight = 3
Is this body consulted as part of the process of developing new regulation?	if yes, weight = 2
Does this body report on progress made on reform by individual ministries?	if yes, weight = 2
Can this body conduct its own analysis of regulatory impacts?	if yes, weight = 1
Is a specific minister accountable for promoting government-wide progress on regulatory reform?	if yes, weight = 2

A column "ITA08" has been added to reflect the Italian situation updated as of 2008 reflecting the deep institutional changes in Italy between 2005 and 2008. The data for other countries in 1998 and 2005 have also benefited from the peer review process undertaken in 2007-08.

Source: Jacobzone *et al.* (2007), *OECD Indicators of Regulatory Management Systems*, Jacobzone *et al.* (2007), updated by the Secretariat, p. 15.

there is still scope to further deploy control mechanisms to strengthen accountability at the various levels of the regulatory process (see Box 2.3). The effectiveness of the USQR as a unitary advisory body may still be challenged given the part-time nature of the commitment of the experts involved.

Box 2.3. **Monitoring OECD recommendations: Clarifying and assuring institutional capacity**

In the 2001 Review, the OECD invited Italy to consider "Improving the efficiency of rulemaking by clarifying the responsibilities in the rulemaking procedure of each major institution, and better integrating numerous regulatory quality procedures" (OECD, 2001).

This recommendation has been partly met. In a formal sense, the current institutional setting for regulatory reform should be more effective than in the past. The Ministers for Normative Simplification and of Public Administration should provide political guidance to the whole process, although it is still too early to fully measure its capacity to ensure coherence and leadership. Compared with the previous *Nucleo per la semplificazione*, the mandate of the USQR has been extended and further structured. The Unit provides for

Box 2.3. **Monitoring OECD recommendations: Clarifying and assuring institutional capacity** *(cont.)*

co-ordination among administrations. It organises their initiatives; monitors the simplification procedures; and controls the implementation of the objectives listed in the Action Plan for Simplification. The Department of Public Administration carries out its specific competences on administrative simplification, process reengineering, the measurement and reduction of administrative burdens, in collaboration with the USQR. There is also greater integration among regulatory tools. For instance, explicit cross-references have been introduced between legislative simplification (the guillotine exercise) and RIA, and between RIA and consultation.

Still, the allocation of roles and responsibilities may still involve the scope for overlap. For instance, synergies between administrative simplification initiatives and efforts to digitalise the administration have not been sufficiently achieved. Full integration between those two action points has remained open. While closely working for the Minister for Public Administration, the two parts of the administration charged with this responsibility (the Departments of Public Administration and of Innovation and Technologies) rely on two different bodies, the USQR and the CNIPA, respectively. They refer to distinct legal bases, as the norms derived from the various Simplification Acts are only partly integrated into the Digital Administration Code. They operate along different programmatic and guiding documents: the Simplification Action Plan as opposed to the annual strategic guidelines of the Minister for Public Administration and the three-year Plan issued by the CNIPA. (Even if significant synergies existed between this simplification plan and the dynamics of the introduction of new technologies in public administrations). The more recent efforts of "Business in One Day", and "Single communication for Citizens", show increased efforts towards co-ordination. Another example refers to the co-ordination of the implementation of Directive EC/2006/123 (so-called "Services Directive"), where the Department for European Affairs, the one for Public Administration and Innovation and the one for Regional Affairs are closely involved. The remit for the evaluation of the central administrations, falls under three different ministerial structures: the Ministers for Normative Simplification, for the Implementation of the Programme, and for Public Administration.

Moreover, clear mandatory and public guidelines governing the use of regulatory tools were not available at the time of writing this report. In addition, a system of checks and balances, with explicit incentives and responsibilities organising the relationships between the centre in charge of regulatory oversight, and the sectoral ministries, has not been formally implemented, even if the practice has moved in this direction.

The role of Parliament

The other part of the political process is the legislature. Italy is quite advanced, through a number of committees and procedures specifically addressing regulatory policies:

- In 1997, the Chamber of Deputies reformed its Rules of Procedures, with advisory and advocacy functions to improve the quality of the legal system. A regulatory checklist was issued and a bipartisan Committee on Legislation (*Comitato per la legislazione*) was created as the main advisory body for the work of the standing committees. The Committee advises the Chamber on the consistency, simplicity, clarity of drafting of proposals and on the effectiveness of simplification measures. The Committee must advise on all

decrees issued by the government and on all proposals for enabling acts and de-legislative acts to be adopted by the standing committees.

- In 2000, the Senate also established an Office for the Quality of Legislation (*Servizio qualità della legge*), with units responsible for compliance with the rules of drafting, for the review of RIAs issued by the government, and for review of the effects of laws.
- A Bicameral Commission for Legislative Simplification was set up recently (*Commissione parlamentare per la semplificazione della legislazione*) to give opinions on the various steps of the guillotine exercise. It also has a mandate for administrative simplification, with the right to render opinions on simplifying, amending or abolishing public administration bodies.

These institutions provide ample potential for valuable parliamentary involvement in a broad-based regulatory reform programme. These bodies offer capacity to institutionalise the regulatory agenda in parliamentary procedures. By many standards, Italy is here more advanced than many OECD countries.

More recently, and in relation to the cutting-laws' exercise (*taglia-leggi*), Law 246/2005 provided for the creation of a Bicameral Commission for Normative Simplification, which will give opinions on the various steps of the guillotine exercise. The Budgetary Law for 2008 (Law 244/2007) extended the mandate of the Bicameral Commission for Administrative Simplification, granting it the right to render opinions on simplifying, amending or abolishing public administration bodies.

Assessment

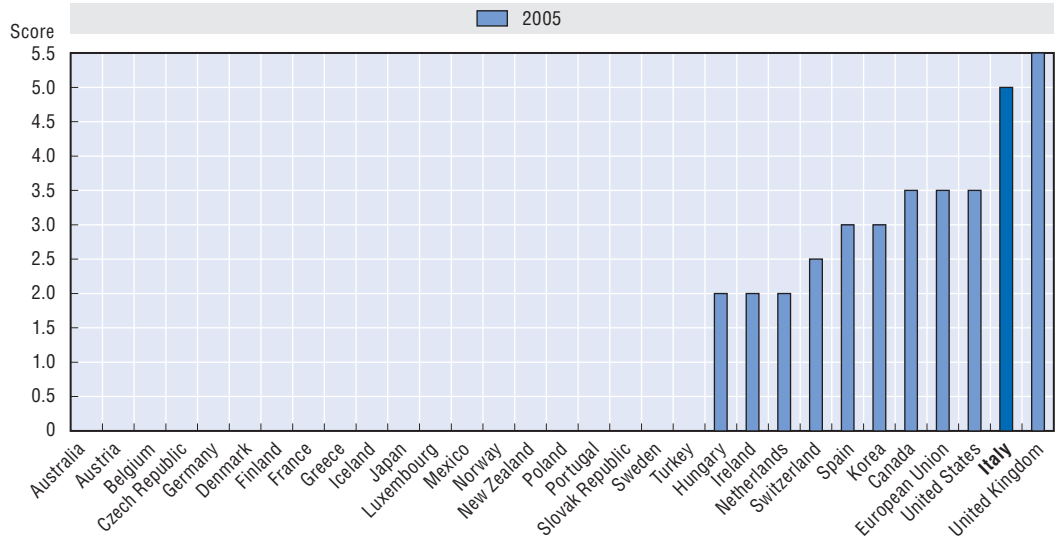
The role of the Parliament with respect to regulatory reform and its internal organisation has not changed significantly in the past decade, but remains however more developed in Italy than in other countries. The activity of the Parliament is adapting to the new context in which increasing recourse is made to enabling laws and delegated legislation. The Italian Parliament has established a number of committees and procedures specifically addressing regulatory policies. It also periodically reviews the quality of the proposed legislation and basic guidelines and criteria are in place to this end. Thanks to this setting, in this area Italy ranks among the top positions in OECD comparisons for parliamentary oversight of regulatory policy (see Figure 2.2).

Training and resources

Capacity building and training are an integral part of any regulatory reform programme. The OECD 2005 *Guiding Principles for Regulatory Quality and Performance* call on countries to "strengthen quality regulation by staffing regulatory units adequately, conducting regular training sessions." Beyond the technical need for training in certain techniques such as RIA assessment or plain drafting, they convey the message to administrators that regulatory reform is an important agenda, recognised as such by the administrative and political hierarchy. This fosters a sense of ownership on reform initiatives. Training helps instil a "new regulatory culture" in the public administration.

In Italy, training for regulatory policies is co-ordinated by the Office for Training of Public Administration Staff (Uffpa) located in the Department for Public Administration. The Ministry relies also on the National School for Public Administration (SSPA), for training senior civil servants. In addition, the Presidency of the Council of Ministers also organises specific training courses, such as a course related to RIA, ATN and VIR conducted in February March 2009. Most of the training programmes at regional and local levels are

Figure 2.2. **Parliamentary oversight of regulatory policy in 2005**



Note: The score on the figure reflects the following answers:

Is there a dedicated parliamentary committee or other parliamentary body with responsibilities that relate specifically to the regulatory policy/regulatory reform policy?	Weights: if yes, weight = 2
If the answer is "yes":	
Does this body periodically review the quality of the proposed legislation (*i.e.* lower-level rules)?	if yes, weight = 1
Is this body also entrusted to review the quality of subordinate regulation (*i.e.* lower-level rules)?	if yes, weight = 0.5
Is the review process, if it exists, explicitly guided by regulatory quality criteria?	if yes, weight = 1
Does this body review and report on progress on regulatory policy/regulatory reform across the administration?	if yes, weight = 1

The data for other countries in 1998 and 2005 has also benefited from the peer review process undertaken in 2007-08.
Source: Jacobzone *et al.* (2007), *OECD Indicators of Regulatory Management Systems*, p. 17.

implemented by FORMEZ (*Centro di Formazione Studi*). Between 2002 and 2008, FORMEZ carried out training, launched trial phases and diffused methodologies related to RIA, involving 15 regions. Five regions were involved in activities related to the measurement and reduction of administrative burdens.

Enhancing performance evaluation is an integral part of the reform package launched by the Minister for Public Administration. This includes the definition of a set of measurable targets that reflects the effectiveness of the public sector in matching the expectations and needs of the citizens and economic operators. The new system closely links the evaluation of the organisation with the evaluation of staff performance, notably of managers. This should enhance meritocracy, transparency of promotions and accountability. In a first phase of the reform, a central evaluation agency will be created charged with methodological aspects and the diffusion of evaluation practices.

These recent initiatives follow up with the Government's Directive on "*Per una pubblica amministrazione di qualità*" adopted in 2006, which urged the administrations to intensify their efforts to provide adequate training to their managers and civil servants in the methodologies and techniques for improving performance. Administrations were also solicited to adopt self-evaluation tools such as the Common Assessment Framework (CAF). In relation to the cutting-laws exercise, a help desk for problems of a legal nature was organised. A computer assistance service has also been provided through a permanent technical help desk service run by CNIPA. These are steps in the good direction.

Evidence in Italy shows that reform initiatives, if well managed, have produced positive results. Nonetheless, part of the challenges lies implementation. It can be hoped that the recent emphasis on outcome and productivity in public administrations will help to close the gaps.

Regulatory authorities

Regulatory agencies are increasingly a core element in the institutional framework and a key instrument of better regulation strategies. The OECD 2005 *Guiding Principles for Regulatory Quality and Performance* call on countries to "improve co-ordination and avoid overlapping responsibilities among regulatory authorities", and to "establish regulatory arrangements that ensure that the public interest is not subordinated to those of regulated entities and stakeholders". In many OECD countries, regulatory powers have been delegated to agencies to secure independent regulatory oversight and management of newly liberalised or privatised infrastructure sectors. Agencies generate a significant proportion of the regulations affecting key sectors of the economy, and have important powers of enforcement. In Europe, they can be directly engaged in the implementation of EC regulations covering their sector at national level and have been explicitly acknowledged by a number of EU directives.

As extensively outlined in the 2001 OECD Report, Italy has set up a number of independent authorities over the years. Throughout the 1990s, in particular, authorities have been established as a result of developments at the level of the EU, but also as a response to the need of addressing policy concerns which were felt to be best handled at arm's length from the political arena. The key economic authorities include the Competition Authority (created in 1990), the Energy Regulator (AEEG, in 1995), the Communications Regulator (Agcom, in 1997), the Isvap (in 1982), and the CONSOB (established as early as 1974). The Bank of Italy was founded in 1893. A recent case is the proposal by the government in October 2008, to establish a national Agency for Nuclear Safety.

The 2001 Report noted that these authorities are entrusted with significant independence, as well as with regulatory and quasi-judicial powers. These features vary from authority to authority, as do criteria for appointment, tenure of the executive board, and accountability procedures. Criteria for appointment and tenure of the executive board assure their independence. The authorities are accountable, as they have to report annually to Parliament. They are also subject to the audit of the Court of Accounts and their decisions can be appealed in courts.[6] Co-ordination between the sectoral regulators for communications and energy and the competition authority has worked smoothly. Financial sector institutions have been reformed recently to shift the decision on mergers to the competition authority.

Authorities have been the subject of significant policy debate in Italy in recent years. The issue was openly discussed and no consensus was reached on the establishment, role and organisation of the authorities. Italy has not yet equipped itself with a regulator in the postal service and in the public transportation sectors. The *Nucleo di consulenza per l'Attuazione delle linee guida per la Regolazione dei Servizi di pubblica utilità* (NARS), has provided the function since 1996. The XV Government tabled a proposal seeking to widely modernise the agency system in Italy (Law proposal AS 1366/2007). The proposal intervened on the number and nature of the authorities, also addressing the vacuum left in the postal sector, as well as in the transport and water sectors. The proposal sought to enhance, clarify, and guarantee the powers of the authorities. A new bicameral parliamentary commission for markets competition and regulation and for relations with

the authorities would be created. The board of the authorities would have been fixed to five members in order to improve governability and avoid political appointments.

Assessment

Law Proposal AS 1 366 would represent an important step towards rationalising the regime of the Italian authorities. Agencies would have been introduced in sectors where they are still missing and needed, and their number and functions streamlined where they are redundant. Above all, a set of common core principles would have been identified that govern and underpin each authority, which assures not only greater efficiency but also enhanced legitimacy and accountability, which would directly respond to the OECD 2001 recommendation on the topic. However, this dossier remained open during the transition of government in 2008.

Discussions on the independence of the authorities remain open within the Executive and the Parliament, even though in several core economic sectors the existence and statute of such sectoral regulatory authorities reflect EU directive requirements. These regulators have in Italy made significant contributions to sustaining momentum and effort for regulatory reform. Evidence especially from the Communications and above all the Energy Regulator (AEEG) shows in fact good practices in terms of stakeholder consultations and impact assessment, as well as significant achievements in terms of tariff reductions. Such practices are clearly ahead of the rest of the Italian regulatory framework and are close to the highest international standards (Eurelectric, 2005).

The debate in Italy, still unsettled for the regulatory agencies, mirrors the larger governance debate in the country, where questions of power, accountability, transparency and performance are still a moving agenda. Italy's rejection thus far of solutions that would politicise important regulatory decisions in the infrastructure sectors is welcome. This is a critical element in the context of building confidence for investors and also creating capacity for regulatory improvement in the future.

Box 2.4. **Monitoring OECD recommendations: Independent regulatory authorities**

In the 2001 Review, the OECD invited Italy to consider:

"Assuring an accountable, transparent and coherent approach to the use of regulations by independent authorities by assuring that they comply with the quality control procedures and government-wide regulatory policy. A first step should be the launching of a comprehensive, high-level and independent review of the performance, working methods and inter-institutional relationships of the sectoral regulatory authorities" (OECD, 2001).

Efforts have been made in redesigning the institutional approach towards regulatory authorities. This has generated some debate, with implications for the independence of the authorities. The recent law proposal for independent authorities (A.S. 1 366) would have offered a modernised regime for these authorities with a uniform framework and improved inter-institutional relationships. However, it has not been approved.

Co-ordination between levels of governments

This section mainly focuses on the national-EU interface since a specific chapter tackles this important dimension of regulatory reform in Italy, following the reform of Title V of the Constitution.[7]

The national – European Union interface

For many years, the interface between the Government and the EU level was governed by the so-called "La Pergola" Law (Law 86/1989), which *inter alia* established the Department for Community Policies (*Dipartimento per il coordinamento delle politiche comunitarie*) as an autonomous entity within the Prime Minister's Office. The EU enlargement in 2004 and the enhanced competences conferred upon the EU since the mid-1990s required an improvement of the channels through which Italy participates in the EU normative procedures. The gaps observed in the past in terms of complying with the transposition and implementation of the EC law required a re-organisation of the procedures dedicated to the transposition of EU legislation into the national legal order. Law 11/2005 ("Buttiglione" Law) operated in both these senses, introducing a two-tiered process that includes:

- a so-called "ascending phase", which refers to the way in which Italy takes part in the process of framing Community and EU decisions; and
- a "descending phase", which encompasses the process of transposing and implementing Community directives into the Italian legal system.

The first phase was not formally regulated before. Each ministry was autonomous and responsible for directly following up legislative and policy dossiers in its area of competence. Politically, the Inter-ministerial Committee for European Community Affairs (*Comitato intermministeriale per gli affari comunitari europei*, CIACE), acting as a sort of "European Affairs Cabinet", is now responsible for defining the Italian position on all EU dossiers. A standing technical committee supports the work of the CIACE. At a lower level, specific working groups have regular meetings.

A representative of the State-Regions Conference sits *de officio* at CIACE as well as in the technical committee's meetings, but these can be also convened in a special, "enlarged" format. Since 2005, the government is required to forward all draft EU acts and the related preparatory documents to both Houses of Parliament. At the same time, the Government forwards the same documentation to the Regions and the Autonomous Provinces in relation to matters within their spheres of competence.

The impact of the reforms introduced by Law 11/2005 on the second "descending" phase has remained limited. The main instrument used to implement EC legislation still is the annual European Community Act (*Legge comunitaria*). This "omnibus law" encompasses in a single text all the principles and the criteria for delegating powers to the government; the modalities for direct and delegated implementation, including the proposals for the related legislative decrees and the so-called "falling norms"; and the lists of the directives that need to be transposed and implemented by the various administrations for the year.

In case of emergency, or if expressly requested by rulings of the EU judicial organs, since 2005 EC obligations can nonetheless be implemented also through lower-level rules to guarantee the necessary promptness in complying with obligations that are so urgent that they cannot wait for the annual Community Act.

To further underpin Italy's efforts, a dedicated unit (*Struttura di missione per le procedure di infrazione*) was created within the Department in July 2006 with the specific task of preventing new infringements and better co-ordinating mechanisms aimed at settling existing ones. The *Struttura* seeks to liaise with the European Commission at the earliest stage possible to ensure the full and timely application of EC law. Internally, the unit has contributed to better organising common responses to information requests, letter of formal notice and reasoned

opinions. So-called "package meetings" are another very important instrument to jointly examine infringement proceedings or problematic cases in a given sector.

A further example of the recent efforts by the Italian government to facilitate the interaction between the regions and the EU is the creation of the Project on Opportunities for Regions in Europe (*Progetto Opportunità delle Regioni in Europa*, PORE).[8] Established by the Presidency of the Council jointly with the Department for Regional Affairs, PORE seeks to best exploit the opportunities offered by the EU regional policy and stimulate transborder and transnational collaboration. The initiative "PORE-VALORE LOCALE" in particular works towards enhancing the participation of the Italian regions and local authorities in European programmes and funds, assisting in the identification and preparation of calls for proposals as well as the implementation of EU-funded projects. The initiative also contributes to capacity-building at the local level. PORE organises seminars on "Local Governance and the European Union", in collaboration with ANCI, UPI, the *Scuola di Specializzazione in Studi dell'Amministrazione Pubblica* of Bologna and the *Università di Roma III*.

Box 2.5. **Putting Italy's infringements online: EUR-Infra**

EUR-Infra is a dynamic electronic national archive introduced by the Department for Community Policies in January 2008 (*http://eurinfra.politichecomunitarie.it/ElencoAreaLibera.aspx*). It seeks to improve the way the government handles infringement proceedings in relation to the transposition and implementation of EU legislation. EUR-Infra is constantly and timely kept up-to-date, which allows access to complete, reliable and official data on Italy's infringement status. EUR-Infra serves not only as a database but also as a tool to organise and manage information. It contains all the documentary material available for each infringement procedure and for the related activities (such as the correspondence among the administrations, information on meetings and co-ordination activities).

For the first time, this tool allows to search the archive according to specific keywords and criteria, identifying the kind of infringements, the policy areas, the stage where the procedure stands, the administration responsible, providing useful statistical as well as operational information. EUR-infra has proved to be a valid working tool to foster co-ordination among administrative actors that are various in nature and scattered on the territory – ranging from the central administrations and the Ministry for Foreign Affairs to the Italian Delegation to the EU in Brussels. EUR-infra works also as an interface between the administration and the citizens and economic operators on infringement cases. Its introduction has remarkably increased the transparency of and accessibility to information, while keeping the necessary confidentiality on the open proceedings. This system was set up and run at low cost, thanks also to the support of the *Struttura di missione per le procedure di infrazione*.

With regard to transparency and access to information, the Department for Community Policies has developed a rich and active interface with both other administrations and the business operators and the citizens, including enhancing the website (*www.politichecomunitarie.it*). Particularly innovative is the initiative seeking to increase the transparency of the infringement procedures ("EUR-Infra", see Box 2.5).

Assessment

With the adoption and implementation of Law 11/2005, Italy has started radically reforming its structures devoted to the transposition of Community law. On the "descending phase" front, the country has committed to establish systematic and

relatively close inter-institutional co-ordination (including for providing information on EU legislative proposals and EU acts to the relevant parliamentary and regional assemblies (or committees thereof). The law is still too recent to assess its full implications, but the potential for sustaining the positive trend is great. These investments have paid off. In twenty months, Italy's transposition deficit has fallen from 2.7% to 1.3% – a percentage in line with the EU average (1.2%) (see Figure 2.3). In January 2008, open infringements amounted to 198, the lowest number in the past five years. The European Commission's Internal Market Scoreboard of July 2008 shows that Italy remains the country with the highest number of infringement procedures (127) but it is also the one that has reduced the most its infringements in the first half of the year.

Figure 2.3. **Italian transposition deficit (1997-2007)**



Note: Data refers to the month of November each year.
Source: Dipartimento delle Politiche Comunitarie, 2008.

Beyond the most evident practical results achieved between 2006 and 2007, the new co-ordination structure can help instil a culture of collaboration and information sharing among officials working in different administrations and at different levels. The members of the technical committee underpinning the CIACE have for instance established a stable network of contacts in each of the sectoral administrations on European affairs. Such practices often did not exist before and are welcome.

The principal causes for infringing transposition obligations refer to the long deadlines for transposition. Under the Community Act 2007, the government has reduced the deadlines, and the delegation term by the Parliament to the executive coincides with the deadline for transposition provided by each directive. For those directives whose terms has already expired, or expires within the three months after the Community Act has been approved, the government has no more than three months to adopt the related legislative decree. Another issue is the complex and long procedure leading to the adoption of the Community Act, which has often delayed the adoption of the implementing decrees by the government. Therefore, the Community Act has become a heavy, all-embracing list covering different fields and including a large number of legal provisions. This does not leave much scope for considering costs, benefits and impacts, and may set aside considerations for regulatory quality in these matters. While the results are significant, they have been acquired at some cost. For all these reasons, the government is studying new, more efficient solutions for the transposition process.

By re-organising and centrally steering the ascending phase, Italy has acknowledged that sectoral or individual management of EU dossiers is no longer possible. Law 11/2005 provides for a good institutional and organisational framework. However, the reforms suffer from tough budget constraints. In addition, the various bodies are not granted with clearly defined powers and authoritative means to deliver efficiently. The system is based on the credibility and the moral suasion of the CIACE, and the agreements reached are voluntary and political. The recent provisions included in the Budgetary Law go nonetheless in the right direction and give the European policy more teeth to be effective.

Regulatory tools and procedures

Transparency and predictability

OECD 2005 *Guiding Principles for Regulatory Quality and Performance* call on countries to "ensure that administrative procedures for applying regulations and regulatory decisions are transparent, non discriminatory, contain an appeal process against individual actions and do not unduly delay business decisions", and to ensure that efficient appeal procedures are in place. They also stress the need to "consult with all significantly affected and potentially interested parties, whether domestic or foreign while developing or reviewing regulations".

Forward planning

In many OECD countries, forward planning is made mandatory as a helpful tool for improving transparency and co-ordination in rule-making. This contributes to increase the quality and predictability of decisions. Some countries periodically assemble lists and descriptions of forthcoming laws and subordinate regulations.

In Italy, while there is still a lack of structured activity for forward planning, a series of dedicated activities and instruments has been initiated. In the course of the XV legislature, the government adopted a political and programmatic document listing all the actions of commitment – the "Programme Tree" (*Albero del programma*) – managed by the specifically created department for the implementation of the programme. Moreover, a directive of the President of the Council in 2007 and strategic objectives for 2008 constituted the frame within which each ministry was called to set its medium term goals and actions. The annual Action Plan on Simplification was another strategic tool for planning and programming in relation to administrative and regulatory reform activities. Nonetheless, forthcoming legislative proposals are not systematically published yet. The Regulatory Authority for Electricity and Gas (AEEG) operates on a three-year rolling work programme system introduced in 2005, which constitutes a sort of regulatory agenda for the sector. The AEEG work plan is subject to annual public hearings.

Public consultation

Enhancing public consultation is a key element to ensure trust in the public, increase consensus for reforms. In Italy, the decentralisation of 2001 has accentuated the need for more systematic and open consultation practices. More thorough consultation practices and agreements have been experienced in a number of policy areas. So for instance has the Department for Public Administration and *Confindustria* signed a Protocol in March 2006 on the systematic identification of administrative burdens on businesses; the quick implementation of the online register for information obligations; the possibility to simplify

authorisation procedures; and diffuse online consultation practices. The measurement of administrative burdens in Italy has drawn from enhanced consultations (see below).

The government has recently accelerated the re-organisation of the institutions and the improvement of the procedures responsible for consultation, in relation to its simplification initiatives and beyond. A *Tavolo permanente per le semplificazioni* was established in March 2007. This standing forum has operated within the Unified Conference through a number of working groups that have concentrated on the specific action lines of the 2007 Action Plan. Further thematic focus groups have met to address additional dossiers, such as the reform of the administrative justice and transport.

The Code for Digital Administration of 2005 (Legislative Decree 82/2005) offered another opportunity for developing a more embracing consultation culture. The code opened the way to use ICT, and Internet in particular, for consultation purposes, and it contained a provision making explicit reference to online consultation. In implementing the code, the government organised for the first time a government-wide online consultation in relation to the Action Plan on Simplification for 2007. In 2008, an online consultation was also launched with a view to collect indications on the priority for simplification for the new Action Plan.

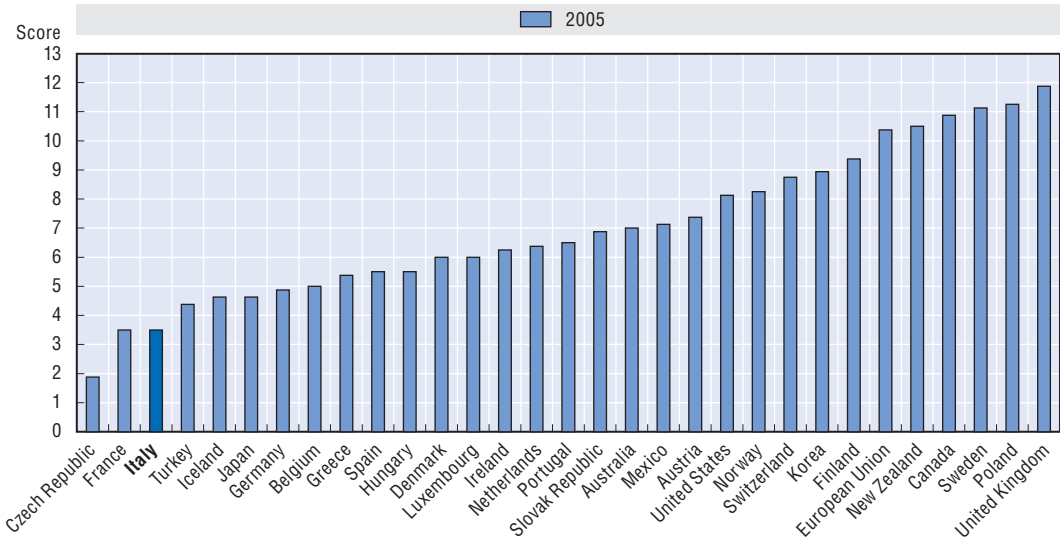
More specific requirements have been set on the regulatory activity of the independent authorities. The Communications Regulatory Authority (Agcom) and the Regulatory Authority for Electricity and Gas (AEEG), for instance, have developed consultation practices that are very close to the best international standards. These include the issuing of specific guidelines, the systematic organisation of hearings with the main stakeholders, and the online publication of consultation documents (coupled with the "notice and comment" procedure).

Assessment

In spite of these positive openings, the general principles and practices of public consultation in Italy have not drastically changed in the past ten years. For the vast majority of draft laws and subordinated regulations, consultations have often taken the form of negotiations between the government and the key third parties involved according to the model of *concertazione*. The interaction between central administrations, the regions, local authorities and the social partners have tended to follow informal negotiations taking place behind closed doors.

There is still no general requirement on central administrations for carrying out systematic public consultations in Italy at this stage. Consultation practices are still not disciplined by centrally co-ordinated, mandatory and uniform guidelines. Moreover, there are no formal legal requirements to publish the results of the consultations carried out, reveal the parties consulted, and provide a feedback on the impact that comments from the various stakeholders have had on the preparation of legislation. Central administrations are therefore autonomous in deciding when, how, and who to consult, often on a voluntary basis. As a consequence, it is difficult to draw a clear picture of the consultation practices as experience on the ground is very heterogeneous. It may be noted that the new guidance on regulatory impact assessment, issued in September 2008, would foresee consultation through electronic means with public and private subjects affected by a proposed regulation, as a preliminary phase in the proposed simplified RIA procedure.

Figure 2.4. **Quality of consultation processes in 2005**



Note: The score on the figure reflects the following answers:	Weights:
a) Is public consultation with parties affected by regulations a routine part of developing draft primary laws?	if no = 0, in some cases = 0.5, always = 1
b) Is public consultation with parties affected by regulations a routine part of developing draft subordinate regulations?	if no = 0, in some cases = 0.5, always = 1
If the answer is "always" or "in some cases" to *a)* or *b):* Primary laws *b(i)* Is consultation mandatory?	if yes, weight = 0.5
If the answer is "always" or "in some cases" to *a)* or *b):* Subordinate regulation *b(i)* Is consultation mandatory?	if yes, weight = 0.5
b(ii) What forms of public consultation are routinely used: Primary laws and Subordinate regulation – Informal consultation with selected groups? – Broad circulation of proposals for comment? – Public notice and comment? – Public meeting? – Internet? – Advisory group? – Preparatory public commission/ committee? – Other?	if ticked, weight = 0, 0.25, 0.5, 0.25, 0.25, 0.25, 0.25, 0.125
b(iii) Can any member of the public choose to participate in the consultation? Primary laws and Subordinate regulation	if yes, weight = 0.5
c(i) What is the minimum period for allowing consultation comments inside government?	c(i) if 1 week = 1.125, 2 weeks = 0.25,
c(ii) What is the minimum period for allowing consultation comments by the public, including citizens and business?	3 weeks = 0.375, 4 weeks = 0.5
d(i) Are the views of participants in the consultation process made public? Primary laws and Subordinate regulation	c(ii) if 2 weeks = 0.125, 3 weeks = 0.25, 4 weeks = 0.375, 6 weeks = 0.5
d(ii) Are regulators required to respond in writing to the authors of consultation comments? Primary laws and Subordinate regulation	8 weeks = 0.625, 12 weeks = 1
d(iii) Are the views expressed in the consultation process included in the regulatory impact analysis? Primary laws and Subordinate regulation	
d(iv) Is there a process to monitor the quality of the consultation process? (*e.g.* surveys or other methods, please specify in comments) Primary laws and Subordinate regulation	until end, if yes, weight = 0.5 except d(ii)

Data for other countries in 1998 and 2005 have also benefited from the peer review process undertaken in 2007-08.
Source: Jacobzone *et al.* (2007), *OECD Indicators of Regulation Management Systems*, p. 22.

International comparison highlights the rather informal character of consultation in Italy. As a result, current practices still fall short from the best available international standards, even if they are close to those of some of its close European partners (see Figure 2.4).

Consultation practices have also been disconnected from impact assessment procedures. However, it is promising in this respect that the September 2008 regulation establishing a simplified RIA (Decree 170/2008) includes consultation as one of the primary phases of that process in the future. It will be important that the related guidelines clearly set quality criteria and minimum standards in that regard. Recently, the Ministry of Public

Administration has used electronic consulting means to prepare the subordinate regulation to the Brunetta Law (Law 15/2009), mentioned in Part I.

The first experiences with online consultation are particularly encouraging. The consultation launched on the 2008 Simplification Action Plan provided a considerable amount (some 1 200) of comments and recommendations from the stakeholders. This suggests a diffused desire by economic operators, non-governmental organisations and citizens to participate more actively in decision making. As mentioned, good practices do exist for specific institutions, as illustrated by the experience of the Agcom and the AEEG regulators. All decisions on general regulation taken by the latter authority (some forty each year), in particular, are preceded by a written consultation procedure.

Still, the perception persists among the stakeholders of not being sufficiently involved in the decision-making process, especially as far as the identification of the problems and the preparation of legislative proposals are concerned. Options for improvement currently being envisaged involve to extend standard consultation periods (up to eight weeks), and to publish the various inputs on the website. The USQR, in collaboration with the Department for Public Administration, has elaborated a set of "Guidelines for online consultations" that, if implemented well, could significantly contribute to the institutionalisation and systematisation of consultation. The fact that the inputs from the consultation on the 2007 Action Plan have been published suggests that there is scope for implementing these good practices in Italy.

Legal drafting

Correct, clear and consistent drafting, including plain language, is an essential factor for increasing the transparency, the predictability and ultimately the enforceability and effectiveness of regulations. Countries typically seek to ensure legal consistency and clarity through training in drafting skills for the preparation of regulations, oversight by expert bodies, and specific guidance material for drafters. In Italy, this is linked with the general conformity assessment of new regulations with the overall existing framework.

Since 2000, Italy has acquired significant experience in performing Legal Technical Analysis (*Analisi tecnico-legislativa*, ATN) to evaluate the quality of the legal text. The timing and methodology to carry out ATNs were revised in September 2008 by a directive of the Presidency of the Council (10 September 2008). This includes assessing the implications on the legal order, in the light of the jurisprudence, and presenting it jointly with the technical-financial analysis and the RIA. As a result, more emphasis is put on the analysis of the national and international context as well as on the quality of drafting, and legal consistency of the legislative proposal. The directive also fosters enhanced collaboration between the legal offices of the sectoral administrations. The ATN is transmitted by the latter to the DAGL, which is responsible for the inclusion of the legislative proposal in the agenda of the Council of Ministers.

Over the years, both the government and the legislative have issued a number of circulars and guidelines on legal drafting. In 2001, the Presidents of the Chamber, the Senate, and the Council of Ministers jointly adopted new circulars on the technical drafting of legal acts. In the same year, the Presidency of the Council of Ministers issued a guide for the implementation by the government of the above-mentioned circulars. In the government, the responsibility for drafting quality lies with the DAGL. In 2002, the Ministry for Public Administration issued a circular on simplifying the language of administrative

acts. More recently, the USQR and the DAGL have worked towards establishing a national "Chart for Regulatory Quality".

Transparency and communication, ICT technologies

In addition to being simply and clearly drafted, regulation needs to be transparent and easily accessible, well understood and effectively implemented. All Italian laws and subordinate regulations as well as the judgements of the Constitutional Court have to be published in the Official Gazette (*Gazzetta Ufficiale*), available online. Since 1999, the programme "regulations on the net" (*www.normeinrete.it*) has operated as a single access point to the acts issued by public administrations. Law 150/2000 has regulated information and communication activities of the public administration. The Digital Administration Code of 2005 (Legislative Decree 82/2005) made a sensible contribution towards diffusing the practice of converting, transmitting and publishing legal and administrative acts into electronic format. The Code strengthened the right for individuals and economic operators to access and receive public documents electronically.

Transparency and predictability: Enforcement and appeals

Regulatory quality requires clear, fair and efficient procedures to appeal administrative decisions based on a regulation as well as the regulation itself. The issue of compliance and enforcement of regulations has received increased interest in Italy in the recent period, due to greater international awareness of the need to ensure an appropriate length of procedures, and in the wake of the saturation of the civil law system.

The issue of delay in appeals has been a source of growing concern. This was initially the case for administrative justice, where a number of fast track procedures have been established – for example for the appeals of the regulatory authorities. The possibility of suspending appeals has also helped to streamline processes, as mentioned in the 2001 Review. Additional appeals mechanisms have been established with the ombudsman, which, however, only exists at regional level, but not in all regions. Italy differs in this significant respect from many of its European counterparts.

The main focus has been shifted recently to civil justice where delays seem to have been much higher than the international average. Procedures are usually more complex in Italy and take more time. According to *Doing Business* data, Italy appears as least-well placed within the OECD area in terms of the length of its procedures.[9] Complementary data by CEPEJ tend to confirm the overall diagnosis: Italian delays are always 20 to 50% above those observed in close neighbourhood countries.

This diagnostic was generally shared by Italian sources. For example, the "Green Book on public expenditure" published by the Treasury in September 2007 identifies a number of challenges faced by justice in Italy (*Ministero dell'Economia e delle Finanze*, 2007). The key factors highlighted by the Green Book are not necessarily due to insufficient public spending on courts and legal aid, nor to a low number of judges; these two indicators are relatively high in Italy compared with other European countries, and have steadily increased.[10] Structural aspects related to the expertise of human resources do not seem to be the main source of delay either. Rather, room for improvement may exist in addressing the effectiveness and efficiency of public spending and achieving economies of scale (Marchesi, 2003). In particular, the Green Book suggests tackling the excessively small size of bailiffs: in 2007, one quarter of the Italian courts employed less than 10 judges (Marchesi, 2007). The consequence is that the same judge has to rule on both civil and criminal cases,

with implications in terms of specialisation and productivity. In addition, in 2007, 72% of the courts were still understaffed (Green Book, 2007).

Further analysis (Marchesi, 2003, ISAE) suggests that the underlying problem refers to demand aspects. In the last decade, the number of criminal and civil cases has doubled. Over the last twenty years, the duration of civil proceedings has increased by 90%, and by 97% when considering only proceedings of an economic nature (*e.g.* breach of contract, debt recovery, etc.). Economic disputes are of remarkably low monetary value: 60% of them are litigations for less than EUR 5 000, and of this 60%, only a quarter concerns disputes for more than EUR 2 500. In addition, even in the first degree proceedings, only 38% of the cases conclude with a judgement. The other 62% in the main end in the withdrawal of one of the parties, or in a settlement reached during the suit, generally occurs after the proceedings have been drawn out over a long period of time. This may suggest that recourse to the judge may be sought less to resolve a controversial juridical issue than for reasons of a different order, for instance in order to take advantage of delay deadlines, or have suspending clauses. In addition, the formula for calculating the lawyers' fee creates incentives for professionals to extend proceedings and make those more complex. The analysis is broadly confirmed by the 2007 annual report of the Highest Cassation Court. Because of the length of the proceedings, legal disputes have resulted in EUR 41.5 millions expenditure for the Italian State in the past five years. The President of the High Cassation Court defined as "alarming" the increment rate: from EUR 1.8 millions in 2002 to EUR 17.9 millions in 2006, *i.e.* an approximate increase of 800%. The number of civil proceedings in arrears has almost tripled over the past twenty years, amounting to more than EUR 3 millions, among first and second degree proceedings in 2004 (*Corte Suprema di Cassazione*, 2008). Contributions for *Confindustria* report estimations of the overall costs caused by the inefficient civil justice system to approximately EUR 2.3 billion for the year 2005, corresponding to an average cost per firm of EUR 384 000 (Trento, 2007). The most recent research also shows that significant regional variation exist, with longer delays in the southern regions. The number of cases appears to be higher in the South even though resources are distributed geographically in line with new cases (Carmignani and Giacomelli, 2009).

While the diagnostic is clear, the issue of possible appropriate solutions that meet with consensus remain open. The Online Civil Trial initiative (*Processo civile telematico*) sponsored by the Ministry of Justice may help towards speeding up the proceedings and facilitating access to documentation by the parties through ICT, thereby reducing costs. It has been launched as a pilot project in seven courts. An agreement to enhance its implementation and diffusion was signed in January 2007 between the Minister of Justice and the Minister of Public Administration.

Bankruptcy regulation has been reformed in the past years. In 2005, the Italian legislator amended the discipline of claw back action and the arrangement with creditors (Law 80/2005). It also introduced agreements for restructuring debts. According to Law 5/2006, the organic reform of bankruptcy law has been completed. The new regime allows speedier proceedings. These efforts have been acknowledged at international level. The *Insolvency Outlook* (Hermes, 2007) acknowledged that the change of legislation in 2006 considerably lowered the number of businesses subject to liquidation on the basis of financial criteria. The criteria were modified again with the new 2008 criteria. The reforms have accelerated the legal proceedings, enlarged the competence of the creditors committee, reduced the term of exercise of claw back action and deeply improved conditions faced by companies under bankruptcy.

Challenges in the future will be to ensure a smooth adaptation of the legal system, finding remedies that take into account Italian specific legal aspects, while helping to significantly reduce the delays for appeal.

Improving the quality of new regulation

The OECD 2005 *Guiding Principles for Regulatory Quality and Performance* call on countries to "Integrate RIA in the development, review and revision of significant regulations", to "ensure that RIA plays a key role in improving the quality of regulation, and is conducted in a timely, clear and transparent manner".

Understanding regulatory impacts: Regulatory Impact Analysis (RIA)

Regulatory Impact Analysis (RIA) is a core tool for regulatory quality. If well designed and implemented, RIA processes improve the overall quality of decision making. RIA requires decisions to be taken with much stronger rigour and through a more accountable and transparent process (OECD, 2005). Evidence in a number of OECD countries shows that RIA helps shift from a legalistic to a more evidence-based approach to decision making. As a process that assists policy makers (it does not substitute their decisions), RIA seeks the adoption of the most efficient and effective regulatory options (including the "no regulation" option). However, experience also proves that the deployment of impact assessment is often resisted or poorly applied due to concerns of delays, excessive technocratic approaches, and additional workload for regulators.

In Italy, RIA was formally introduced in 1999-2000, as a pilot project. A directive of the Prime minister and fairly detailed guidelines for the preparation of RIAs implemented the instrument and defined the stages, modalities and exemption of implementation. As originally designed, the Italian RIA consisted of a two-tiered process. The proponent administrations had to submit the related assessments to the DAGL and to the *Nucleo* for their inclusion in the agenda of the pre-Council of Ministers meeting. At a first stage, services were to prepare a standardised "preliminary assessment" that identified the problem to be addressed, the objectives of the intervention, and the stakeholders. They also were to analyse likely budgetary, economic and social constraints, including impacts, provide a general assessment of alternatives, including the "no action-option", and, finally describe the appropriate level of the regulation proposed. At a second stage, a more comprehensive RIA was to accompany the final draft. The final RIA was to be supported by a consultation phase.

After the first trial phase, a second directive of the Prime minister relaunched the experimental period for RIA in September 2001, but the resources allocated to RIA were reduced and the body supposed to provide oversight, the *Nucleo*, was dismantled in 2002. Implementation of RIA was therefore not matching expectations, reflecting the lack of organisation and financial resources, as well as sound economic analysis and reliable data. The first experimental phase of 2001 produced only five full RIAs, while the second phase, launched by the 2001 Prime minister directive and which lasted from 2003 to 2005, produced only one full RIA.[11] Reports on progress with RIA were presented by the Presidency of Council to Parliament in 2006 and 2007. The 2007 report delivered in July 2007[12] acknowledged that RIA reports were concise and rather descriptive, with less focus on substantive assessment-related aspects and limited consideration of alternatives. The view was that many of the RIA documents ended up being a "support to an *ex post* justification of choices made". No central administration has so far systematically published its RIA documents online.

Many of the gaps mentioned above have not been addressed yet. However, attempts have been made to tackle the deadlock, for example by streamlining and simplifying the RIA procedure. Law 246/2005 revised the scope of application; decentralised responsibilities for carrying out RIAs; and "simplified" the methodology in order to ensure the widest recourse possible to RIA by the administrations (see Box 2.6). However, it was evidently faced with continuing lack of capacity in sectoral ministry, in a context of highly rotating staffs, and lack of analytical structures. Compared with the political momentum given to administrative simplification policies, the side of the flows of new regulations may not have received the same level of attention.

Box 2.6. **Towards a simplified RIA system in Italy**

Further to the specific action line outlined in the 2007 Simplification Action Plan, a dedicated group was established within the USQR to draw the regulation implementing Law 246/2005, which established a simplified procedure for RIA. In April 2008, the regulation[1] was adopted further to the opinion provided by the State Council. The regulation was officially published in September 2008 (Regulation 170/2008).

The principal goal of the revised approach was to diffuse and embed the instrument into the working methods of each central administration. During 2001 and 2006, preparation of RIAs by administrators had in fact not gone, in the majority of cases, beyond the mere fulfilling of procedural and bureaucratic requirements. Often, moreover, RIAs did not properly address the cost and benefits related to the proposal, and the two documents (the "preliminary assessment" and the full RIA), when drafted, contained duplications and overlaps, thereby complicating the analysis.

The "simplified" approach seeks to streamline the logical and procedural steps designed by Article 5 of Law 50/1999. The new regulation consolidates the previous two circulars of the President of the Council into one single act and the two-tiered approach is brought back to a single RIA document. At the same time, the new model confirms the necessary and indispensable stages that characterise the RIA process. The regulation requires the administration to outline the "context" of reference; the coherence of the initiative in relation to the government's programmatic objectives; and the information used in the analysis. The administrations must also provide information on the consultations carried out as well as their results. In the case where consultation was absent, they shall justify why they did not comply with this step. While the "relevant options" need to be only "described", the regulation requires an analysis of the "zero-option" and the one chosen. Particular emphasis is placed on assessing the likely administrative burdens implied by the chosen option. The general principles underpinning the preliminary investigation are proportionality, a flexible use of methodologies to collect data, and transparency. It also defines a set of core criteria to ensure that the impact on competition and the liberalisation of markets is taken into account.

The regulation also offers a clear model with seven core sections to be filled as part of the structure of the RIA:

1. *The issue and the objectives of the proposed regulation*
2. *The consultation process*
3. *The assessment of the "null" option*
4. *The assessment of alternative options*
5. *The justification of the chosen regulatory option (with the methods and comparisons)*
6. *The impact on well functioning markets and on the competitiveness of the country*
7. *The modalities for implementing the regulatory intervention*

In 2006, draft regulatory instruments submitted by administrations to the President of the Council and that were accompanied by RIA reports accounted for only 50% of all draft regulatory instruments examined.[2] RIA documents now must accompany all proposals for normative acts submitted to the Council of Ministers. RIA is not mandatory for proposals related to the exemptions listed by the law in 2005. Upon

Box 2.6. **Towards a simplified RIA system in Italy** *(cont.)*

motivated request by the concerned administration, the DAGL may exempt it from carrying out a RIA in cases of necessity, urgency, or in the light of the "specific complexity and size of the normative intervention and its likely impacts". The Council of Ministers, moreover, may always decide and motivate exemptions. In any case, the regulatory memorandum accompanying the act shall report on the motivations for eventual exemptions.

The DAGL checks the appropriateness and the completeness of the activities performed during the preparation of the RIA. It may ask the relevant administrations to complement and clarify the report and it gives its final opinion on the document before it goes on the agenda of the Council of Ministers.

It is foreseen that the new regime will operate within the same institutional framework and the same amount of resources currently in place. The simplified RIAs, estimated to be carried out on some 250 governmental acts each year, will be subject to the same transparency requirements as in the past. In accordance to Law 246/2005, each ministry will decide autonomously on the form of publicity beyond the minimum requirements set by the law and the allocation of resources. The responsible administration may decide to publish its RIAs also during the preparatory phase.

1. The regulation contains provisions also with regard to the *ex post* evaluation instrument (*Verifica dell'impatto della regolamentazione*, VIR).
2. See *Progress Report to the Parliament on the Implementation of the Regulatory Impact Analysis (RIA)* (2007).

The DAGL should also help to provide central co-ordination for RIA practices and serve as a unique reference point for both *ex ante* and *ex post* analyses. The RIA Unit is charged with control of compliance and gives its final opinion on the document before it goes on the agenda of the Council of Ministers. Under the new regime, RIA practices should be generalised. In principle, no legislative proposal can be considered by the government if it is not accompanied by a RIA. However, the new regime will operate within the same institutional framework and the same amount of resources currently in place.

Assessment

The long experimental period foreseen for the introduction in RIA was not as successful as expected. Still today, the completeness of RIA practices in Italy do not compare in very favourable terms with international standards. There was a significant gap in implementation between what had been envisaged and effective results. Only few full RIAs were completed during the trial phase.

This is explained by a series of factors. First, momentum was lost after the launch of the instrument because of the lack of political support, and insufficient internal communication. At the same time, the business community may have not exerted the same pressure on the central administration as it did on other regulatory bodies. Accordingly, administrations have not felt the sense of urgency for implementing RIA as a pressing imperative. Second, the two training cycles were insufficient to diffuse the know-how throughout the administration. Not all Italian administrations can rely on internal multi-disciplinary expertise, in particular on staff with a professional economic background. Third, RIAs have been mainly produced by the legislative offices of the various ministries, which have operated at ministerial discretion in a context of high political turn-over. External experts were retained on a case-by-case basis. This has not allowed for rooting the necessary skills within the administrations. Finally, the results were also influenced by a specific political context, in which party coalitions had to resort to urgent bills (Decree-Laws) or so-called "omnibus laws" to pass legislation. By doing so, short-term political agendas often disregarded the priorities and deadlines set in policy programmes, thereby hindering the effectiveness of the RIA process.

Renewed political impetus was given to RIA with Law 246/2005, and the concrete steps taken with the regulation of September 2008 sought to re-establish its credibility and promote its use. The responsibility for carrying out RIA is now allocated directly to the services responsible for the preparation of the proposal, as advocated in OECD best practices. The "simplified" RIA approach appears to be a first possible step towards addressing some of the challenges faced when implementing RIA. The September 2008 RIA regulation is fairly detailed and outlines many of the core concepts underpinning a sound RIA process. The label "simplified" should not be understood as debasing the instrument. Compared with the past, the regulation consolidates and rationalises both the reference documents (the 2000 and 2001 Circulars) and the procedural steps (the two-tiered approach).

However, some open issues remain. Despite recent progress, internal co-ordination mechanisms for quality control do not seem to be fully established yet, in ways that would be comparable with the most advanced countries. At present, the powers entrusted to the DAGL, and its corresponding resources, do not allow to exert an effective oversight function. The proposed new scheme for a "simplified" RIA, with its emphasis on linking impact assessment with public consultation, may help to improve RIA quality. Consultation is an integral part of the RIA process given its contribution to both the survey of the needs and interests and the evaluation of the likely impacts. A transparent RIA process further enhances accountability.

The new regulation does not specify the criteria and the standards that future RIAs will have to meet. These include guidance on how to define problems, collect data, and use methodologies. Little is said, moreover, about the stage at which RIA needs to be done. This is left to further formal guidelines to be issued in support of the regulation and to be circulated to the various administrations. The current simplified RIA sheet that is attached to the regulation falls short from representing a real guideline. The regulation document makes also no reference to the need for formal inter-departmental consultation on RIAs. The criteria that the DAGL should apply to scrutinise the "appropriateness" of draft RIAs are not specified. Finally, the challenges of implementation will be significant without additional resources, particularly if it has to apply to hundreds of acts a year.

The picture concerning the independent authorities is more mixed. Two key examples are positive. The first refers to the Agcom, which since 2006 has attached and published a simplified impact analysis to a limited number of general measures adopted. The second is the AEEG. Since 2006, the AEEG has performed and published some ten RIAs which included a sound methodological approach, a description of the alternative options and relatively sophisticated market analyses. In particular, the RIA process designed by the AEEG includes at least two rounds of public consultations. The AEEG also equipped itself with internal guidelines. Nonetheless, progress has been uneven among the smaller regulatory authorities in terms of initiating RIA procedures and practices (Rangone, 2006). Despite the legal obligations, after four years many of the authorities still do not carry out RIAs, and RIA documents are not submitted as part of the discussions in Parliament in most cases. An exception is the AEEG which has done so on occasional instances since 2005, and it has joined a CD-Rom including all the RIA documents to its annual reports to the Parliament and the President of the Council.

Choice of policy instrument: Regulation and alternatives

The OECD 2005 *Guding Principles for Regulatory Quality and Performance* call on countries to "consider alternatives to regulation where appropriate and possible". Effective modern regulatory processes are those that consider and use a wide range of approaches to meet

policy goals in the most appropriate and accountable manner. So-called "alternatives to regulation" (or "soft" approaches) are for instance voluntary agreements, standardisation, conformity assessment, as well as self-regulation (including codes of conduct) and co-regulation. Approaches of this kind can aid effectiveness by increasing acceptance of regulation, facilitating compliance, and ensuring flexibility. At the same time, however, they may trigger legitimacy concerns, and problems related to enforceability as well as liability, dispute settlement and (judicial) review.

In Italy, self-regulation regimes are to be found in a variety of sectors. The professions where scope for self-regulation exists will be analysed in a specific chapter of this review. One of the main fields in which such approach has been followed is environmental policy. Because of the growing complexity of the system and the potential importance of the intervention, OECD countries have increasingly had recourse to a mix of instruments in this field. Since the end-1990s, not least in relation to the implementation of the Kyoto Protocol, the Ministry for Environment has promoted voluntary agreements in a variety of economic sectors. Initiatives have ranged from the use of bio-fuels in the transport sector, the so-called "car-sharing initiative", and the diffusion of methane in automotive vehicles, to the creation of protected natural reserves.

Beyond organisational aspects, however, the use of alternatives to regulation has remained limited, despite the fact that the 2001 Italian RIA guidelines explicitly prescribed administrations to consider and evaluate the relevant alternatives to the regulatory option when carrying out RIAs. The predominantly legalistic and prescriptive approach in decision making has hindered the search for alternative options. In the draft RIA regulation of February 2008, the "zero option" is clearly pointed out as the baseline for the measurement of the effects of the initiative under consideration. On the other hand, the simplified RIA approach allows a less detailed analysis of the options other than the chosen one.

Improving the quality of the regulatory stock

The OECD 2005 *Guiding Principles for Regulatory Quality and Performance* call on countries to "improve the stock of existing regulations", to "minimise the aggregate regulatory burden on those affected as an explicit objective to lessen administrative costs for citizens and business, and as part of a policy stimulating economic efficiency" as well as to "measure the aggregate burdens while also taking account of the benefits of regulation".

Evolving legislative simplification policy: From consolidated texts and sectoral codes to the "guillotine clause"

In Italy, a series of instruments have been subsequently used to implement the simplification agenda. Throughout the 1990s, recourse was made first to consolidated legal texts (*testi unici*). Besides their consolidation function, these also served as instruments to reduce the scope of laws (de-legislation) towards an objective of simplification. Sectoral consolidation was also sought by means of the so-called *testi unici "misti"*, introduced by the First Simplification Act for 1998 (Law 50/1999). Experience with this mixed type of legal instrument showed that such practice was not necessarily conducive to a clear and easy understanding of the stock regulating a given policy area. The Third Simplification Act (Law 229/2003) put less emphasis on de-legislation imperatives and replaced the *testi unici misti* with sectoral recasting codes (*codici di settore*).

The most recent and drastic simplification instrument is the "guillotine clause" introduced by the 2005 Simplification Act for repealing State legislation. The so-called

"cutting-laws" (*taglia-leggi*) mechanism involved first a stock-taking of the State legislation in force, establishing the boundaries of the areas of the State legislative framework under the responsibility of each Ministry, highlighting the inconsistencies (*incongruenze* and *antinomie*) related to the various legislative sectors. A supporting database was developed. At a second stage, the government systematically reviewed the norms adopted by the State before 1 January 1970,[13] with a view to identifying those considered essential to be maintained in force. The idea was that any legislation adopted before 1970 and not considered to be indispensable be automatically repealed (exceptions are stated in the law). The government should also proceed to simplify and reorganise comprehensively the various legislative areas through specific codes. It will have the possibility to further intervene with corrective or restorative acts (*decreti legislativi correttivi*) by 2011 to ensure that the measures envisaged are effective and proportionate.

The inventory was undertaken by the administrations with the co-ordination of the USQR and the support of the *Centro Nazionale per Informatica nella Pubblica Amministrazione* (CNIPA), which established a dedicated Intranet website for sharing and diffusing experiences and best practices among the administrations (*www.taglialeggi.cnipa.it*). The Government completed the first phase of the exercise and presented the findings to the Parliament in December 2007. Overall, it was therefore estimated that the total number of primary laws adopted by the State and still in force amounted to 22 000, of which approximately 7 000 going back to the period 1860-1969.[14]

Further to the inventory, the Law Decree 112/08 affected a number of areas, including the extension of the life-span of identity cards and its renewal procedures; the simplification of information obligations for installing electric, sanitary, heating and other systems in buildings; the liberalisation of transferring shares of limited liability companies (llc); and the simplification of formal obligations in keeping documentation related to work and in setting working hours, identified on the basis of the measurement of administrative burdens. Overall, according to the estimates provided by Italian authorities, the corresponding savings amount to almost EUR 5 billion a year. The savings on identity card simplification measures could amount to EUR 15 millions (see Table 2.1), while on privacy policy only, the foreseen savings are estimated to EUR 2 billions. The measure on digitalising company books, provided for in the Decree, would allow to eliminate one of the procedures considered in the *Doing Business* ranking, improving thereby Italy's position. Upon the adoption of the related implementing decree, the measure on business start up will reduce the time to set up an economic activity from 30 days to one day.

Table 2.1. **Immediate monetary impact of Legislative Decree 112/20081**

Provision	Without simplification (EUR)	With simplification (EUR)	Savings
Art. 31 (identity card)	30 m	15 m	–50%
Art. 35 (installation of systems in buildings)	909 m	0 m	–100%
Art. 36 (transfer of llc shares)	300 m	100 m	–67%
Total savings (without labour measures)		1 124 m	
Art. 40-41 (Working documentation and hours)	6.35 bn	2.78 bn	–56%
Total savings (with labour measures)		**4 698 m**	

1. These are preliminary estimations related to the activities and procedures simplified by the mentioned decree.

Source: Presidenza del Consiglio dei Ministri – Unità per la semplificazione e Dipartimento per la Funzione Pubblica, 2008.

Assessment

The cutting-laws (*taglia-leggi*) allowed for the first systematic census of the stock of primary legislation since the creation of the Italian State in 1861. Moreover, it contributed to cope with the gap created by the revision of Title V of the Constitution, further to which a number of State laws are no longer legitimate because of the changed allocation of competences between the State and the Regions. The completion of the first inventory phase in 2007 shed a light on the difficulties to scrutinise concretely the entire Italian legislative stock, as a gap emerged between the figure advanced by the ministries and the search made through other databases.

The inventory task was onerous but necessary and it was performed with determination. The choice to use an innovative and powerful instrument such as the guillotine clause speaks for the ambition and the commitment of the government to streamline and avoid overlapping legislative intervention. This was furthermore confirmed by the creation of a Ministry for Normative Simplification in 2008, which conferred the implementation of the *taglia-leggi* the status of strategic objective and political priority. Similarly, the Simplification Action Plan for 2007 identified the bodies responsible for the implementation of the various parts of the process, set deadlines, and mentioned methods for the evaluation and scrutiny of the findings. In this respect, Italy has here applied a number of critical success factors that can be drawn from international benchmarking on the use of regulatory guillotine clauses: there has been a clear "top-down" approach; criteria and standards for repealing are explicitly stated by the law; and reform is fast and final decisions are taken by the government in conjunction with the Parliament.

Box 2.7. **Monitoring OECD recommendations: Rationalising the legislative stock**

In the 2001 Review, the OECD invited Italy to consider:

"Expanding the value, speed and scope of review of laws and major subordinated regulations by accelerating the process of consolidating text, using RIA and competition enhancing criteria systematically" (OECD, 2001).

This recommendation has triggered action and considerable efforts have been devoted towards simplifying the legislative and regulatory environment in Italy. This has helped to address the issue of the intricate and overlapping regulatory stock, with tools such as the cutting-laws mechanisms (*taglia-leggi*), which not only seeks to reduce the number of provisions but also and above all to re-organise and recast of the whole stock, the sectoral codes, and the Annual Simplification Acts have also contributed to mapping and codifying existing laws and regulations. However, in the wake of the ever increasing complexity of new rules, including implications from the EU level as well as from the new multi-level framework in Italy, the urgency of this agenda remains.

The cutting-laws mechanism proved its merits as it led to a rapid cut in Italy's legislative stock, with some 7 000 laws (*i.e.* one third of the entire legislative stock) repealed in June 2008 already. An additional 28 000 Laws, which dated from before 1948, were also repealed by Legislative Decree 200/2008. Nonetheless, those were laws explicitly classified as useless, obsolete or already implicitly repealed. The effectiveness of the cutting-laws mechanism will be put to a more significant test when simplification initiatives will be carried out on more relevant legislative acts.

Overall, the progress made on legislative simplification is positive and is in line with the recommendation of the 2001 Review. Beyond the introduction of the guillotine mechanism, the State Council confirmed that the recourse to the *codici* helped reform sectoral regulation,[15] recognising at the same time the codes made the legal source for simplification more rigid. The slower pace of legislative simplification during the XIV legislature may also reflect the introduction of this type of instruments. A further reason for the reduced simplification activity may lie with reform of Title V of the Constitution, which drastically reduced the capacity of the State to intervene to rationalise substance and/or procedures in areas of non-exclusive State competence (Natalini, 2003).

Regulatory review

Rather than a linear process, accountable and effective decision-making should take the form of a policy-regulatory cycle. Regulatory reviews, in the form of *ex post* evaluations, provide a feedback loop to regulators. Such analyses are performed after regulations are implemented and enforced. In Italy, regulatory review has been formally foreseen since the Prime minister directive of September 2001. However, the instrument still waits for a full implementation. The initiative of the Parliament is therefore to be welcomed to put renewed emphasis on regulatory review through two important provisions included in the Simplification Act for 2005: the *ex post* evaluation clause (*Verifica dell'impatto della regolamentazione*, VIR), and the cutting-laws mechanisms.

Box 2.8. **Monitoring OECD recommendations: Enhancing a transparent, evidence-based and participatory decision-making**

In the 2001 Review, the OECD invited Italy to consider:

- "Strengthening attention to policy results by initiating an assessment of regulatory compliance and enforcement procedures, by integrating an assessment of feasible compliance strategies into the RIA process, and particularly by assessing compliance difficulties for businesses or citizens when reviewing or revising existing regulations" (OECD, 2001).
- "Strengthening disciplines on regulatory quality in national and regional ministries by refining tools for regulatory impact analysis, public consultation, and alternatives to regulation, and training public servants in how to use them" (OECD, 2001).
- "Improve transparency by further strengthening the public consultation process through standard procedures and criteria, and by adopting government-wide notice and comment procedures" (OECD, 2001).

In the light of the current review, these recommendations have been only partially met. Institutions underpinning a proper RIA process have been established again at the centre of the government. However, practical implementation of RIA lags behind. Similar remarks apply to *ex post* evaluation practices. The extent and quality of public consultation practices vary considerably, without formal government-wide mandatory guidelines. First experiences with online consultations have been made recently. In general, an evidence-based, open approach to decision making is emerging in Italy, but has not been firmly embedded in the common working procedures of the public administration.

The acknowledgement of the VIR in a formal legal document is to be welcomed. Law 246/2005 indicates that this should be carried out two years after the entering into force of the legal act under consideration. Subsequently, regular reviews should take place every

two years. Unlike for RIAs, there is no general obligation to carry out VIRs. Guidelines supporting *ex post* analysis will have to be drawn up. In the meantime, an Annex attached to the enabling regulation provides some basic indications on how to perform the analysis. Much of the effectiveness of the instrument will depend on the remit provided by each individual decree, therefore relying on an *ad hoc* approach. Clearly drafted guidelines will therefore be an indispensable tool.

Administrative simplification: Measuring and reducing administrative burdens

Across OECD countries, businesses and citizens increasingly complain about the excessive time they spend and the significant resources they devote to activities such as filling out forms, applying for permits and licences, reporting business information, notifying changes, etc. "Red tape" is costly, not just in time and money spent complying with information obligations but also in terms of reduced productivity and innovation in business. This is particularly burdensome to smaller businesses and may even discourage people from starting up a new business. These effects are more costly in global markets, where the efficiency of the domestic regulatory and administrative environment can affect business competitiveness. Cutting "red tape" is therefore a priority on the political agenda and many governments are giving priority to measuring and reducing administrative burdens in recent years (OECD, 2006b, 2007b).

The Italian situation from an international perspective

Since the end of the last decade, clear signals have pointed to the significance of the problem. For instance, ISTAT estimated at EUR 10 billion the overall compliance costs borne by businesses in Italy for the year 2000. The situation improved the following couple of years: in 2003 the OECD indicated that six other OECD countries imposed more burdensome procedures on start-ups than Italy, while the European Commission confirmed the reduction in both the number and the length of start-up procedures for public limited companies (from 21 to 12 and from 22 to six weeks on average, respectively).

According to the World Bank's *Doing Business* reports (see Table 2.2), Italy has significantly reduced the costs for start-ups since 2003.[16] World Bank data referring to 2007 show a reduction by one third, from 24.1% to 18.7% of the income per capita. This figure, however, does not take into account the adoption of Law 40/2007 (so-called "Bersani" Law) in April 2007. Further to this law, it is calculated that costs may be cut down to 12.9% of income per capita, which represents almost half of the costs in 2003.[17] Nonetheless, with the updated figures, Italy still ranks 23rd in terms of costs for starting a business, among OECD countries. Italy performs slightly better than the OECD average in terms of days necessary to start a business. Between 2003 and 2007, it nearly halved the time needed (13 against 16 days of OECD average). If the effects of Law 40/2007 are considered, however, Italy's improvement is more significant, moving from the 13th position in 2003 to the 5th position in 2007 (six days needed, only).[18] As to the number of procedures, thanks to Law 40/2007, Italy has reduced the figure from nine to six. This is close to the OECD average, in line with the performance of France and the UK, and better than other big European countries such as Germany and Spain. Indeed, after the execution of the public deed of incorporation before a public notary, the entrepreneur may now complete the following four procedures[19] though an online application to the local Chamber of Commerce. At the same time, the local Chamber of Commerce releases a certificate, which allows the entrepreneurs to start up an industrial or commercial business. Progress has also been made on the minimum capital required to start a business, which moved from almost 50% of income per capita to 9.8%.

Table 2.2. **Starting business 2003-07**

	Starting a business 2003-07							
	Procedures (number)		Time (days)		Cost (% of income /capita)		Minimum capital (% of income /capita)	
	2003	2007	2003	2007	2003	2007	2003	2007
Italy	**9**	**9** *(6)*	**23**	**13** *(6)*	**24.1**	**18.7** *(12.9)*	**49.6**	**9.8**
Italy rank within OECD	*18*	*24* *(11)*	*13*	*15* *(7)*	*21*	*27* *(23)*	*10*	*10*
OECD average value	6.9	6.5	16	16	10.4	7.02	50.9	38
Austria	8	8	28	28	6.1	5.4	65.6	55.5
Canada	2	2	3	3	0.6	0.9	0	0
France	8	5	41	7	1.3	1.1	29.2	0
Germany	9	9	45	18	5.9	5.7	49.1	42.8
Ireland	4	4	18	13	10.4	0.3	0	0
Japan	11	8	31	23	10.7	7.5	74.9	0
Netherlands	7	6	11	10	13.3	6	67.2	52.9
Spain	10	10	114	47	16.8	15.1	17.9	13.7
Sweden	3	3	15	15	0.7	0.6	38.5	31.1
United Kingdom	6	6	13	13	1	0.8	0	0
United States	6	6	6	6	0.7	0.7	0	0

Note: This methodology was developed in Djankov *et al.* (2002) and is adopted here with minor changes. Number of procedures, figures in parenthesis, result from recent Italian estimates based on policy measures adopted in 2007 and that are not yet reflected in World Bank data.

Source: World Bank, *Doing Business*, Reports 2004-08.

Complementary information is also available in terms of licences and permits. The World Bank *Doing Business* reports also look at the performance of countries in issuing licences (see Table 2.3). This indicator considers typical private construction companies. In 2007, Italy compared unfavourably with other OECD countries under this criterion. While the number of procedures required (14) is below average and very similar to the French and German figure, the time needed to fulfil the procedures is particularly long. Italy ranked 27th in this respect.[20]

Table 2.3. **Dealing with licences and registering property (2007)**

	Dealing with licences		Registering property	
	Procedures (number)	Time (days)	Procedures (number)	Time (days)
Italy	14	257	8	27
OECD rank	14	27	28	18
OECD average	16	166.1	4.8	38.4
Austria	13	194	3	32
Canada	14	75	6	17
France	13	137	9	123
Germany	12	100	4	40
Ireland	11	185	5	38
Japan	15	177	6	14
Netherlands	18	230	2	5
Spain	11	233	4	18
Sweden	8	116	1	2
United Kingdom	19	144	2	21
United States	19	40	4	12

Source: World Bank, *Doing Business*, Reports 2004-08.

The diagnostic is slightly more positive when considering a further relevant *Doing Business* indicator which refers to the "registering property" measure (see Table 2.3). The indicator considers the procedures to legally transfer the title on real property in the same way as for the "starting business". Similarly, it calculates the time required to complete each procedure. The costs associated to the latter are the official ones (no bribes) and they do not included added value or capital gains. In 2007, registering a property in Italy still involved up to eight procedures, compared with about five procedures on average within the OECD area. Nonetheless, the situation was relatively positive in terms of the number of days needed (27), placing the country after the Spain and the UK but well before France and Germany, among the big European countries.

These measures serve more as a general indication on the issue. They may have to be considered in the light of methodological caveats. Italian experts, for instance, suggest a number of considerations for a careful reading of the findings.[21] First, non-observable or non-measureable factors may affect the economic performance of countries. Second, external factors that are independent of the domestic regulatory regime make it sometimes impossible to exactly quantify the overall effects of regulations on businesses. Third, it is difficult to assess the direct costs and benefits that enterprises have from changes in the regulatory environment. Fourth, the arithmetic mean of each sub-indicator does not necessarily reflect their relative impact on the performance and competitiveness of the firms. Fifth, the *Doing Business* indicators overlook the benefits brought by regulation. Finally, changes in methodologies may make diachronic comparisons difficult. With particular reference to the Italian case, and in relation to the cost of starting, running, and closing a business, the authors further note that it is also difficult to ascertain which should be the "type firm" to be taken as a reference (*e.g.* medium size manufacturer located in capital city versus typical micro and small enterprise in the North-Eastern regions).

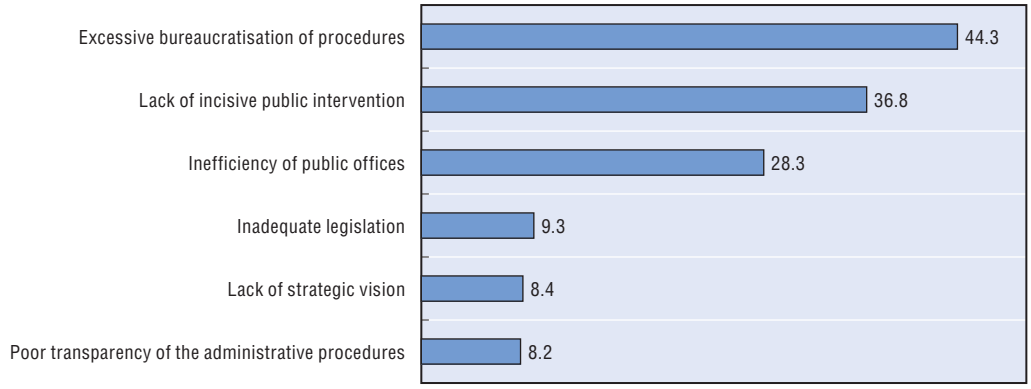
The Italian situation from domestic sources

Domestic sources shed complementary light on the issue. They may involve results from perception surveys. This is a key priority issue for Italy. The 2006 study by *Censis* and *Confcommercio*[22] revealed that among the share of enterprises interviewed that declared having problematic experiences with the public service (some 32% of the sample), the main factors at the origin of their dissatisfaction in 2006 were the length and complexity of bureaucracy; the lack of decisive public intervention in the area where the enterprise is located; and the general sense of organisational and managerial inefficiency of the public administration (see Figure 2.5). The business community highlighted problems that go beyond the lack of transparency and the complexity of the procedures.

Another study carried out in 2007 by the Italian Chamber of Commerce Association (*Centro Studi Unioncamere*) assessed the degree of satisfaction further to the use of services provided by the administrations (Centro Studi Unioncamere, 2007). Overall, businesses rated the services 69.3 on a 0 to 100 scale. Interestingly, more than 46% of the businesses declared to use at least "sometimes" electronic tools to fulfil their administrative obligations in 2007 (they were 32% in 2006). 16.3% of them (7.3% in 2006) used electronic tools "always". As to the cost incurred to execute these procedures, despite the increased computerisation of the administrations, 24.6% of the businesses felt that administrative practices had become more expensive compared to the previous year, whereas only 8.4% of them indicated a reduction in costs.

In 2008, the industry confederation *Confindustria* has estimated the cost generated by the regulatory burdens on the growth of Italian business in comparison with some OECD

Figure 2.5. **Satisfaction of entrepreneurs with public administrations (2005) (%)**



Notes: Total is more than 100% because of possible multiple choices.
Further technical checks are being made to ascertain the technical validity of the survey (*e.g.*, coverage).
Source: Censis-Confcommercio, 2006.

countries (Rodà, 2008). The study considered as impact factors both "institutional" and "firm-related" variables.[23] An analysis of the cumulated effect of these variables shows that the same firm would grow 47% more in the US and 39% more in the Netherlands over five years than if it had be established in Italy (see Table 2.4). In Italy, the greatest obstacles are reported to be the cost to access credit and, from the second year of activity onwards, the ones related to the infrastructural endowment.

Table 2.4. **Annual growth rates**

Years of activity	Italy	France	Germany	UK	US	Japan	Netherlands
I	10	13.7	14	15.9	16.1	13.5	14.7
II	10	12.6	12.9	11.9	14.4	13.1	13.6
III	10	12.8	13	12.4	14.5	13.3	13.8
IV	10	12.7	13	12.5	14.6	13.4	14
V	10	12.5	13.1	12.6	14.4	13.5	14
VI	10	12.4	12.7	12.4	14.4	13.2	13.4
Average annual growth rate	10	12.8	13.1	12.9	14.7	13.3	13.9

Source: From Confindustria, 2008.

Direct statistics estimating the monetary value of red tape have been produced by *Unioncamere* in 2007 estimating that the overall cost borne by the Italian economy for fulfilling administrative obligations exceeded EUR 14.9 billion in 2006, or about 1.0% GDP, as opposed to EUR 13.7 billion in 2005. This means an average annual cost per business of about EUR 11 800, *i.e.* the cost of a part-time employee. A breakdown of the data according to the size of the firm reveals that micro- and small enterprises are over-proportionately affected by compliance costs. Firms with 50-500 employees bear only three times higher costs than firms with less than 10 employees (see Table 2.5) (Centro Studi Unioncamere, 2007).

Intense efforts to reduce licences and permits

International comparison testifies of Italy's efforts to improve its capacity to facilitate the provision of licences and permits. Between 1998 and 2005, the country was among the top OECD countries in terms of the intensity of its efforts to reduce licences and permits (see Figure 2.6).

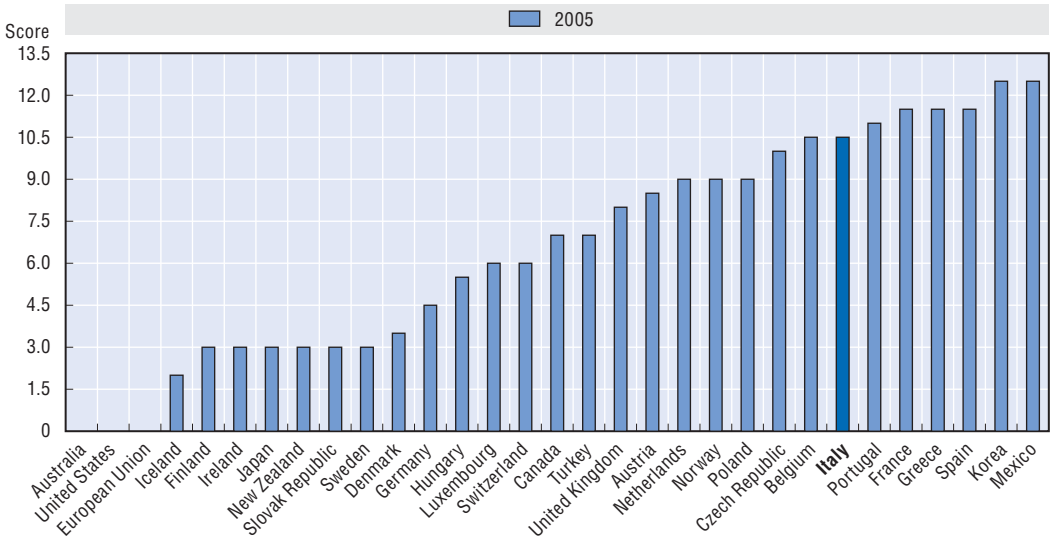
Table 2.5. **Estimated compliance costs on business, 2006**

	External costs	Internal costs		Total costs	Total costs
	(in million EUR)	Day/man *(in thousand)*	Internal costs *(in million EUR)*	*(in million EUR)*	per business *(in EUR)*
Sector of activity					
Manufacturing	1 824 441		1 872 373	3 696 814	12 979
Construction	1 038 658		1 186 786	2 225 444	10 861
Retail	1 322 519	11 675	1 425 812	2 748 330	9 223
Advanced tertiary services	917 583	8 002	989 941	1 907 524	12 215
Other services	1 703 638	11 704	2 638 462	4 342 099	13 633
					–
Size of company					
1-9 persons	5 291 181		6 094 537	1 1385 719	10 372
10-49 persons	1 239 79		1 651 674	2 891 054	20 310
50-500 persons	276 278		367 161	643 439	28 588
Total	6 806 839		8 113 373	14 290 211	11 818

Note: Advanced tertiary services include innovative and professional services, facility and supply chain management services, marketing, etc.

Source: Unioncamere, Indagine sui livelli dei servizi della Pubblica Amministrazione, 2007.

Figure 2.6. **Efforts towards facilitating licences, permits and administrative requirements in 2005**



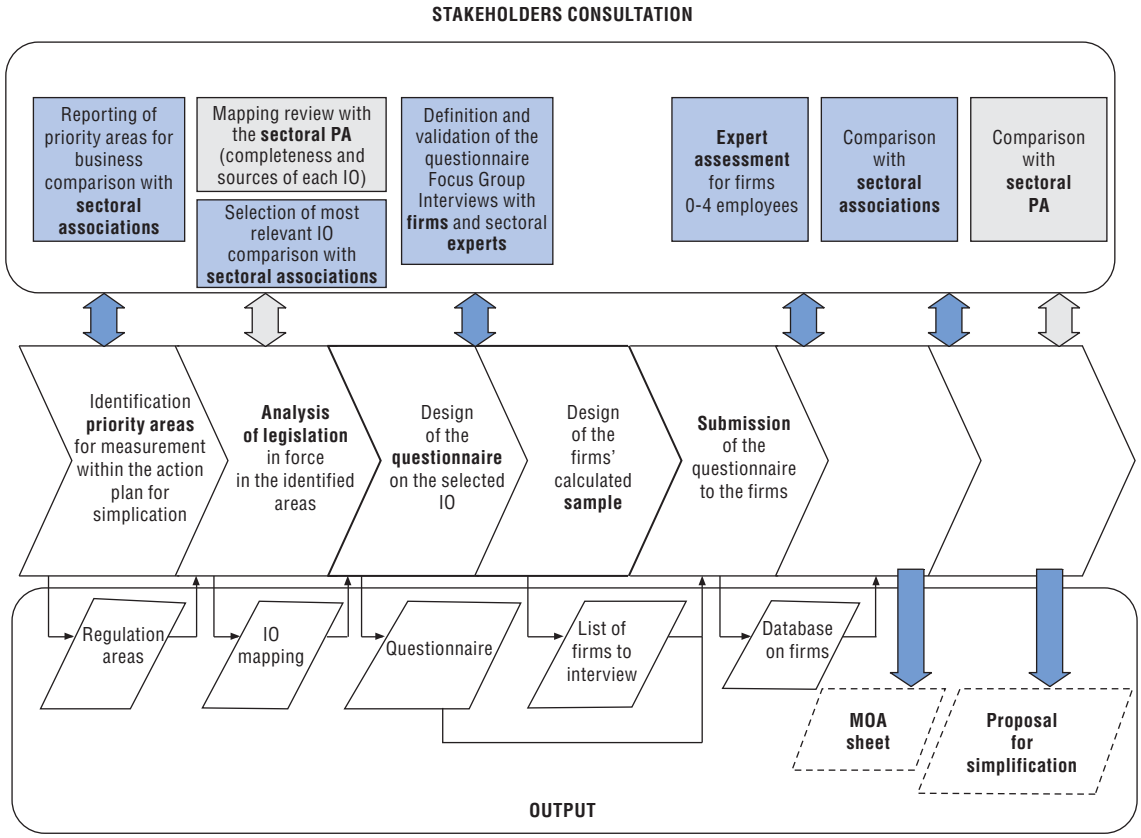
Note: The score on the figure reflects the following answers:	Weights:
Is a "silence is consent" rule used at all (*i.e.* that licences are issued automatically if the competent licensing office has not reacted by the end of the statutory response period)?	if yes, weight = 0.2
Are administrations obliged to provide the name of the person responsible for handling the application in any formal correspondence?	if yes, weight = 0.5
Are there single contact points ("one-stop shops") for getting information on licences and notifications?	if yes, weight = 3
Are there single contact points for accepting notifications and issuing licences (one-stop shops)?	if yes, weight = 3
Is there a programme underway to co-ordinate the review and reform of permits and licences at sub-national levels of government?	if yes, weight = 1
Has there been a clear decline in the aggregate number of licences and permits?	if yes, weight = 2
Is there a complete count of the number of permits and licences required by the national government (all ministries and agencies)?	if yes, weight = 1
Is there a programme underway to review and reduce the number of licences and permits required by the national government?	if yes, weight = 1

Source: Jacobzone *et al.* (2007), *OECD Indicators of Regulatory Management Systems*, p. 33.

Measurement of burdens according to international standards

Originally developed in the Netherlands, the Standard Cost Model (SCM) analysis has become the most diffused methodology to measure the costs caused by information obligations imposed by laws. In 2003, a network of European countries was formed to consistently apply the SCM (*www.administrative-burdens.com*). At present, SCM is the most widely applied methodology for measuring administrative costs[24] (OECD, 2004). While largely building on the SCM, the Italian version – the *Misurazione degli oneri amministrativi* (MOA) – differs in some respects (Cavallo, 2008). The methodology has been modified so as to best adapt to the Italian specific business structure, characterised by great heterogeneity and a very high number of SMEs. The MOA process involves a continuous process of specific consultation of the stakeholders and the public administrations, as outlined in Figure 2.7 below.

Figure 2.7. **The process of measuring administrative burdens in Italy**



Source: Adapted from Presidenza del Consiglio/Dipartimento per la Funzione Pubblica, 2008.

The measurement is carried out by the Department for Public Administration through a dedicated task force co-ordinated by the Office for Administrative Simplification (UANAS) and composed by experts partly recruited from the USQR. The National Institute for Statistic (ISTAT) also contributed to the project.

Results from the 2007-08 survey, and the related measurement were published in August 2008. In the sectors considered (privacy, the environment, fire prevention, landscape and cultural goods, the labour market, and welfare) measurement led to an

overall estimated aggregate annual burden of State legislation of approximately EUR 16.2 billion (see Table 2.6). A simplification programme in the privacy field was designed in co-ordination with the Privacy Authority (*Garante per la protezione dei dati personali*). Areas of measurement for 2008 include the environment, taxes and customs.

Table 2.6. **Annual aggregated total cost per sector per business category, in thousands of euros**

Sector	0-4 employees	5-249 employees	0-249 employees
Privacy*	n.a.	n.a.	2 190 431
Environment	1 540 382	518 807	2 059 189
Fire prevention	995 212	414 303	1 409 515
Landscape	550 817	70 583	621 400
Labour	5 858 048	1 052 596	6 910 644
Welfare	1 832 710	1 196 833	3 029 542
Total	n.a.	n.a.	16 220 722

* No disaggregated data in relation to the size of the firm is available for the measurement in the privacy sector.

Source: Presidenza del Consiglio dei Ministri – Dipartimento per la Funzione Pubblica.

Table 2.7. **Estimated costs caused by the old procedure and savings for SMEs brought by the simplification measures on information obligation in the labour sector**

Simplification measure	Costs related to the old procedure (in thousands of EUR)	Savings (in thousands of EUR)	Savings (in %)
Information sheet on occupational status	15 976	3 953	25
Partial exemption	9 159	333	4
Declaration of compliance with obligations related to the occupation of handicapped people	22 763	6 829	30
Keeping of the personnel register	165 858	165 858	100
Pay roll keeping	6 015 358	3 352 002	56
Communication on keeping escrow	128 037	45 057	35
Communication on hiring*	405 895	355 156	87
Communication on employment cessation*	180 247	156 629	87
Total of obligations subject to simplification	6 943 293	4 085 816	59

* Obligations simplified prior to the entry into force of Law Decree 112/08 converted with amendments by Law 133/08, by Law 296/06 and entered into force on 1 March 2008.

Source: Ministero per la Pubblica Amministrazione e l'innovazione, Relazione al Parlamento sullo stato dell'amministrazione, 2007.

The adoption of the comprehensive Legislative Decree 112/2008 in June 2008, institutionalised and provided long term support for the application of the system. The decree set the basis for the adoption of a fully-fledged programme for the completion of the measurement of all areas falling under the competence of the State; and it foresaw the co-ordination of the measurement activities by the Department of Public Administration jointly with the USQR. On this basis further measurement activities have been launched in areas such as the environment, taxes and customs, while the elaboration of the measurement plan for 2009-12 is ongoing.

Assessment

In Italy, the reduction of administrative burdens is a priority due to the proliferation of legal sources. The multiplicity of the sources of new regulation (partly due to the constitutional

reform) and above all the great variety in the number and length of the obligations point to the need for reducing the quantity, duration and uncertainty of administrative procedures.

International best practices suggest that the success of administrative burden reduction programmes depends on the presence and effectiveness of a central unit. This unit sets operational deadlines, provides support, and co-ordinates consultants and departments for solving methodological issues.[25] Italy has followed such best practices with the Department of Public Administration responsible for MOA measurements, and for reducing or simplifying unnecessary regulation, with the technical assistance of the *Scuola Superiore della Pubblica Amministrazione* and the ISTAT, together with the USQR and in association with the Minister for Normative Simplification.

The success of the MOA is also due to a joint Protocol brought forward by the Government and *Confindustria* in 2006, and confirmed thereafter, as well as the commitment since 2007 outlined in the first Annual Simplification Plan and the national multi-annual Plan (2007-10). Compared with other EU countries, the initial experience with the MOA system seems to have been cost-effective, leading to first estimates in a relatively short time and a small budget. It is estimated that some EUR 840 000 have been granted for the measurement programme at State level for 2007-08. The cost incurred by the administrations involved in the programme need to be added to this amount, which remains nonetheless below the levels committed in some other large EU countries.

Whatever the amount of the burdens identified, the data generated as a result of the MOA allow to better design and target the related simplification measures. On the basis of the results of the measurement programme of administrative burdens, provisions included in the Law Decree 112/08 are estimated to produce a global saving of more than EUR 18 billion by 2012. In the labour sector only, it is estimated that SMEs will saved more than EUR 4.1 billion each year as a result of the measures already implemented. This reduced the costs by 59% compared with the old procedures and it corresponds to 25% of the overall burdens already measured in Italy (see Table 2.7 above). If the initial positive results are confirmed throughout the following phases, the MOA system could play a catalyst role in setting good practices for intra-institutional co-ordination, the use of expertise and the involvement of stakeholders when carrying out reforms.

Administrative simplification: Coupling administrative re-organisation and ICT innovation

Re-engineering administrative procedures

Many OECD countries have implemented process re-engineering initiatives to simplify requesting and receiving permits and licences. This has involved the replacement of authorisations by notifications; the amalgamation of related licences; the introduction of time limits and of "silence is consent" clauses; or the reduction in the average length of time required to process applications. Time limits for administrative decision-making were also introduced by countries to reduce costs and uncertainty. In most cases, Information and Communication Technologies (ICT) have been deployed to support reforms.

In Italy, the principal legal basis for administrative simplification is Law 241/1990, which contained the key principles governing each administrative procedure at state level (effectiveness, transparency and efficiency). Serving as a sort of "Administrative Procedure Act", that law provides for setting timing of procedures, accountability, motivation of the acts, participation, transparency and right of access. De-legislation has been used diffusely

to streamline administrative procedures. Reform of Title V of the Constitution has however limited the possibility for the government to adopt decrees on that matter.

One important area of intervention involves the re-engineering of administrative procedures and the reduction of delays. Good practices for measuring the time to complete procedures were identified among central administrations. To this end, and further to the experience gathered from trial cases, specific guidelines for measuring procedural times were drawn up in April 2008. The 2007 Action Plan set a general target for reducing procedural times by at least 10% for each administration. The March 2008 report on the implementation of the Action Plan indicated that seven ministries had implemented their time reduction programmes, which resulted in an average time reduction of 19.5% (with peaks of even 45.7%). The contribution of Law Decree 112/2008 in this regard is significant. Art. 30 simplified administrative controls in the environmental sector, providing that for certified enterprises the periodical controls carried out by qualified private companies replace administrative controls. A regulation to simplify the procedures and to conform them to the ISO 14 001 system should be adopted. Furthermore, the Parliamentary Bill AS 1 081 of October 2008 (*Disposizioni per lo sviluppo economico, la semplificazione, la competitività nonché in materia di processo civile*) provided a term of 30 days for public administrations to conclude the procedure for the adoption of an administrative act.[26]

Other simplification measures relate to the "silent is consent" rule (*silenzio-assenso*),[27] self-certification (*auto-certificazione*) and the "start-of-activity" notice (*denuncia di inizio attività, DIA*).[28] While they were used only in cases specified by law, these tools were generalised in 2003. This sought to counter low implementation rates.

Making one-stop shops operational

Recent measures have been introduced to increase the operability of one-stop shops (*sportelli unici*) [Law Decree 112/20008 converted in Law 6 August 2008 (Art. 38)], in a multi-level context for the exercise of productive facilities and services, as foreseen by Directive 2006/123/CE. In particular, "one-stop shops" are to become a single electronic access point for information to businesses and the issuing of all authorisations required to localise, create or modify a production and commercial facility. All municipalities had been invited to set up one-stop shops after their introduction in 1998. However, by 2004, only 65% of municipalities had established such one-stop shops. In addition, these one-stop shops were operational only in half of the corresponding municipalities, thus reducing the percentage of municipalities actually running a one-stop shop to 33%, covering 57.3% of the population. Further normative interventions were not sufficient to make the system significantly simpler and more efficient.[29] When operational, however, the one-stop shops did reduce the length of the procedures. For procedures involving environmental impact assessments (*Valutazione di Impatto Ambientale*), the waiting time was reduced from 11 months to 94 days. By end 2007, according to a Formez survey, 70.6% of municipalities had established such one-stop shops (5 718) covering 84.6% of the population. However these one stop shops were operational only in 40.6% of the municipalities, covering 60.1% of the population.

The platform *www.impresa.gov.it* attempts to centralise online access to information and services for Italian businesses. In the framework of the 2007 Action Plan, a number of actions were also taken. They included a single notification procedure for business start-ups replacing all of the former requirements for starting a business in the fields of social security, public assistance and taxation (tax code and VAT number). To fully exploit the potential of the system, new one-stop shops (so-called "SUAP") are being made

operational, following the approval of Law Decree 112/2008. Also as a response to the implementation requirements of Directive 2006/123/EC (the "Services Directive"), SUAPs will reduce the length of the procedures even further, as the requests to start all the activities concerning the location, the realisation, the transformation, the restructuring, the reconversion, the increment or the transfer, the cessation and the re-establishment of the economic installations are sent exclusively electronically. SUAPs will become the only public access point for all administrative issues linked to economic activities in a given territory. They will assure a unique and timely answer to the applicant in place of all the public administrations involved in the procedure, including those responsible for the environmental and landscape-territorial matters, the historical-artistic patrimony, health and public safety. Through these innovations the SUAP is expected to solve most of the problems related to the length and the intricacy of the start-up procedures in Italy. The new business register (*Communicazione Unica*) started to be operational in 2008.

In addition, since 1 March 2008 a new procedure has allowed employers to communicate online all relevant data related to the hiring and firing of employees to employment centres, which avoids separate and specific submissions. By July 2008, citizens should be able to notify only once to the public administration data related to changed residence status. Simplification and re-engineering of administrative procedures for immigrants have also been undertaken. In addition, initiatives have been launched to re-engineer sectors such as the computerisation of the Register of Italians Resident Abroad (AIRE), the organisation of online interdepartmental conferences (*conferenze di servizi*) as well as electronic payment. The Budgetary Law for 2008 foresaw a reduction in the burdens on the declaration and management of the fiscal activity by forfeiting incomes lower than EUR 50 000. Further systemic initiatives for 2008 aim at switching to the full electronic management of the documents of the public administration and the total abolition of paper for internal communication. Guidelines for correctly and safely archiving electronic data are being published.

Finally, the website of the *Portale Nazionale del Cittadino* (*www.italia.gov.it*) serves as the electronic portal for the Italian citizens living both in Italy and abroad as well as any person resident in Italy who needs information and assistance in their interacting with the public administration. The service is implemented and managed by the *Centro Nazionale per l'Informazione nella Pubblica Amministrazione* (CNIPA).

Developing ICT tools facilitating e-government processes

The use of ICT tools (e-government) clearly facilitates the interaction between the public administration and businesses.[30] Over time, awareness has increased in Italy of the necessity to develop coherent policies for administrative simplification at all levels of government and to best exploit the synergies offered by administrative and electronic innovation. Streamlining communication tools and procedures into one single electronic platform has been the main approach followed in the recent past. To this end, a budgetary increase has been foreseen for 2008-10 to enhance the electronic services in central administrations. The initiatives launched to foster e-government in Italy are promoted and co-ordinated by the Department for Innovation and Technologies and they rely on the activity of the CNIPA. One of the key targets is to introduce a fully electronic data management within the public administration, abolishing any paper exchange between central administrations by the end of 2008. The CNIPA estimates cost savings of about EUR 200 million per year. To incite reform, funding for traditional mail granted to the

administrations will be cut if they do not use speedier and cheaper communication means.[31] Initiatives have also been undertaken to promote the exchange of information, data and documents between public administrations by improving the interoperability of information systems. The target is to prepare 100% of the framework agreements and ensure access to 50% of databases by the end of 2008. By March 2008, six types of such agreements had been defined. Moreover, the CNIPA has established a Centre on the quality of online services that supports, also through training, public administrations in the programming, launching and reviewing of online services. The establishment of an electronic medical filing system (*Fascicolo Sanitario Eletrronico*, FSE) is being co-ordinated by the Department for Innovation and Technologies jointly with the Regions and the Ministry of Health. It should facilitate online appointments, prescriptions and medical reporting.

The relevant legal provisions in this area were codified in the Digital Administration Code (*Codice dell'amministrazione digitale*) of 2005. Italy's current strategy for diffusing ICT in the public administration is built upon the Strategic Guidelines for e-government (*Verso il sistema nazionale di e-government. Linee strategiche*) issued by the Department for Reform and Innovation of the Public Administration in January 2007. Italy intends thereby to become a front-runner and leading actor in developing e-government practices internationally and, in particular, in the framework of the "European Information Society – i2010" strategy of the European Commission.[32]

CNIPA studies have highlighted that controlling is the sector where ICT tools have been implemented the least. Only few investments have been devoted to improving accounting, strategic, managerial, evaluation, and customer satisfaction control mechanisms. Lacking or insufficiently co-ordinated electronic systems and procedures have made data aggregation and comparison difficult and have hindered efficient public spending. To tackle these problems, the CNIPA is implementing three projects for the complete computerisation of all accounting processes.

Assessment

In Italy, the electronic innovation and the diffusion of ICT within the public administration have acquired a particularly strategic relevance further to the constitutional reform of 2001. The reform of Title V made it no longer possible for the State to proceed to administrative simplification at various levels of government through legal interventions, as it had done throughout the 1990s. E-government allows for transmitting simplification imperatives from central to regional and local administrations.

One of the main improvements recently introduced was encouraging recourse by the public administrations to private sector instruments, thus promoting a client-oriented perspective in the administration. While the rationale triggering reform is sound, however, the results involve some bright points while leaving scope for improvement. The development of the "Friendly Networks" project illustrates the renewed thrust for streamlining and diffusing e-government services over the territory, consolidating the positive results already achieved over the past years in terms of using e-government by public administrations. Moreover, ICT tools are starting to be applied in areas previously unaffected such as consultation (see above the pilot project on the Simplification Action Plans for 2007 and 2008). More generally, thanks to administrative simplification initiatives, the number of obligations has diminished and the costs to start a business have been cut. A sort of spill-over effect has been triggered by sectors and municipalities showing good

practices. Users have tended to be satisfied with simplified administrative procedures, where these were implemented.

On the other hand, however, so far reforms have had incomplete effects (Bassanini/Dente, 2005). The "silence is consent" practice, the "start-of-activity" notices, and the uneven evolution of the one-stop shop system, are points in case in this respect. A primary problem seems to lie with the heterogeneous dissemination and degree of performance of the tools across the country. For instance, not every administration is equipped with a *sportello unico*, probably also due to the fact that the diffusion of the tool was mainly driven by pilot projects and on a voluntary basis. Second, throughout the past decade, administrative simplification has faced the existence of multiple administrations and complex procedures. In the case of the one-stop shop notably, greater emphasis seems to have been put in Italy on simplifying the "front-office" than on intervening on simultaneously streamlining the "back-office" (*i.e.* the public administration itself, its procedures, and its internal co-ordination). Third, modifications of the number, size and portfolio of ministries further to the changes in governments have had implications for the continuity of action needed to carry out digital reforms in the administration. The link with the demand is another issue. Also for internal organisational reasons, many municipalities have preferred not seizing the opportunity to directly and fully exert their new powers at the start. Moreover, individual entrepreneurs often have an indirect relation to the public sector, and the intermediaries offering their services to them might not have the right incentives to promote simplified and shorter procedures. Finally, many analysts take the view that genuine good intentions and sound principles for administrative simplification have been followed by inadequate means. Administrative simplification in Italy has often focused more on fixing the structure and the procedures rather than on actually removing unjustified obligations, as the second proved more difficult to achieve.

Nevertheless, the most recent policy changes show that Italian authorities are aware of some of the current shortcomings of the past one-stop shop initiatives and are searching for ways to fill the gaps. It is certainly promising to see that pragmatic responses are being developed in a way to overcome the institutional complexity and foster an operational approach to increase user take up and satisfaction.

Box 2.9. **Monitoring OECD recommendations: Enhancing administrative simplification**

In the 2001 Review, the OECD invited Italy to consider to:

"Establish a centralised registry of all administrative procedures with positive security" (OECD, 2001).

This recommendation was met in part. The 2007 Action Plan has outlined the recollection of regulation on administrative procedures and the reduction of procedural times. However, since the constitutional reform of 2001, the division of powers between the State and regions has been changed and administrative competences have been transferred to local autonomies, thus the consistence of a centralised registry of administrative procedures could be questionable. While several ministries (*e.g.* Economic Development) have implemented sectoral registries, a full consolidated register of all administrative procedures with positive security however does not seem to have been established as of yet from a whole-of-government perspective.

Risk

Assessing risk to the public and to public policy in a transparent manner is explicitly acknowledged in the OECD 2005 *Guiding Principles for Regulatory Quality and Performance*. Risk management has become one of the core functions of the governments across most OECD countries. Risk management policies are designed to balance the need for competitiveness while ensuing safety and equity, and providing an appropriate understanding of the responsibilities of all stakeholders. In most cases, risk management is associated with government actions to protect people at work and to protect citizens and the environment from harm. In recent years, traditional decision-making models for assessing and managing risks have faced major challenges. This may involve erosion in public trust together with increased citizens' expectations and increasing risk aversion.

In Italy, forms of risk management are applied to a number of policies and sectors. Some examples include hydro-geological and seismic risks as well as technological risks related to public health and the environment. The National Environmental Protection Agency (APAT – renamed ISPRA in 2008) provides the Ministry of the Environment and Land Protection (MATT) with scientific and technical support since 2002. Further to the Environmental Code of 2006, the APAT has acquired an autonomous status in terms of internal organisation, management and budget, as well as technical and scientific advice and regulatory powers. Since 2001, ISPRA-APAT is integrated into a network-type system, the Environmental Agency System, which today includes 21 Regional (ARPA) and Provincial (APPA) Agencies, established by special regional laws to perform inspection and enforcement. The ISPRA provides national technical guidelines and handbooks.

Risk management may also be addressed as part of the environmental impact assessment, which exists under a certain form. The *Valutazione dell'impatto ambientale* (VIA) assesses potential impacts of project, while the *Valutazione Ambientale Strategica* (VAS) seeks to integrated environmental considerations in the design and implementation of policy programmes and strategies – as mandated by EU requirements.[33]

In the field of health, the *Consiglio Superiore di Sanità* is the technical consultative organ supporting the Ministry of Public Health. The *Istituto Superiore di Sanità* (ISS) is the leading technical and scientific public body of the Italian National Health Service. The National Committee for Food Safety (CNSA) became operational in February 2008. It serves as a technical advisory body participating in the network of the European Food Safety Authority (EFSA). As such, the CNSA provides scientific opinions to the relevant ministerial administrations as well as to the Regions and Autonomous Provinces.

More recently, a form of "risk-based inspection" approach was envisaged by a draft Bill (AC 2 161) to simplify the monitoring of businesses subject to environmental certification. The Action Plan for 2007 foresaw to conduct a two-year trial programme for SMEs certified on the basis of ISO14 001 international standards, in which the periodical inspections required for certification are performed by certifying bodies or by the companies themselves instead of administrative bodies. The certifications ensure that businesses meet the standards required for compliance with environmental legislation and the renewal of permits. This action point remains to be implemented because the end of the XV Legislature prevented the adoption of the Bill.

Assessment

Some OECD countries have started to recognise the importance of, and the need for, an effective policy to assess and manage risks, and to put institutional structures,

guidelines and procedures in place for this. In organisational terms, in Italy, the network model established in the environmental policy has worked, combining direct knowledge of the local area and local environmental problems with national environmental protection and prevention policies. The APPA-ARPAs network has become a point of institutional and technical/scientific reference for the entire country. The recent establishment of the CNSA is an example of the attention that Italy is giving to adapting its institutional and procedural structure to the requirements of EU regulations and policies related to risk.

Nonetheless, risk is not fully part of the regulatory reform debate in Italy, given the overall priority given to administrative simplification and the reduction of burdens. The OECD has observed that, as a result, there are no general principles or policies that could be applied across government departments and that could be explicitly supported at political level. However, the Italian view is that this is not necessary to design a coherent policy on risk, as it believes that general principles of policies are not necessarily the best instruments to ensure that risk management solutions are applied in sectoral fields.

Conclusions

Regulatory reform efforts in Italy are now building on almost two decades of effort. Since the 1990s, and even before, the need for reform has been acknowledged at the highest levels in the administration and among political elites. The commitment to modernise the public administration was explicitly pursued both through the approval of laws of re-organisation and harmonisation of administrative procedures as well as the creation of dedicated structures: the creation of the Ministry of Public Administration in 1983, the DAGL in 1988, the *Nucleo per la semplificazione* in 1999 followed by the *Unità per la semplificazione* in 2007. The recent move under the XVI legislature has resulted into significant progress towards a comprehensive and articulated vision for reform. Through clearer ministerial responsibility and accountability, the new system moves further compared with the loose institutional arrangements that prevailed previously. Italy, at the level of its centre of government, the Presidency of Council, is now equipped with Better Regulation structures, which are in a position to pursue a wide ranging regulatory reform agenda, including the simplification and reduction of the stock of existing regulations, the measurement and reduction of administrative burdens, as well as performance evaluation practices. The Italian State also pursued reform within the framework of broader economic policy goals, including cutting expenses, reducing public debt.

In the past ten years, progress has been made in Italy to simplify and improve the administrative and regulatory environment. The 2001 OECD Review analysed the early phases, moving away from significant direct public intervention in the economy towards a more transparent, flexible but structured regulatory system that would improve economic performance. The 2001 Review identified four main areas of action for Italy:

- Improving the institutional and policy framework.
- Creating the institutions and tools for controlling the flow of new regulations.
- Rationalising the stock of existing regulations.
- Improving regulatory coherence between the national and the local levels of government.

Since then, Italy has overall worked towards improving its regulatory environment on all of these fronts. In some areas, the results achieved have been significant and innovative, notably in terms of developing the legal framework underpinning reform and designing

specific tools such as administrative burden measurement (the *taglia-oneri*) or the cutting-laws (the *taglia-leggi*) mechanism.

Constitutional changes, lack of consistent political support over the past decade, and a lack of resources have nonetheless had implications for the implementation of all the initiatives launched over the past decade. Pending issues remain the extent to which the periphery, and sectoral ministries, are prepared and equipped for implementing the initiatives launched, as well as consolidating reform tools and practices, such as RIA.

The constitutional reform of 2001 was a turning point in Italy's regulatory reform programme. This reform led to an entirely new system, which is not a fully-fledged federal system, but still differs from the former centralised system. Such changes require time for adaptation and proper implementation in a country in which the legislative activity, the doctrine, and the case law had traditionally defended and promoted the unitary concept of the State. The constitutional reform brought not only a regionalisation of the territory but it also further underlined the importance of the local level. Regulatory competences have been conferred on the lower levels of government since 2001 and sources of regulation have proliferated. This has triggered greater competition among sub-national authorities, fostering excellence in some cases. It has nonetheless also had political implications, as well as opened the possibility for overlapping competences, which require further adjustment. This situation is analysed in further detail in Chapters 5-9 of the study.

The high rotation of governments in the past decades is another complicating factor, one which sets Italy aside from a number of other European countries. This situation bears some elements in common with the pre-1958 period in France. The current organisation of parliamentary work, and the fact that there are no clear boundaries to the matters to be addressed through law, have implications for the current regulatory framework. The efforts that have been made in recent years are all the more laudable, since they have been achieved against the backdrop of this specific challenging institutional context.

As underlined throughout this report, renewed support for reform was achieved over the XIV and XV Legislature, and confirmed by the XVI. A collegial climate seems to have consolidated around the need and the urgency of regulatory reform since 2005. This renewed emphasis on the reform agenda in Italy is characterised by a greater awareness that regulatory policy is to be conceived and implemented with a comprehensive perspective and over a relatively long period of time.[34] The term "simplification" has now a broader meaning in Italy and it encompasses not only the mere reduction of the number of laws and their codification. Simplification covers a broader policy spectrum, away from a purely legal approach, and opens up to evidence-based considerations. Simplification refers also to the attempt to improve the quality of regulation.

The creation at ministerial level of a portfolio explicitly addressing normative simplification testifies of the strong political commitment of the Italian government to advance and sustain regulatory reform through simplification. The quick implementation of the various phases of the "guillotine" mechanism (*taglia-leggi*) – *i.e.* the inventory of the existing legislative stock; the identification of the legislation to be repealed; and the actual repeal – is remarkable, bearing in mind the considerable challenge. Italy is shifting its regulatory policies towards a broader approach that openly considers political prioritisation, administrative capacity, measurement and performance evaluation.

In terms of administrative simplification, the launch of the "Industrial Plans" for public administration and for innovation by the Minister for Public Administration represents a decided and sustained intervention to modernise the bureaucratic apparatus. This has been complemented by valuable measures to reform the statute of civil servants and assess their performances. The measurement of administrative burdens has been completed within a limited period of time and an efficient use of resources. Its scope is being extended to measuring burdens from regional and local authorities as well as those generated by agencies. The next steps involve addressing burdens falling on citizens, while maintaining a strict monitoring of the implementation of the current planned burden reductions as well as their final impacts on the economy and society.

Efforts have also been made to enhance strategic planning for reform. Despite its complexity, the Action Plan on Simplification and Regulatory Quality articulated in 2005-7 represented a significant step towards organising the action of the Government along a strategic work programme both within the year and in the course of the legislature. Programmatic documents increase the accountability of the executive *vis-à-vis* the Parliament and the stakeholders, as they shift the emphasis of Government's action towards the achievement of measurable results within clearly set deadlines. As the initiative to make greater recourse to online and more traditional forms of consultation in 2007 proves, these documents have also the potential to be one of the leverages in the hands of the Government to unlock the interface between the public administration and the external stakeholders. This evolution is broadly in line with the 2001 OECD recommendations.

As consensus has been achieved, progress has been made. Regulatory reform has produced a number of effective results. The implementation of the cutting-law exercise now offers opportunities for matching top-down impulses to the reform with bottom-up responsibility. This could also benefit from cross-fertilisation and joint opportunities with the currently conducted review of public expenditure. Sectoral simplification codes have been processed and international indicators show that some procedures have been simplified. E-government has made some progress, although the digitalisation of public administrations has been slower than expected, and should deliver more concrete results thanks to the newly introduced "Friendly Networks" project. The latter project also testifies of the synergies realised between administrative simplification and technological innovation. Italy is also now better complying with EU directives than ever in the past. Regulation in sectors such as energy and telecommunications has achieved higher quality standards.

These approaches broadly respond to some of the recommendations made by the 2001 OECD Review and also reflect international good practices.[35] Nonetheless, the effectiveness of the current institutional arrangement will depend on the co-ordination between the centre and the periphery. Incentives and the organisation of policies at the micro-level are critical elements of success. Recent reforms have focused, and rightly so, on key institutional aspects and the measurement of regulatory burdens is a decisive achievement which helps to monitor progress by ministries. However, incentives to perform and sanctions for non compliance have comparatively received less attention. The need for communication was not entirely felt at the political level and the potential benefits of reforms always need to be publicised, even at a time of a crisis.

However, the state-centred approach for policy making remains. Many administrations are focused on compliance with laws and procedures, while the shift to service quality and

outcomes still represents a cultural revolution. All the reforms, since those undertaken in the early 1990s to those acted in 2008 seek to transform the public service from a formal juridical machinery into a performance-driven and a consumer-oriented and client-friendly service. In Italy, as well as in many other countries, this requires tenuous commitment to change, in order to overcome internal cultural resistance. The review of regulations *ex ante*, from a cost benefit and welfare perspective still needs to be developed. Recent initiatives by the Minister of Public Administration on strengthening performance evaluation criteria and control are promising and to be welcomed in this respect.

The relationship between the political layer and the senior administrative levels is another issue in a context of high rotation. Irregular political support and changing policy agendas may hamper the implementation of reforms, where continuity is needed, for example to support the diffusion of large scale e-government tools. While in France, under the institutional context of the IVth Republic, in the pre-1958 period, the stability of the administration was to some extent compensating for the rotation of the policy makers at the highest level, this was less the case in Italy. The public administration faces challenges to trigger, sustain and implement regulatory policies. The use of emergency governmental decrees and "omnibus" laws, even if they are justified by the urgency, may not facilitate evidence-based decisional processes, as evidenced by the process to close the gap for the implementation of EU regulations through annual omnibus laws. Over the past decades, the frequent change in the number, structure and portfolio of ministries, which reflects the negotiations underpinning coalition governments, has had implications for the long-term implementation of regulatory policies.

The Italian context is also characterised by the persistence of strong vested interests that do not necessarily seek to promote a more open, accountable, evidence-based and participatory decision-making process, as they may stand to lose from it. These interests also implicitly benefit from the lack of communication around better regulation towards the broader public. Reforms in Italy have largely remained self-referential and yet they have not emerged as a sufficiently strong internal driving force for higher quality regulation.

In addition, reforms were constrained in the past by segmented and scarce financial and human capital resources, which had to be spread across a large number of policy priorities, with changing responsibilities. The kind of resources invested in the reform is also an issue. Availability of qualified human resources is an important factor for the success of better regulation policies. In Italy, while progress has been achieved at the centre of government, this remains the case in some of the sectoral ministries, as well as across levels of government. A stronger coupling with the strategic budgetary planning and management of resources, which is an important planning element, might have helped. Strong economic and analytical skill and multi-disciplinary expertise are not available in all administrations. The overly legal culture of the administrations has also limited recourse to evidence-based approaches to regulation. The option to draw from external expertise, while an understandable response to the current setting, may not fully compensate the need to build long term know-how within the administrative apparatus at large.

In Italy, significant and intense innovative phases have been followed by periods of relative operational inertia, in which implementation has slowed down. This may have prevented some reforms from achieving their full potential. Initiatives have not always met with the initial expectations. In particular, the pathway towards implementation may have

been affected by hesitations. This also makes a fully fledged evaluation of the reforms relatively difficult over the long term.

The recent period offers scope for increased expectations, as some of the reforms build on increased political consensus. The increasing consensus over the regulatory reform agenda across the recent legislatures bodes well for the future. This fosters hope that reforms be supported on stronger political ground in the long term, with significant benefits for the competitiveness of the Italian economy, thus improving its capacity to resist the crisis.

Policy options

While Italy has improved its approach for regulatory reform, with significant efforts underway, scope remains for ensuring further progress. This section highlights a number of policy options that can help Italy keep momentum and maintain its commitment to consistent and full implementation. These options draw from the OECD 2005 *Guiding Principles for Regulatory Quality and Performance* and reflect international good practices.

Maintain political commitment for a consistent approach to regulatory reform

One of the key OECD principles underpinning regulatory reform refers to changing the basic approach to regulation within the public administration as a whole. Italy has now made commitments to improve the quality of regulatory processes and outcomes in a more consolidated manner that are supported at a high political and administrative level. This now needs to be sustained to be put into practice.

The new institutional setting reflects increased good practice for implementing regulatory reform, with clear ministerial responsibility. The set of units supporting the Minister for Simplification as well as the Minister for Public Administration are in a position to ensure impetus for reform and are located close to the centre of government. All this reflects the imperative of ensuring leadership for reform at the highest political level. Parallel reforms have also been launched by the Minister of the Public Administration with the aim of improving the efficiency of the public administration and to reduce absenteeism.

There is still scope for further consolidation. A consistent approach to reform has yet to emerge, as principles and objectives are scattered among various policy statements, legal documents and institutional mandates. The adoption of a single, formal policy statement underpinning regulatory reform could be instrumental. This statement could be intended to guide governmental actions over a long period, and be supported by adequate consensus. In addition, these efforts would gain to be supported by clear programmatic steps, with articulated goals and measurable targets to sustain the effort over time.

Above all, political leadership is to ensure that the government designs and implements a consistent and encompassing programme for regulatory reform which should be carried out in a comprehensive approach. Each initiative and instrument should be intertwined in order to exploit synergies. For example, as recently acknowledged by the government, further synergies can be exploited between RIA, consultations, and legislative simplification.

Consolidate mechanisms for monitoring regulatory and simplification policies

Regulatory reforms embrace not only the flow of new legislation but also the maintenance of the existing legislative and regulatory stock. In OECD countries,

simplification policies are important to identify and streamline unnecessary legislation, thereby contributing to reducing inconsistencies and administrative burdens. By so doing, they make the regulatory environment more accessible, effective and more conducive to economic growth and competition.

This Review has highlighted a number of positive features in Italy's simplification policy. The annual Simplification Acts have been an attempt to legally proceed in a programmatic manner. The "guillotine mechanism" (*taglia-leggi*) has great potential and is characterised by a number of good practices. Italy should build upon this system and further commit to its implementation.

Especially on the eve of the challenging second phase of the cutting-laws' exercise, it is important that the government introduce further good practices that appear to be missing or only partially implemented at present and which would fully exploit the potential of the guillotine instrument. As the government also acknowledged in its report to the Parliament, it is essential that priorities are set to proceed rationally and as smoothly as possible to the review.[36]

Clear principles should be used to carry out the task, especially when the cutting-laws exercise will be applied to achieve the simplification of more substantial pieces of legislation.[37] It is necessary that the emphasis now shifts from reducing the absolute number of acts towards above all substantively assessing the impact of each legislative act. Law 246/2005 explicitly includes provisions for *ex ante* (RIA) and *ex post* evaluation (*VIR, Valutazione d'Impatto della Regolazione*). Efforts should be made in this direction.

A further critical improvement would be to add a third review "filter" to the scrutiny process carried out by the sectoral administrations and the central review unit. The cutting-laws should not be limited to a formal exercise carried out by and for the public administration. Hence, a further review filter should take the form of feedback and recommendations from external stakeholders. Public consultation on the relevance of the regulations initially identified by the government as necessary should be made mandatory and systematic.

Furthermore, with reference to the last phase of the exercise, the final, simplified regulations should be redrafted and designed following strict regulatory standards criteria and made subject to evaluation – an imperative explicitly reiterated also by the State Council in its opinion on the cutting-laws.[38] It will be also very important to clarify the synergies and the differences between the simplification action carried out by the government in the framework of this exercise and other future sectoral simplifications.[39] It is important that the final list of regulations be computed in a publicly accessible database, which is now fortunately the case under the recent measures adopted by the Minister for Simplification.

Guillotine mechanisms deliver only if they are conceived as a part of a broader set of reforms and not as a one-off exercise to *ad hoc* reduce the size of the legislative stock. The insertion of the cutting-laws into the programmatic document of the government (the annual Action Plan for Simplification) goes in the right direction and should be made routine. The instrument should also be used to promote simplification activities at the regional level. By so doing, and by making the initiative permeable to external inputs, the *taglia-leggi* introduced by Italy can constitute an extremely powerful tool to profoundly streamline the country's regulatory environment on the one hand, and introduce an outward-looking logic in the public administration on the other hand. It should also be added that this effort will need to

be supported by more permanent structures, as current organisational arrangements that are not perennial are not fully in line with practices in many OECD countries.

Implement a more systematic and transparent consultation mechanism taking advantage of new technologies

The OECD 2005 *Guiding Principles for Regulatory Quality and Performance* insist on the importance of having transparent and non-discriminatory regulations. Consultation with all significantly affected and potentially interested parties is a key instrument in this respect. It should take place at the earliest possible stage of the process of producing and reviewing regulation.

In recent years, a number of platforms have been established in Italy to ensure consultation practices at various levels of government. Great efforts have been made to cope with the changed constitutional setting. Pilot projects and individual initiatives for online consultations have also been launched. However, more can be done to make regulatory process even more open, transparent and accountable. Online consultations should be made into a regular and formalised practice by all administrations, including independent authorities.

The involvement of stakeholders in policy making is still uneven, depending on individual dossiers, on the responsible administration, and on the political context. Very often, stakeholders have been contacted at a late stage. Government-wide guidelines should establish good principles and mandatory minimum standards for the consultation of citizens, business, and other stakeholders. Consultations should be carried out on all legislative proposals and major regulations, including transposition and implementation measures, as early as possible. In particular, consultation should entail explicitly addressing issues related to the identification of the problem, the definition of causal links, and the spelling out of possible policy options, also in the framework of the RIA process. They should be posted online together with the relevant documents, and announced well in advance. For example, the notice on the opening of a consultation should be more visible on each ministry's website; a system of mailing list should be set up, including all the persons or organisation or companies asking to be informed of a new consultation opened. The consultation period should last a significant time (for example eight weeks is a possibility), to allow for adequate reply. Administrations should publish the comments received, provide feedback to them, and explain the outcomes of the consultation process (further to the "notice and comment" principle). Such a move would bring Italy in line with international good practices.

Further consolidate capacity to support reform

Evidence from OECD best practices shows that the organisation of the interface between the political and administrative spheres within the executive and between institutions, is a critical success factor for reform. Significant steps have been made over the recent period to improve these structures in Italy, particularly in the centre of government. A stable institutional framework has been put in place, with a reinforced co-ordination between the centre and the periphery. The consolidation of responsibilities of ministers for the quality of regulation in their sectors, and the initiation of a system of checks and balances to stimulate the reform initiatives, have to proceed in co-ordination with the quantitative evidence provided by the measurement of regulatory burdens.

While these reforms should receive praise for the progress that has been accomplished, Italian structures could still be slightly reinforced in terms of staffing, as well as being moved to permanent structures, away from the current mechanisms of "*struttura di missione*". Another issue remains, in terms of the availability of adequate capacity in sectoral ministries, to sustain formal systems to improve both the stock and the flow of new regulations in every sector. The full implementation of a functioning RIA system will require additional resources in sectoral ministries, with quantitative analytical skills to complement the legal approaches. The need to further professionalise the Italian administration and reinforce expertise is acknowledged by the Ministry for Public Administration and this agenda will need to be sustained over the coming years.

Building on recent steps, it is furthermore crucial to maintain and consolidate sustained political strategies that incentivise and support ministers and those administrators who champion the reforms, so as to encourage implementation. This way, regulatory reform would continue being an internally-driven and politically sustained policy over the next years.

Foster the adoption of Regulatory Impact Assessment through a pilot approach

The OECD 2005 *Guiding Principles for Regulatory Quality and Performance* champion RIA as one of the key processes allowing rational, balanced and evidence-based decision-making. RIA helps regulators identify the underlying problems or mischief, consider alternative policy options, and apply various methodologies to compare costs and benefits of regulatory interventions. As such, it is an auxiliary tool for decision makers when they exercise their responsibilities.

In Italy, efforts to embed RIA practices in the public administrations have led to mitigated results to date. The new regulation on a simplified RIA of April 2008 aims at re-launching the practice within the central administration. To work well, the instrument requires an adequate supporting organisation. This includes the strategic and operational management of RIA. To this end, the government should make sure that related guidelines are issued and that there is the capacity to run the entire process. To grant full credibility to the initiative and ensure an effective level-playing field, it is important that RIAs are carried out in a predictable manner, and with rigour. In particular, RIA analyses should start as early as possible in the policy formulation process. Each Ministry should therefore define an annual programme on the basis of which RIAs are planned for the following year, and set clear deadlines for delivery. Precedence should be given to priority items, to be agreed in an accountable manner.

In this respect, the regime outlined in the regulation for a simplified RIA may prove over-ambitious and it still lacks focus. Considering current financial and human capital constraints, the scope of application of the instrument may be too broad (hundreds of measures per year), while not addressing the key legislative proposals. Another possible option might be to concentrate resources and expertise to perform RIA on a limited number of major legislative proposals per year. A few, well-structured and fully-fledged analyses (maybe two or three per ministry) may have greater economic impact, and be vibrant examples of the potential of a performing RIA system. The amount of such assessments should be progressively increased over the years.

In addition, a number of organisational steps may be considered to further improve the system. Sectoral administrations should continue being responsible for carrying

out RIAs, as correctly envisaged by the new RIA regulation. Each should make a senior member of staff responsible for promoting and monitoring compliance with the good practices contained in the guidelines published by the USQR. A "RIA network" should emerge consisting of the USQR, the DAGL, and the dedicated staff of each administration.

Mechanisms should be introduced that enhance co-ordination and ensure quality control:

- Other administrations should have an opportunity to input to draft IAs at an early stage, through a mandatory and formalised inter-departmental consultation.
- The RIA process should be made more transparent, and third parties, including regional and local authorities and the stakeholders, should have an opportunity to comment before IAs are finalised.
- The capacity of the DAGL should be increased in order to provide a systematic and effective scrutiny of the overall quality and the balance of the analysis contained in the RIA documents. Clear indicators measuring regulatory quality should be drawn up and periodically reviewed.
- RIAs should be systematically published, and the government should provide stakeholders and the public with a single online access point for all documents. This access point should also be used to provide feedback to respondents.
- It should be better specified on which grounds the DAGL decides on the opportunity and/or necessity to exempt a proposal from being subject to RIA.
- The obligation for the President of the Council of Ministers to annually report on the application of RIA to the Parliament[40] should be used as an opportunity for a constructive regular evaluation of the functioning of the system as well as the political and technical issues raised by practice.

Furthermore, mandatory guidelines should be issued to ensure consistency in analytical methodologies. Guidelines should describe the principal roles and responsibilities within the executive for RIA; the process and the methods to be followed; and the criteria and standards for quality. They should specify that RIAs follow an integrated approach and systematically cover economic, social, and environmental impacts. Guidelines should also include a common list of methodological and technical assumptions to be used in all RIAs, insisting on developing and using quantitative analyses.

Most importantly, RIA should get rooted into the daily *modus operandi* of the administration. Sectoral administrations should be fully associated in the development and implementation of the tool, in order to forge a sense of ownership. Specific resources should therefore be allocated. Concrete action is recommended to recruit and train administrators able to perform RIAs. A multi-disciplinary background is essential if the public administration is to meet the quality standards set in the guidelines. Close co-operation should be developed also with stakeholders for the collection and validation of data. Practice by the AEEG could be considered as a good basis in this respect.

Finally, high quality standards should be applied to each administration producing new regulations, including all independent authorities and at all levels of government. All RIA processes should include public consultations and feedback with stakeholders, and the RIA reports promptly published online.

Apply more consistently regulatory quality principles to the interface between the national and the European decision-making processes

This report acknowledges the significant progress made by the Italian government in curbing the deficit related to the transposition and implementation of European legislation. Efforts have also been made to improve the interface between the national and the European levels during the preparation phase (so-called "ascending phase"). However, there is scope for strengthening attention to the European dimension in designing regulatory reform. Only the decree establishing the USQR refers to the importance of integrating that dimension explicitly.[41] Italy should extend its regulatory policy principles and tools to embrace also the interface with the EU institutions.

The powers and means entrusted to the CIACE have not been spelled out explicitly. This situation has sometimes led to deadlocks and conflicts. It should therefore be redressed by clearly defining the prerogatives and powers of the CIACE *vis-à-vis* the other administrations. Dedicated technical committees supporting the CIACE have been established to follow particularly relevant dossiers. This practice should be confirmed and reinforced and, more generally, the structure should be adequately staffed. It is in fact increasingly important for a member state to express its position at the earliest stage possible (even before the Commission transmits its proposal to the Council of European Ministers) and follow it through, especially at COREPER level.

Furthermore, both the scope of the Community Act and procedure leading to its adoption should be revisited, in order to best integrate better regulation principles into the process. While the current situation may appear more satisfactory in terms of overall implementation of EU directives, there are implications from hasty legal drafting and lack of due process. Therefore, stronger attention to quality regulation as part of this process might help to fully reap the fruit of the efforts made. For example, proper consultations and RIAs should be carried out also on this important piece of legislation.

Consolidate the regulatory authorities

In many OECD countries, regulatory authorities have been established during the privatisation and liberalisation process to improve market efficiency access and transparency, as well as consumer protection. An enhanced co-ordination among the executive and regulatory authorities reflects OECD best practice. To comply with the principle of separation between regulatory and operational functions, moreover, the EU requires the establishment of independent regulatory authorities in specific sectors, such as telecommunications.

The OECD review of 2001 included some recommendations on regulatory authorities. Italy was invited to improve its institutional structures and procedural mechanisms in order to assure that the authorities comply with the quality control procedures and regulatory policy set by the government. Overall, general satisfaction is expressed with the regulatory and/or management performance of the Italian sectoral authorities, even though a thorough analysis of all the agencies was outside the scope of this review. The sectoral analyses have shown that the AEEG for instance has introduced good practices, while there still is room for manoeuvre in the transport sector, where such an authority does not exist.

The domestic debate has often had implications for further progress, in terms of implementing homogeneous quality regulation criteria for these bodies. Some sectors are

also lacking such sectoral authorities, as illustrated in the transport sector (Chapter 8). Further facilitating a consistent approach to regulatory authorities, as envisaged by the Draft Law A.S. 1 366 could help to further modernise the institutional design of such bodies, as well as their contribution to economic and social well being.

Notes

1. *http://ec.europa.eu/governance/better_regulation/index_en.htm*.
2. For Italy, see the various *Piani per l'innovazione, per la crescita e l'occupazione* (PICO), *www.politichecomunitarie.it/attivita/48/programma-nazionale-di-riforma*.
3. See *http://ec.europa.eu/enterprise/regulation/better_regulation/high_level_group_en_version.htm*.
4. These include Decree-Law 7 on Liberalisation of 31 January 2007; the "Bersani" Bill**,** laying down measures in favour of consumers and facilitating production and commercial activities; the "Nicolais" Bill on the modernisation and efficiency of government; the "Amato" Bill introducing new legislation on nationality; the "Lanzillotta" bill reorganising local public services; and the "Turco" Bill on the simplification of administrative procedures in the field of health protection.
5. The pre-Council (preparatory meetings of the Council of Ministers) meets weekly. It is chaired by the head of the DAGL and consists of the Heads of the Legislative Offices of all the Ministers of the Government.
6. The administrative court of Lazio (*Tribunale Amministrativo Regionale*, TAR) in Rome has generally jurisdiction over appeals addressed to the authorities. The only exception being the Energy Regulator, for which the court of Lombardy has jurisdiction, as this regulator is based in Milan.
7. The OECD report *Ensuring regulatory quality across levels of government: Italy* (Paris, 2007), moreover, extensively addressed the subject.
8. See *www.PORE.it*.
9. However, the methodology of such data has been subject to discussion in Italy. This data starts from the hypothesis that the most suitable procedure for the "standard case" is the *procedimento ordinario di cognizione*. However, the features and the assumptions of the "standard case" would rather suggest the possibility to file a lawsuit following a special procedure, called *procedimento d'ingiunzione*, ruled by Art. 633 ff. of the Italian Code of civil procedure (ccp). This procedure is very common in commercial litigation: it is a sort of "summary judgment" and allows in a few steps (and in a few days) the plaintiff to obtain a judgment against the defendant. This judgment can be provided with an enforcement order from the beginning or, at most, within maximum 6 months (Art. 648 ccp) and allows the plaintiff to proceed directly to the enforcing procedure.
10. Italian public spending on justice has increased by 140% and the number of judges in service increased by 15% in the 1990s. See *Green Book* (2007), p. 27.
11. See G. Savini (2005), "La Lei 246/2005 – Legge di semplificazione per il 2005: Prime considerazioni", in *Amministrazione in Cammino*, p. 15. On the first phase, see E. Morfuni (2002), "L'introduzione dell'Air in Italia: la prima fase di sperimentazione", in *Giornale di Diritto Amministrativo,* p. 729 ss.; and S. Cavatorto e A. La Spina (2002), "L'analisi di impatto della regolazione nella recente esperienza italiana", in *Rivista Italiana di Politiche Pubbliche*, p. 43 ss.
12. See the first *Progress Report to the Parliament on the Implementation of the regulatory Impact Analysis (RIA)*, of 13 July 2007, pursuant Art.14, par.10, of Law 246/2005, which reflects data and provides information as regards 2006 activities, p. 8-9.
13. This is the date when the regions, foreseen by the 1948 Constitution, were introduced in Italy.
14. See Presidenza del Consiglio (2005), *Relazione al Parlamento sull'attuazione dell'Art. 14, comma 12,* della legge 28 novembre, No. 246 (*"taglia-leggi"*), of 14 December 2007, p. 22. The report estimates in 5-15% the approximation error due to the incomplete or incorrect classification of the legal acts by the different database systems.
15. See Consiglio di Stato, *Parere sullo schema di decreto legislative recante il Codice dei diritti di proprietà industriale*, Adunanza generale 10548/04 del 25 ottobre 2004. On the opinions given by the State Council on the first *codici* scrutinised, see G. Savini, "I pareri del Consiglio di Stato sui primi schemi di 'codice di settore'", in *Iter Legis*, No. 4, 2005, p. 5. On the merit of recasting trhough the *codici*, see

F. Patroni Griffi, "La 'nuova codificazione': qualche spunto di riflessione", in M.A. Sandulli (2005), *Codificazione, semplificazione e qualità delle regole*, Milano, pp. 75-80.

16. These refer to the pre-registration aspects, the registration in the economy's most populous city, and the post-registration aspects. The time required to complete each of these procedure is expressed in days, excluding the time spent gathering information. It is assumed that each procedure starts on a separate day; that the procedure is completed once the final document is received; and that the applicant has never contacted the officials before starting the procedure. The "starting a business" calculates the official cost required to complete each of the procedures. Professional fees are not taken into account, unless services are required by the law. Finally, the paid-in minimum capital (expressed in percentage of the income per capita) refers to the money deposited in a bank or with a notary before registration begins.

17. In the *Doing Business* report, costs are computed referring to companies with a start-up capital equal to 10 times the income per capita at the end of 2005, paid in cash (approx. EUR 229 084). However this size is not representative of the typical newborn company in the Italian business environment: most of the enterprises born in 2005 had a start-up capital amounting from EUR 10 000 to 15 000 (data from Unioncamere on the entry of firms show that only 11 new enterprises operating in the country's most populous city had a start-up capital of EUR 200 000 to 250 000, whereas 10 539 new enterprises had a start-up capital of EUR 10 000 to 15 000). If the set-up costs for an enterprise with a EUR 15 000 start-up capital are considered, cost amount to 11.2% of GNI per capita, instead of the value reported in the Doing Business report (18.7%).

18. Considering that (as in the 2008 *Doing Business* report) some procedures may take place simultaneously but cannot start on the same day, in Italy, Decree 7/2007 allows to start a business in only six days (instead of 13 days as in the *Doing Business* report).

19. They are: the registration of the company with the Register of Enterprises (*Registro delle imprese*) at the local Chamber of Commerce, the application for the tax identification number (*codice fiscale*) and VAT number (*numero di partita IVA*), the registration of employment books at the INPS office and finally, the notice of the employment of workers at the Labour Office.

20. It should be remarked that the Decree of the President of the Republic which regulates licences for building (DPR 380/2001) imposes terms that vary depending on whether the firm is located in a small (less than 100 000 inhabitants) or large (larger than 100 000 inhabitants) city. In the latter case, the terms (length of procedure) are doubled. This may introduce distortions in the calculation of the *Doing Business* indicator, as a large number of small firms in Italy are established in cities with less than 100 000 inhabitants.

21. See P. Dubini and A. Melchiodi, "Misurare la competitività dei sistemi economici: L'indicatore Doing Business", in *Economia & Management*, forthcoming.

22. Censis-Confcommercio, *L'Impresa di fare impresa*, 14 November 2006, p. 1. The sample considered by Censis referred to some 530 enterprises with at least 20 employees and more than EUR 3 million turnover. The sectors covered were house furnishing, automotive, pharmaceuticals, mechanics, food, transport and industrial logistics. The sample is not representative per production division. Field research data was processed with PAC methodology and cluster analysis. The enterprises were contacted between September and October 2006. Data referred to 2005. The sources used by Censis were the *Doing Business 2003* Report, *Statistiche giudiziarie* by ISTAT, data from the Ministero per lo Sviluppo Economico (on oil product prices) and Eurostat (prices of electrical consumption for industrial purposes) as well as the study by Unioncamere on *La soddisfazione delle imprese per i servizi resi dalla pubblica amministrazione* of 1 June 2006.

23. The first are, broadly speaking, administrative costs, labour market rigidities, fiscal imposition; access to credit; technologic and human capacity. The second refer to fix and variable production costs (including row material, labour and capital costs).

24. The European Commission distinguishes between "administrative costs" (*i.e.* information that would be collected by businesses even in the absence of the legislation), and "administrative burdens", which refer to information that would not be collected without the legal provisions. (See European Commission, *Measuring Administrative costs and reducing administrative burdens in the European Union*, Commission Working Document, COM(2006) 691 final of 14 November 2006.)

25. Examples of such units are the Danish Commerce and Companies Agency (division for Better Business Regulation) in Denmark; the Ministry of Trade and Industry in Norway; the Ministry of Finance in the Netherlands; the Swedish Agency for Economic and Regional Growth (Nutek) in Sweden; and the Better Regulation Executive in the Department for Business, Enterprise and Regulatory Reform in the UK.

26. In certain cases, the term is fixed in 90 days, or 180 days. The Bill, which also provides a simplified procedure if the terms pass uselessly, was under parliamentary reading at the moment this report was drafted.

27. This tool implies that licences are issued automatically if the competent licensing office has not reacted by the end of the statutory response period.

28. This tool permits to initiate activity through a notification (that is, without any explicit or implicit authorisation). In Italy, only a government decree can introduce an authorisation system.

29. On this, see for instance F. Bassanini e B. Dente (a cura di), *Lo sportello unico per le attività produttive: Stato dell'arte e strategie di rilancio*, ASTRID, 2005; and B. Argiolas, "I vincoli amministrativi allo start-up", in *Rapporto ISAE. Priorità nazionali: ambiente normativo, imprese, competitività*, Istituto di Studi e Analisi Economica, Giugno 2007.

30. See OECD, *The e-government imperative*, Paris, 2003; and *E-government for better government*, Paris, 2005.

31. The Budgetary Law for 2008 foresees cuts in such funding of 30% of the total resources annually granted to an administration whose e-mail traffic is less than half of its mail. See *Piano d'Azione per la Semplificazione e la Qualità della Regolazione. Relazione sullo Stato di Attuazione e sulle Attività Istruttorie Svolte*, 31 Marzo 2008, p. 8.

32. See *http://ec.europa.eu/information_society/eeurope/i2010/index_en.htm*.

33. See EC Directive 97/11, and EC Directive 2001/42, respectively. Besides the VIA and VAS, so-called "super-VIAs" can be performed on projects with high strategic priority. The super-VIA is a simplified and accelerated environmental impact assessment that facilitated the fast adoption of a piece of legislation.

34. This notion was acknowledged for instance by the Government in its "*Relazione al Parlamento sullo stato di attuazione dell'Analisi di Impatto della regolazione (AIR)*", of 13 July 2007, p. 11.

35. See OECD (2001), p. 180ff.

36. See Presidenza del Consiglio, *Relazione al Parlamento sull'attuazione dell'Art. 14, comma 12, della legge 28 novembre 2005 n.246 ("taglia-leggi")*, of 14 December 2007, p. 31.

37. *Ibid*., pp. 28-30.

38. See Consiglio di Stato, *Sezione Consultativa per gli Atti Normativi*, n. 2024/2007.

39. See Presidenza del Consiglio, *Relazione al Parlamento sull'attuazione dell'Art. 14, comma 12, della legge* 28 novembre 2005, No. 246 ("taglia-leggi"), of 14 December 2007, p. 31.

40. Article 14, Para 10 of Law 246/2005.

41. Article 3, Paragraph 3 of DCPM of 12 September 2006 indicates that the Unit shall participate in initiatives and programmes of the European Union, the OECD, and other international organisations.

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Chapter 3

Competition Policy

Italy has made progress implementing the recommendations of the 2001 OECD Report on Regulatory Reform in Italy, *to eliminate unnecessary regulatory constraints on competition about price, entry, and quality. The* Bersani *reforms in 2006 and 2007 removed many constraints, and in a way that showed how reform benefits consumers, shifting the terms of debate about reform priorities. These reforms have vindicated the Antitrust Authority's programme of policy study and advocacy, since the Authority's reports supplied the evidence to justify and explain them. Other recommendations have received less attention. Including competition policy in the legislative quality process remains an aspiration. The issue of competition in local public services remains open. Antitrust enforcement has improved in some of the recommended directions, notably stronger sanctions and more flexibility to permit adopting a formal leniency programme. This chapter discusses timetables for merger review in the light of European practice.*

Background and recent developments

The policy options proposed in the 2001 *OECD Report on Regulatory Reform in Italy* ("2001 Report") dealt with regulatory constraints, public services, direct controls on price and market share, regulatory impact analysis, cartel enforcement, sanctions, merger deadlines and resources. The principal recommendations addressed problems of anti-competitive regulation.

Steps taken since the 2001 Report have moved toward implementation of many of these recommendations. The most dramatic steps were the two packages of reforms introduced in June 2006 and January 2007 by Minister Pier Luigi Bersani, improving transparency, consumer choice and freedom of competition in a wide range of sectors, including bakeries, banking, insurance, retail trade and restaurants, taxis and pharmaceutical products and services.

Some reforms have strengthened enforcement of competition law, authorising stronger sanctions against infringements and broader powers for the Italian Antitrust Authority ("Authority"). The Authority's enforcement tools now include a leniency programme and the powers to order interim relief and to accept commitments governing future conduct. With the termination of the special jurisdiction of the Bank of Italy, power to apply competition law in all sectors rests with the Authority.

Substantive law

Italy's competition law, first enacted in 1990, has always been based on the jurisprudence of the EU. Substantive consistency facilitated Italy's adaptation to the decentralised application of EU competition law since 2004. The Authority's emphasis on economic factors in its application of the common prohibitions against restraints and abuse of dominance and in merger control also facilitated harmonisation, as EU competition policy has moved toward a more economic approach.

Restrictive agreements

Adoption of a formal leniency programme in early 2007 should strengthen enforcement against clandestine horizontal collusion. The first result of Italy's programme was announced in May 2007. Firms in the particle board industry were fined EUR 31 million for fixing prices, setting output quotas and co-ordinating input purchasing. The firm that came in first and co-operated with the investigation was not fined at all, while fines for the others were reduced, by lowering the base amount 30%, for co-operation with the investigation.

Enforcement against agreements reached through associations continues to be hampered by weak sanctions or legislated protection. Agreements reached through associations usually result in low fines because the associations themselves have very little turnover. Restrictions imposed through associations of professionals generally escaped enforcement, until the 2006 *Bersani* Decree, because of authorisation by other rules or

regulations.[1] Occasionally, the Authority has encountered and sanctioned action by professional associations that exceeded the scope of their legislated protection.

Enforcement actions against information-sharing concerted practices have met mixed responses in court. In insurance, the court upheld the Authority's finding and its very large sanction: EUR 360 million. By contrast, the court rejected a sanction of similar magnitude in another high-profile action, against restraints in the distribution of petroleum products. The court found that the Authority did not prove agreement, and it also questioned assessing high fines against behaviour where ministry officials had some role in setting up the scheme with the industry's trade association.

Parallel conduct and some degree of government involvement also characterised the situation in the infant formula market. The Authority's 2005 decision attacked the use of recommended retail prices and information exchanges. To some extent, the industry's practices followed advice from a ministry. That factor may explain why, despite the long duration of the restraint and the sensitivity of the product for consumers, the fine was relatively modest (EUR 10 million). But later, in approving a merger in this market, the Authority accepted commitments about marketing and price reductions in order to reduce the risks of a stable collusive equilibrium among three roughly equal post-merger firms. The commitments seem to have had an effect: a year later, prices were 25% lower.

The prohibition against horizontal collusion has been applied in aid of regulatory reform. To promote competition in local services and in health care markets, the Authority fined four suppliers EUR 4 million for refusing to submit bids in a competitive tender to a local health authority, which wanted a single supplier for post-operative devices, anticipating lower prices from competitive bidding.[2] Two water supply firms were fined a total of EUR 11.3 million for a strategy of joining for bids in order to discourage or prevent entry by others, just as the water services market was being opened to competition.

The Authority has continued to target industry-wide agreements, including some that look more like simple market division or price agreements. The largest sanction imposed recently – EUR 301 million – was against an "arrangement" that had the effect of dividing the jet fuel market and preventing entry, notably by preventing airlines from operating as their own suppliers. (The Authority's structural relief, to require divestiture of interests in the joint ventures, was rejected by the reviewing courts, though.)

In the "modernised" system of applying EU competition law in effect since 2003, there is no longer a procedure for securing an individual exemption from the prohibition against anti-competitive restrictive agreements. The parallel provision of Italy's competition law remains unrevised, though (Art. 4). The law requires the Authority to respond to an application for exemption within 120 days. This deadline has worked against enforcement; the court rejected the Authority's sanction against an agreement in petroleum distribution on the grounds that the parties' dealings with the Authority could have been construed as an application for exemption that the Authority did not respond to on time.

Abuse of dominance

The prohibition against abuse of dominance continues to be applied principally in the context of network industry reforms. The Authority has made some use of an interesting provision added to the law in 2001 which requires public-service firms to operate through structurally separate entities if they are engaged in operations outside of the public-service area. This is backed up by requirements to notify the Authority when setting up such

Box 3.1. **More enforcement against collusion**

Increase enforcement attention to clandestine collusion

Noting that the Authority had been concentrating much of its attention, appropriately, on promoting competition in major infrastructure sectors, the 2001 Report concluded that anti-competitive collusion called for more attention.

Several important decisions have been taken about restrictive agreements. Many of them involve oligopoly information sharing or other formal co-ordination, rather than concealed agreements. The number of cases about restrictive agreements increased 20% from 2002 to 2003 (from 46 to 54, of which 4 resulted in finding a violation), and increased further to 60 in 2004. These increases did not constitute a clear long-term trend, for there had been 52 cases about agreements in 2000 and 43 in 2001. The number dropped sharply in 2005, to only 14. The low level continued in 2006, with 16; the Authority found a violation and took some remedial action in 3 of these. The number increased somewhat in 2007, though.

More effective tools for undoing explicit agreements may reduce the proportion of cases based principally on less direct evidence, of parallel behaviour and exchange of information.

operations, and by an obligation to provide access to competitors in those markets with services on non-discriminatory terms.

Discouraging monopolists from using affiliates to distort other markets was also the principle for several Authority enforcement actions in the gas industry. ENI was found to have violated Art. 82 by discontinuing work on a pipeline upgrade and hence denying this capacity to potential competitors. In another case involving ENI, in early 2007 the Authority accepted commitments to make gas available at below-market prices to conclude an investigation into whether ENI had hindered competitor access to regasification facilities.

In telecommunications, strong enforcement action has met some judicial scepticism about setting appropriate fines. A 2004 decision by the Authority fined Telecom Italia EUR 152 million for a variety of strategies to prevent fixed-line competition, principally for business customers. The fine was reduced on appeal, though, on the grounds that some of the violations were only “serious”, rather than “very serious”.

The Authority’s power to adopt decisions embodying commitments has proven useful in opening up the electricity market. The energy regulator called attention to irregularities in determination of prices and tried to address the problems under the energy legislation, but delays due to litigation over whether the regulator had the power to impose a structural remedy made that remedy impracticable. So the Authority launched an investigation of whether the historic monopolist’s strategies amounted to an abuse of its dominant position. The Authority’s investigation concluded in December 2006 with the acceptance of commitments to reduce its pivotal price-setting role in the relevant zonal markets by offering virtual power plants, that is, financial hedging contracts for capacity.

Postal services, a sector for which Italy has not yet formally established a regulatory body, have been the object of several cases about abuse of dominance. The incumbent was fined EUR 1.6 million in 2006 for shutting out competitors in “hybrid” e-mail, to favour its own operation. The Authority’s remedy acknowledged, and supported, other reform efforts to open up the market, including freezing *Poste Italiane’s* prices for a 6 month transition

period. One element of the case was finding that *Poste Italiane* had not separated this operation from its monopoly services. The Authority has looked into whether the subcontract arrangements could prevent competition, and in February, 2008 it accepted commitments from *Poste Italiane* to tender for concessions in 70 urban areas and to maintain contract relationships in order to preserve potentially viable post-liberalisation competitors.

As reforms seek to stimulate competition and reduce costs for health care, enforcement has sought to increase competition from generic pharmaceuticals. The Authority accepted commitments to issue royalty-free licences leading to production of generic versions.

In the politically sensitive area of broadcasting, the Authority found that Mediaset violated Art. 82 of the EU Treaty by monopolising the market for advertising on football broadcasts. As a result of the enforcement action, Mediaset reduced its long-term contracts to two years plus a one year option, gave up the contracts' pre-emption rights and sold its satellite broadcast rights. The Authority issued its decision in June 2006; an appeal is pending.

Concentrations

Merger control is the sole responsibility of the Authority. No sectoral regulators apply the competition law, now that the Bank of Italy is no longer responsible for applying the competition law in the banking sector. The Authority's decisions are based on the competition issues involved in the transaction, and other policies are not considered. Since the end of the special regime about banking, the Authority's most important merger decisions have involved financial markets. The Authority has permitted bank combinations subject to conditions, typically the divestiture of retail branches and other measures to maintain retail-level competition for deposit services, small-business lending, asset management and insurance in local markets where post-merger concentration would otherwise have been too high. Reports of the decisions suggest that the Authority is applying a structural rule-of-thumb, seeking remedies where the share of the post-merger firm in the relevant service and geographic market would exceed 25-30%, and would be substantially higher than any other firm in that market.

The substantive standard in Italian law emphasises dominance: a merger is prohibited if it would create or strengthen a dominant position, with the effect of eliminating competition appreciably on a lasting basis. Italy has not changed its statutory standard to conform to the revised standard of the EU merger regulation. A provision of the Competition Act could permit balancing competition considerations against other national interests, but it has never been used and the regulations needed for the Authority to do so have not been promulgated. (When the government determined to rescue Alitalia in 2008, it added special treatment provisions to bankruptcy procedures rather than resort to this part of the Competition Act). Mergers that could impair competition in the domestic market may be permitted where "major general interests of the national economy are involved in the process of European integration" (Sec. 25.1). The decision is to be made by the Authority, applying general criteria proposed by the Minister for Trade and Industry and promulgated by the Council of Ministers. This "integration" benefit is to be balanced against the concentration's impact on domestic competition, and the Authority may prescribe measures and set a deadline to restore full competition. This provision appears intended to permit higher concentration among domestic firms, with the long-term goal of

creating substantial competitors in an integrated European market. This provision empowering the Authority to consider other national interests was not invoked, though, when the national airline, Alitalia, proposed a combination with a principal competitor; instead, the government enacted special legislation to remove from Competition Act jurisdiction certain transactions involving firms in financial difficulty. Because the Authority will not consider such transactions, it will have no opportunity in these cases to apply related competition policy doctrines about the treatment of transactions involving failing firms, such as inquiry about the possibility of less anti-competitive alternatives.

The process of merger review now involves a filing fee. The system for calculating the basis of the fee has been modified to make it proportional to the merger's potential impact on the Italian market. The notification threshold is adjusted annually to account for inflation. An "advance notice" procedure is available to facilitate compliance. Experience with advance notice of larger transactions since June 2005 showed that it simplifies administration and speeds up findings. Compliance with the merger review system is encouraged through vigilant enforcement. On finding that Tetra Pak was *de facto* controlling a firm whose acquisition the Authority had prohibited, the Authority imposed a fine of EUR 95 million.

Box 3.2. **Merger deadlines**

Make merger review deadlines consistent with other jurisdictions

The 2001 Report observed that Italy's merger review timetable is relatively short. The Authority must decide within 30 days of the notification whether the concentration might infringe the statutory standard. If so, a formal investigation may be opened, and it must be concluded within an additional 45 days. (This may be extended by 30 days if the parties fail to provide requested information). The timetable for EU review of a merger that raises issues requiring investigation can be substantially longer, ranging from about 4 to 5 months depending on whether the "clock is stopped" to consider negotiated commitments.

The increasing co-ordination of national and EU-level administration of competition policy would argue in favour of generally consistent processes, and thus of extending the Italian review timetable. Conforming with the Authority's deadlines in merger review to those used by the EU will simplify processes by eliminating a potential source of confusion. It will also give the Authority more time for complete investigation in the small handful of matters that require it.

This recommendation has not yet been implemented. Italy's merger review timetable remains significantly shorter than the EU's.

Unfair competition and consumer protection

The Authority combines its antitrust duties with responsibilities about advertising and unfair competition that arise under different legislation. The rules about deceptive and comparative advertising follow from EU directives that have been enacted into Italian law. These matters represent a large part of the Authority's workload, measured by number of actions – several hundred per year – if not by resources employed. Legislative decrees about consumer protection have empowered the Authority to extend its activities here. Three sectors were most at risk for misrepresentation: telecommunications, tourism and "pseudo-pharmaceutical" diet products.

The consumer code, enacted in 2005, unifies the treatment of consumer issues. The code recognises the dual importance of ensuring that advertising is not misleading, to protect the interests of consumers and to protect the public interest in fair competition among enterprises. Since 2005, the Authority has had the power to impose fines against misleading advertising. European Community directives on unfair practices were transposed into Italian law in 2007. These measures bring Italian rules into line with the European model about misleading advertising addressed to consumers and businesses. They also give the Authority greater enforcement powers, such as the authority to act *ex officio* rather than only in response to a specific complaint.

The Authority has declined to become involved in claims about the abuse of economic dependence, such as refusal to deal, burdensome or discriminatory contract conditions and termination of trading relations. The Authority opposed adding the principle to the Competition Act, because these claims, which are decided mostly through arbitration or private lawsuits, could be used to impede competition and undermine efficiency. The Authority may issue warnings and impose penalties against abuse of economic dependence "which is relevant to the protection of competition and the free market".

Conflicts of interest

The goal of the legislation on conflicts of interest is to ensure that holders of government office act solely in the public interest. It characterises conflicts of interest in a technical sense, and it defines four types or aspects of abuse, also in somewhat technical terms. The role of the Authority is to determine the existence of "incompatibility" or conflict of interest and report its findings to the presidents of the Senate and the Chambers of Deputies, which have the constitutional capacity to impose remedies on the member of the government. The Authority has the power to fine firms that have gained economic advantages from a government act that was adopted in a conflict of interest situation. The Authority has handled several hundred preliminary inquiries under this law, but these have resulted in only a handful of formal proceedings.

Institutions and enforcement processes

The Authority is a separate, expert agency, with unusually broad freedom of action and strong protection of its decision-making independence within the government structure. The Authority's five members are appointed by the Parliament for non-renewable seven-year terms. The members are not permitted to hold other positions or perform other professional services. The law provides no avenue for political control or influence, in general or over particular decisions, beyond the appointment process itself. No other agency is involved in applying the competition law, since the new law about financial market regulation ended the power of the Bank of Italy to apply the law in that sector. The terms of the members were originally simultaneous, so all five members were replaced at the same time. A proposal for a general reform of independent agencies would have created a formal system of staggered terms and thus a stronger basis for continuity, but it was not adopted before the government resigned.

The Authority's budget is a separate line item, approved by Parliament and subject to inflation adjustment. Funding has been adequate. Filing fees now support the merger review operation; indeed, they may support more than that. Self-financing has made it possible for the Treasury's contribution to the Authority to drop 34% between 2005 and 2007. The Authority's personnel levels have been generally stable for several years.

Additional positions were authorised when the Authority was given powers to deal with conflicts of interest and banking.

Box 3.3. **Staff levels**

Raise the statutory caps on the Authority's staff levels

The 2001 Report observed that the Authority confronts some resource limitations, principally the inability to hire staff. If, as the 2001 Report recommended, the Authority's attention is focused increasingly on the resource-intensive task of uncovering cartels, it should be freed of constraints that prevent it from applying its budget resources to support the personnel it needs.

The ceiling has been raised, but only to cover some new responsibilities for comparative advertising (20 additional positions), conflicts of interest (15) and banking (8). With an authorised ceiling of 193 positions, plus contract employees, the Authority remains smaller than the enforcement bodies with similar jurisdictions in similar-sized member countries. The staff complements for the DGCCRF in France and for OFT in the UK are much larger; moreover, each of those two countries also has a separate adjudicating council or commission, with its own staff.

The number of distinct matters pending at the Authority dropped for several years, most sharply in 2005 when there was a substantial turnover in membership. Since then, the level of activity has increased again. But a consistent caseload level does not necessarily mean the Authority needs no more resources. An equal or smaller number of tougher and more important matters could require as many or more staff to handle.

The principal sanction under the Competition Act to enforce compliance and deter violations is a financial penalty imposed by the Authority on infringing enterprises. There is no provision for criminal penalties or for sanctions against individuals, even in the case of repeated violation, resistance to the Authority's orders or individual active participation in a violation. The Authority does have a powerful weapon in reserve, though. It can punish repeated violations by requiring the enterprise to cease operations for up to 30 days. This deterrent has never actually been used. Upon determining that the law has been violated, the Authority is not required to assess a fine. The Authority sometimes concludes ordinary matters with an order setting a deadline for correcting the restraint or abuse. In serious cases, the Authority may impose a fine, which can vary depending on the gravity and duration of the violation.

A leniency programme has been in place since February 2007. It follows the ECN model and the European Commission's leniency program. The Authority can now reduce fines or exempt a firm from sanctions completely. Clemency is limited to companies that inform the Authority of the existence of secret cartels. Reductions follow a sliding scale, according to the usefulness of the collaboration offered. Full co-operation with the Authority is an essential prerequisite; thus, the company must present all the relevant information it has and must not reveal its participation in the programme to third parties. A simplified application to the Authority is permissible, where the European Commission is in a better position to investigate.

The Authority now has the power to order interim relief pending its final decision. Interim relief power could be particularly significant in cases alleging abuse of dominance through denial of access to a network facility. So far, the Authority has applied this power

Box 3.4. **Sanctions**

Improve sanctions, to make enforcement more effective

To take effective action against horizontal collusion, the 2001 Report called for strengthening the Authority's hand, by authorising larger fines, enough flexibility in setting fines to support an effective leniency program and means for assessing substantial fines against violations accomplished through associations.

In February 2001, as the 2001 Report was being completed, the Parliament approved a bill that anticipated some of those recommendations. The reference for determining the level of fines is no longer the relevant market affected by the restraint or abuse; instead, it is now the undertaking's total turnover. The Authority may impose a fine of up to 10% of that figure. Italy's basic sanctions system is now generally comparable to the systems used by the EU and many other European jurisdictions.

Responding to the courts' demand for transparent justification for the amounts assessed, the Authority has relied on the criteria and guidelines issued by the European Commission for setting fines under its similar powers. That is, the Authority considers the seriousness of the offence, the impact on competition, the economic circumstances of the violators and aggravating or extenuating circumstances such repeat offences or co-operation with the Authority's investigation.

The amendment also increased the Authority's sanctioning flexibility in the other direction by permitting it to impose a fine of 0 even in the case of a serious violation. The Authority did not set up a formal leniency program, though, until 2007, after the first round of *Bersani* reforms supplied the necessary legislative authorisation to issue such a rule of general, prospective application.

The Authority still does not have the tools to levy substantial fines on associations or to fine the members directly where their associations have violated the law. An association typically has little or no turnover on which to base a fine, so a sanction based on its own turnover would necessarily be small. Basing sanctions on the turnover of the associations' individual members, and making the members liable for the fines, would make the sanction fit the offence. This broader sanction is possible now in some other jurisdictions that use the EU model.

against a trade association circular that could have dampened reforms in financial markets and against an alleged collective boycott that would have undermined reforms in pharmacy retailing.

Commitments about future behaviour can now be accepted to close investigations. Parties to an investigation can propose such commitments, and the Authority can issue a decision that makes the conditions obligatory and then end the investigation without a finding of infringement. The Authority's procedures for commitment decisions provide an opportunity for comment by third parties. The new capacity for commitment decisions was first used at the end of 2006, when the Authority accepted commitments from ENEL to sell "virtual" capacity and then closed its investigation of alleged abuse of dominance. The Authority has been resorting to commitments increasingly.

The Authority's record on appeals has improved as the courts and the Authority have become familiar with each other. Justification for the computation of fines has been the principal topic of judicial attention recently, as the courts have sometimes

Box 3.5. **Corrective advertising orders**

More powers may also be appropriate for dealing with deceptive advertising

The sanctions available appeared inadequate to undo the harm that a deceptive advertising campaign has done to the competitive process. Ordering the violator to publicise the fact that the previous advertisements were deceptive may have much less impact than the original advertisements did. The 2001 Report recommended giving the Authority the power to ensure that corrective advertising accomplishes that goal, of correcting the mistaken impressions that the deceptive advertisements had conveyed. And consideration might be given to treating violations the same way as violations of the Competition Act, in that fines could be imposed for original violations, not just for violations of the Authority's orders.

A presidential decree of 11 July 2003 setting out procedures for enforcing the law about misleading and comparative advertising now empowers the Authority to order corrective advertising, including setting the medium and formalities of the corrections to be sure they are effective. Other legislation has now given the Authority the power to impose fines against misleading advertising, to investigate advertising claims *ex officio* and to issue commitment decisions in advertising matters.

disagreed with the Authority's characterisation of the seriousness of the respondents' misconduct.

Delay in the review process has been largely corrected. After an important reform introduced by legislation in 2000, both stages of appeal can now be completed within about a year and a half after the Authority's decision.

Class actions on behalf of consumers may become more important. An amendment to the Consumer Code, effective in mid-2008, introduced into Italian law a procedure for awarding damages to a large group of individual consumers in a single action. Grounds for suit could include unfair trade practices (such as false advertising) and anticompetitive practices affecting consumers, as well as torts and "standard form" contracts of adhesion. This revision expands the relief available in consumer class suits, but the means for determining and awarding damages remain to be worked out.

Coverage and special sectoral regimes and regulation

The Competition Act covers the entire economy. There are virtually no explicit exemptions or special enforcement regimes. But other legislation creates some immunities or market distortions. The most important problems arise from local-level regulation constraining competitive entry.

The special regime for applying competition law in banking ended in 2006. Before, the Bank of Italy, rather than the Authority, enforced the Competition Act in this sector, including review of mergers and application of the prohibitions against restrictive agreements and abuse of dominance. The change, made by the new law regulating financial markets, was part of a package of reforms prompted in part by controversy over the treatment of bank takeovers. The Bank may ask the Authority to authorise otherwise prohibited agreements for a limited period in order to ensure the correct functioning of the payment system, or to authorise otherwise anticompetitive bank mergers, where necessary to preserve the stability of the banks concerned. For mergers involving banks,

the decision by the Bank of Italy about prudential regulation is separate from the Authority's decision about competition effects. The Antitrust Authority's review of a bank merger must be completed within sixty days from the notification. Setting a different deadline for action on bank mergers, even shorter than the 75 days for others, could create problems of administration where a merger involves both banking and non-banking entities.

Since the shift in jurisdiction, several bank mergers have been authorised, some of them subject to conditions. The Authority launched a fact-finding investigation in June 2007, to examine corporate links between banks and insurance companies. The Authority is concerned that, in Italy's bank-centred economy, patterns of effective control traced to this level could facilitate co-ordination or discourage competition in other markets. Some banks are under investigation for bidding collusion, while the Authority accepted commitments to conclude its investigation of collusion over fees for interbank commission rates on transfers and ATM transactions. The first time the Authority used its interim relief authority, in September 2006, was in the banking sector. The banking association had issued a circular about how to respond to one of the Bersani reforms, requiring no-fee transfers of mortgages. The Authority was concerned that the circular could lead to co-ordination about banks' market strategies. The association ultimately withdrew the circular and disbanded the working group that had been set up to develop strategies for responding to regulations.

Media firms are subject to several special rules. Regulations prohibit acquisitions by media companies that would result in control of over 20% of the total circulation of daily newspapers in Italy or 50% of inter-regional copies. The Authority has generally objected to using market shares as *priori* restrictions on companies' prospects; however, in media settings the Authority has concurred that limits may be justified to preserve pluralism. In a July 2007 report on media issues, the Authority noted that indirect aid via a lower postal rate for publications enriches the postal system more than it increases subscriptions. In publishing, Italy like many other jurisdictions sets special rules about retail pricing. The numerous exceptions to this general rule still limit price competition for school texts.

Reform in road transport is coming slowly. Compulsory trucking rates were finally abolished in 2005. The Authority has been calling for this basic, obvious reform since at least 1993. Entry is still not determined by market forces. The number of trucking licences is regulated, and in issuing the licences, the Minister of Transport is to ensure that supply matches demand. The Minister of Transport also retains potentially anti-competitive discretion over entry into long-distance bus service, despite some reform of this sector in 2005, to replace the old method of issuing concessions with five-year authorisations based on criteria of safety and service quality.

Advocacy and policy studies

Output of advocacy opinions and reports by the Authority has sharply increased. In 2005, the Authority issued some 40 advocacy papers, followed by 47 in 2006 and 65 in 2007; by contrast, in 2004 there were only 12.

The Authority's renewed advocacy activity began as part of the shift in strategy by the newly constituted Authority in 2005. The new government in 2006 issued decrees implementing several long-awaited liberalisation measures, and some of the Authority's

comments since then target local regulations that undermine the pro-competitive intention of these reforms. The two packages of *Bersani* reforms are major steps toward implementing the most important recommendation of the 2001 Report. The first package liberalised aspects of professional services, retail trade, restaurants, bakeries, car insurance, distribution of pharmaceuticals and taxicabs. The second addressed access to services, including barbers, hairdressing, tour guides and driving schools, while extending the prohibition of exclusive dealing to insurance products.

Showing that liberalisation would directly benefit consumers was one of the motivations behind the Bersani measures. The Ministry of Economic Development has

Box 3.6. **Entry constraints**

Eliminate all unnecessary regulatory constraints on competition about price, entry, and quality, which cannot be justified as the best way to serve public interests

Concessions, licences, and other rules impaired competition in many sectors. Examples were cited in the treatment of local services, retail distribution and local transport. Many are imposed by local and regional governments. The Authority produced a report in December 2001 about services subject to regulatory constraints on entry, pricing, product and service quality at the local and the national levels. This was an effort to focus the reform effort, by demonstrating the need for principled action to correct the general problem. The 2001 Report observed that broad action based on a general principle might be more effective than trying to deal with such restraints one by one, for the latter strategy might stimulate strong resistance from the producer interests without enlisting countervailing support from consumer interests.

The Authority continued to issue reports and opinions to try to correct these problems. Authority advocacy reports since 2001 addressed topics such as:

- Controls on locations of phone centres in Lombardy, supposedly based on health and safety reasons; the Authority argued that it simply froze the status quo and prevented new competition.
- Restraints on who can provide "professional training" for retailers and restaurateurs in Lazio and Puglia.
- Rules set by regional governments about names, signs and store designs and operation of outlets selling non-prescription pharmaceuticals. For example, Lombardy and Umbria require walls separating spaces where OTC drugs are sold, as well as separate cash registers and fax machines,
- Limits on trading hours for pharmacies: the Authority agreed that prescribing minimum hours could serve a public purpose in assuring availability, but prescribing maximum, uniform hours, though rules set by bodies composed of the pharmacists themselves, is discriminatory and anti-competitive.

The effort paid off. Nearly 400 sector studies and advocacy filings by the Italian Competition Authority, over a period of 15 years, laid the foundation for the wide-ranging *Bersani* reforms of 2006 and 2007. The reforms mirror recommendations from the Authority's repeated findings about issues arising from sector regulation. The Ministry's announcements of these measures cited about 30 of the Authority's advocacy reports and studies. The changes made by the two package of reforms include:

- **Professional services:** Rules setting minimum fees and banning advertising are repealed, and controls on multi-disciplinary practices are relaxed. In 1997, a sector inquiry by the Competition Authority called attention to these constraints, and in 2005 the latest in a series of advocacy reports on liberalisation of professional services analysed potential measures in detail.
- **Retail distribution:** Limits on promotional sales are dropped, and approval of new store locations should not impose requirements about minimum distance from others or range of products supplied. These steps bolster a 1998 reform that made it easier for small shops to open up. In 1993, one of the Competition Authority's first reports, in response to a specific instruction in the then-new Competition.

Box 3.6. **Entry constraints** *(cont.)*

Act, was about issues in retail distribution. Later advocacy reports backed up the 1998 reforms and called attention to how regional governments were implementing those reforms.

- **Bakeries:** Bakeries no longer need special authorisation to relocate, and they may sell other food products for immediate consumption. In 2002, an advocacy filing by the Authority called for such reforms.
- **Pharmaceutical products:** Pharmacies no longer have a monopoly on selling "over the counter" products, retailers may discount the prices of those products and a wholesale distributor may now run a pharmacy. In 1997, a sector inquiry by the Competition Authority questioned restraints on pricing and on entry by wholesalers, and more recent advocacy filings dealt with other aspects of these regulations.
- **Taxicabs:** Limits on the number of taxi licences are lifted, and other aspects of regulation by municipalities are made more flexible, to promote new entry. In 1995, the Competition Authority issued an advocacy filing about competition problems in this sector, and it returned to the topic with a filing in 2004.
- **Insurance:** Exclusive distribution arrangements and mandatory minimum prices are prohibited. In 2003, a sector inquiry by the Competition Authority showed that exclusive contracts raised entry barriers.
- **Notary services:** Notary certification is no longer needed for transactions in used cars.
- **Financial services:** To make it easier to change service providers, customers can close bank accounts (and change banks) with no charge if their bank changes its contract terms, prepayment fees for mortgages are abolished and mortgage contracts can be transferred between banks, and liability insurance is no longer subject to long-term contract commitments. The government recent package, mortgage renegotiation will be facilitated (Law 126, July 2008).
- **Personal services:** Licensing hurdles for tour guides, driving schools and real estate sales are lowered, and hairdressers and barber shops can stay open longer.

monitored marketplace reactions and estimated the impact of some of these changes. Dramatic reductions in prices accompanied the reforms of pharmaceutical sales, mobile phone charges and airline fare advertising. Notary fees for transferring used vehicles dropped simultaneously with reform, perhaps in anticipation of it. Market effects of the other reforms are more difficult to isolate. Based on experience to date from five of the reforms, the Ministry estimates that Italian consumers will save between EUR 2.4 billion and EUR 2.8 billion annually.

Several opinions in 2005 found competition problems in proposals or actions to manage markets for food and agricultural products. A legislative proposal would have empowered producers' organisations to intervene in times of "crisis" by suspending or limiting supply and required posting of producer prices with the final retail price. The Authority warned about a decree giving the Ministry of Agriculture the power to authorise production-planning agreements by producer associations: such agreements would be tantamount to illegal price fixing, and a Ministerial decree could not justify otherwise illegal actions undertaken independently. Another proposal would have mandated minimum retail space for regional products. The Authority said that such a limitation on distributors' choices was contrary to EU and national competition principles, preventing retailer strategies that have lowered consumer prices and raising a barrier to entry.

A 2007 fact-finding report demonstrates how consumer prices for produce are higher because of Italy's inefficient, fragmented multi-level distribution systems, which persist in

Box 3.7. **Public services**

Provide effective competition in, and for, local public services markets

At the time of the 2001 Report, a framework law for local governments was under consideration. The full report pointed out that this law should not delegate powers in such a way that local authorities could undermine national reform goals by preserving unnecessary market power at the local level.

The framework law has given municipalities more flexibility to implement the services for which they are responsible. The Authority continues to be concerned that tendering and contracting for government services do not take sufficient account of competition. The Authority recommends open tendering for public service contracts even below the thresholds at which that is required by EU directives, with terms short enough to avoid long-standing monopolies.

A comment from the Authority in December 2006 set out its views about legislation governing contracting with publicly-owned companies. The Authority's report calls for more precision in defining the exceptional circumstances that might justify letting a contract "in-house", and for setting up independent specialised bodies to oversee cases of conflict of interest. The Authority argued that in-house contracting should be treated as justifiable only when it is impossible to find a better solution in the marketplace, and that public-private partnership should be used only in exceptional cases, because it implies the maintenance of a situation of conflict of interest involving the contracting public entity, the service company and the regulator.

The first package of *Bersani* reforms provided for competitive tendering for local public services and expanded the possibilities for competition from private bus services in cities. New rules and institutions to encourage competition and modernise government purchasing procedures and make them more efficient are set out the *Code for public works, service and supply contracts* (Legislative Decree 163/2006), which transposes European Community Directives 2004/17 and 2004/18. In general, though, there has not been a significant change in the state of competition in and for local public services markets. Local municipalities retain considerable autonomy in choosing how to provide services with social objectives or aimed at promoting economic and social development of local communities. Competition for the market, through bidding, is one option available for them to choose.

part because of regulations and local regulatory decisions that discourage integrated, large-scale operations. (The report also criticises opportunities for obscure but profitable speculation in the numerous micro-markets.)

The Authority has continually called for more competition in petrol retailing, which would likely lead to a reduction in the very large number of small, inefficient service stations. One way would be to permit petrol sales by supermarkets, which tend to sell higher volumes, at lower costs, where that is permitted and common (as in France). A report in January 2007 echoes what the Authority had said in a report in November 2004, decrying the lack of liberalisation and entry and the comparatively high consumer prices that result from the lack of competition in Italy. The discretion given to the regions about regulating entry has been used in a way contrary to the reform proposals, perpetuating existing distribution arrangements and favouring incumbents. Regulation of hours and operation similarly reduces consumer choice while protecting the businesses of incumbents. Because most restraints on retail competition arise from regional regulation, advocacy to correct them

must address regional governments.[3] In August 2008, major legal barriers to entry and reform were removed, through legislation that eliminated minimum distance requirements and abolished restrictions about offering other products and services.

The insurance industry has been a frequent topic. Recent comments analyse proposed reforms, some of which were incorporated in consumer-protection clauses of Italy's new insurance law. Several comments endorsed a shift to so-called "direct compensation", so that a party who is damaged would collect from its own insurance company, which would then recover from the insurance company of the party that had caused the damage.

A sector inquiry report on airline services in April 2005 asked why there is so little competition to provide service despite liberalisation of entry and pricing and the appearance of low-cost airlines. The Authority concluded that the sector in Italy is not yet fully liberalised. Limits on allocating slots were identified as the principal constraint. Historic incumbents are favoured, limiting the opportunities for potential new competitors. The report called for a slot allocation system that promotes contestability of routes, more competition in airport services and management, and more transparency of airfares to help consumers choose.

In June 2004, the Authority and the Electricity and Gas Regulatory Authority released a report taking stock of progress in the deregulation of the natural gas industry, three years after

Box 3.8. **Sectoral legislative interventions**

Avoid anti-competitive direct government interventions in sectoral problems

Another issue that was prominent at the time of the 2001 Report was proposals to resort to controlling prices and market shares by legislation in situations that are not regulated monopolies. The 2001 Report argued that price controls are inevitably less flexible and discriminating than application of general competition policy principles, and they may just reinforce an industry's instincts for co-operation and common behaviour. Rules that limit market shares, perhaps in an effort to rein in monopoly, also prevent competition by segmenting the market. Such legislative "fixes" may be based on misconceived markets, and thus they could distort or prevent competition that would otherwise occur. Both kinds of controls are typically rationalised as transition measures, but they also typically last too long. Market-share ceilings were discussed for electric power, to force the historic national firm to shed generating capacity, and for natural gas. These may be aimed at competition-policy goals, such as eliminating or reducing dominant positions. But the method of doing so is less sensitive to actual contexts and effects than the enforcement of the Competition Act would be. Moreover, fixed ceilings may dampen competition among the firms that remain, by encouraging comfortable duopoly instead of rivalry over the marginal customers.

The use of such controls has evidently not expanded. But in several areas, mostly involving media and utilities, sectoral laws still set special rules or limits based on market share. There is a 60% ceiling on any one party's acquisition of exclusive encoded broadcasting rights for the League "A" Football Championship matches. Advance notification is required if an acquisition involves direct or indirect control of 25% or more of cinema distribution and movie theatres in at least 1 of the 12 major cities in Italy. A single operator's holdings of broadcast licences is supposed to be limited to a 20% share of channels, under a 1997 law. However, the deadline for applying that ceiling was extended. (The European Court of Justice ruled in January 2008, in a suit by a private broadcaster who had sought and won some of the frequencies that should have been made available, that this intervention in the system of spectrum management did not comply with EU rules on the subject.)

legislation to that purpose was enacted. The agencies concluded that the strongly dominant position of ENI was thwarting efforts to introduce competition and proposed steps to establish real competition through new entrants that were not bound to ENI by take-or-pay contracts.

Electric power reform was the topic of a report in July 2006, addressing the disposition of shares in ENEL's generating assets. According to the decree prescribing their divestiture in November 2000, public entities, domestic or foreign, could not hold more than 30% of the shares for at least five years. But a deal through which EDF (controlled by France) and AEM (controlled by Milan) would join to buy Eurogen would exceed that limit. The Authority was concerned that this would distort competition, since the limitation on public holdings was intended to foster initiative and internal growth in markets traditionally dominated by public firms.

At the request of the telecoms regulator, the Authority issued an opinion on proposed legislation about termination charges on mobile phone networks. The Authority endorsed treating the termination of all kinds of calls, both fixed and mobile, for each domestic network as a single "market" (following the recommendation of the European Commission about relevant markets). Maximum prices should be set in a way that encouraged reductions over time, taking account of expected productivity improvements. Initial levels should be set by reference to long run incremental costs, which should not include the firms' marketing costs. The Authority also issued opinions on calls for tender from the government, for fixed-line services (voice and data) and for IP connection services. These supported measures to anticipate problems due to the historic incumbent's vertically integrated operation and installed-based advantage, and warned about the risk of entry-deterring cross-subsidy strategies, requiring that future price reductions be tied to actual reductions in costs.

Procedures for ensuring regulatory quality continue to develop. The 2005 simplification law gives the government a mandate to simplify bureaucratic formalities.

Box 3.9. **Competition policy and RIA**

Include competition policy in the processes of ensuring legislative quality

The 2001 Report examined means to improve how competition policy is incorporated into the regulatory system. As regulatory impact analysis becomes the established practice in preparing new rules, the Report recommended that competition impact should be made an explicit criterion and that the Authority should participate in the process routinely. In the review and compilation of existing laws and regulations, competition policy should also be a criterion, and the Authority should be involved. By legislative decree, a representative of the Authority was involved directly in the *Observatorio* on simplification of rules and procedures. The guide about regulatory impact analysis that was issued in December 2000 by the regulatory simplification unit of the Ministry of Public Administration supported a market-competition criterion for assessing new regulations.

The legislation on simplification adopted in 2005 moves to make regulatory impact analysis a regular feature of law-making and to undertake a thorough review of laws and regulations on the books. The law itself does not specify in detail how competition issues will be considered in either process, leaving those details to implementing guidelines.

The simplification law moves regulatory impact analysis out of the experimental phase to make it a regular feature of the regulatory process. The law also provides for an overall review to find and eliminate obsolete, duplicative, anomalous and ineffective rules. Aspects of the regulatory quality framework now encourage competition policy goals. Thus, secondary legislation must provide for self-regulation to foster competition, if that would not conflict with essential public interests, as well as for systems of incentives and disincentives, where possible, rather than prescriptive rules. But proponents of legislation are not required to identify means for achieving its objective that are least restrictive of competition, and there is no provision for involving the Authority regularly in evaluating proposals that may have particularly significant marketplace effects.

Assessment

Italy has made substantial progress in implementing the key reform recommendation of the 2001 *OECD Report on Regulatory Reform in Italy*, to eliminate unnecessary regulatory constraints on competition about price, entry and quality. The two packages of the Bersani reforms in 2006 and 2007 removed many of these constraints, and it did so in a way that showed how reform benefits consumers, shifting the terms of debate about reform priorities. The Bersani reforms have also vindicated the Antitrust Authority's long-standing programme of policy study and advocacy, since the Authority's reports supplied the evidentiary basis to justify and explain them. Opinion surveys report that those reforms were very popular, gaining the approval of about 70% of the public. By sharpening public appreciation for the reform impulse, they may have laid a foundation for larger-scale changes. The government's initiative to introduce an annual law about competition and market issues should help sustain the momentum for reform, while the creation of a price monitoring "watchdog" (price guarantor, *Garante per la Sorveglianza dei Prezzi*) should keep consumers' interest in the forefront.

Other recommendations about regulation from the 2001 Report have received less attention. Most importantly, there is still no provision for systematically including the competition policy dimension in the review of proposed and existing regulations, although the system for regulatory impact analysis is now finally getting on track. A short checklist was added to the draft screening protocol, to identify provisions that could raise competition issues that are important enough to call for more careful examination. This addition was inspired in part by the *OECD Competition Toolkit*.

The 2001 Report also called for encouraging more competition in local public services. Some provisions have been made for more competition in bus and taxi transport, and bidding procedures are encouraged in order to create competition for the market for other services. It also warned against trying to solve sector problems through anti-competitive direct interventions such as price controls and market-share caps. At the time, the concern was principally about the treatment of network industries and media. In media markets, maintaining viewpoint diversity and other values might justify otherwise arbitrary constraints based on measures such as market share. Now that the regulatory structure for telecoms and energy is better developed, there is less reason for concern about this issue.[4]

Antitrust enforcement measures have improved in some of the directions that the 2001 Report recommended, notably stronger sanctions and more flexibility in sanctioning to permit adopting a formal leniency program. Legislation was adopted early to authorise financial sanctions against misleading advertising and to permit downward flexibility, so

the Authority could assess no fine despite finding an infringement. But a formal leniency program evidently needed a more elaborate legislative foundation, which was finally provided in the first *Bersani* reform package. The formal program was thus launched in 2007. The programme has not produced very much visible enforcement action yet, though.

Clandestine collusion has nonetheless received more enforcement attention, as the 2001 Report recommended. The number of cases dipped when the membership of the Authority turned over; however, major actions that followed, such as the jet fuel decision in 2006, show that this dip did not foreshadow a long-term diminution of enthusiasm. The number of enforcement matters at the Authority against restrictive agreements is returning to the long-term average level, of about 10 per year. And sanctions imposed by the Authority since 2002 against restrictive agreements, mostly for violation of the EU Treaty prohibition, have averaged about EUR 100 million annually.

Policy options

The following recommendations deal with the enforcement and application of competition law, the organisation and resources of the Authority and the process of developing regulation. Several of them are renewed from the 2001 Report.

Enforcement and application

Some aspects of the provisions about sanctions might still be improved. Authorisation of a modern leniency programme was a very important step against horizontal collusion. Two further steps could make enforcement even more effective.

Provide for more effective sanctions against associations

The 2001 Report called for finding a way to impose higher fines on associations that are the vehicle for anti-competitive agreements. The very low fines that the Authority has been able to assess against cartels organised through industry associations shows that this problem still needs to be fixed. Associations typically have little turnover and few assets. Where restraints are imposed through an association, fines could be computed based on the activity of its members or assessed on its members directly. The EU and some other jurisdictions that use the EU model have moved to close this loophole.

Consider strengthening deterrence by imposing sanctions on individuals

The principal sanction to enforce compliance and deter violations of the Competition Act now is a civil financial penalty against an infringing enterprise. There is no provision for sanctions against individuals, even in the case of repeated violation, resistance to the Authority's orders or individual active participation in a violation. The Annual Survey observed that sanctions against individuals would improve enforcement in areas such as professional services; and it suggested considering criminal penalties against hard-core cartels. Several other member jurisdictions have moved recently to adopt individual or criminal penalties against hard-core cartels. One motivation is to make leniency offers more attractive and hence more effective as investigative tools.

Administration of the law could be improved by revising the timetable for reviewing mergers and correcting a confusion that appeared as Italy's law incorporated the procedural innovations of the EU's modernised enforcement regulation.

Harmonise merger timetables with EU

This recommendation from the 2001 Report has not been addressed. Timetables for merger review have not been modified yet to make them consistent with practice elsewhere in Europe. That change would simplify administration by eliminating a dimension of potential confusion or conflict. Italy's merger review timetable is short. The Authority must decide within 30 days whether to proceed to a formal investigation, which then must be concluded within an additional 45 to 75 days. The timetable for EU review can be as long as 4 to 5 months. Conforming with the Authority's deadlines in merger review to those used by the EU will simplify processes by eliminating a potential source of confusion. It will also give the Authority more time for complete investigation where necessary.

Make merger timetables consistent for all sectors

In eliminating the special sectoral regime for banking, Italy introduced a complication. The deadlines for reviewing mergers involving banking are different from those that apply in other sectors. Although the banking sector deadline is somewhat longer, the schedule still differs from the timetable for review at the EU. It would be sensible and efficient to make the timetable the same for all mergers, including those in the banking sector. The possibility that another regulatory body would be concerned, because it has a responsibility to review the effect of the merger on other policies, should not make a difference. Banking is not the only sector where a merger might also call for attention from some other regulator.

Permit resolutions through commitments at any stage of proceedings

The Authority's power to terminate cases by taking commitments gives it useful flexibility. The law seems to require that proposals for commitments be submitted within three months after an investigation is launched. An early deadline would create pressure for a quick-fix solution. Although the courts have not treated this provision as a bar to entering a settlement later, it would be clearer to remove this oddity from the legislation.

Organisation

In the administration and organisation of the Authority, the limit on resources is still a potential concern. And continuity could be improved by staggering the terms of the Authority's members.

Permit increased Authority resources

The statutory cap on the Authority's personnel level has been raised, but only to accommodate some additional responsibilities. Fifteen of these additional positions, or nearly 10% of the authorised complement, came with the non-germane responsibility to handle cases about conflicts of interest. The Authority still has comparatively few personnel resources to handle its policy and enforcement responsibilities. Funding has been adequate, but more than half of it now comes from filing for mergers, while the Treasury's contribution has dropped substantially. As the Authority turns more attention to resource-intensive enforcement, it should be freed of constraints that prevent it from applying its budget resources to support the personnel it needs. The ceiling on its authorised personnel leaves the Authority smaller than its peers.

Assure continuity in the membership of the Authority

The structure of the terms for members of the Authority interrupts continuity. The Authority has now been in existence long enough to go through two episodes of complete membership turnover. The most recent episode corresponded with a significant change in the Authority's output and enforcement priorities. Abrupt change would be less likely if the terms of the members were staggered, so they did not all end at the same time. A proposal to make such a change in the structure of independent agencies in general was under consideration by the last government. Departure of a few members before the end of their term has created *de facto* some difference between them. But it would be sounder to provide consistently for overlapping, rather than coincident, terms.

Regulatory process

Include competition policy in the processes of ensuring legislative quality

This recommendation from the 2001 Report remains relevant, as Italy continues to improve its processes for reviewing and developing laws and regulations. Those processes should provide systematically for the consideration of effects on competition.

Notes

1. See Chapter 4 for more details on the effect of these reforms in the liberal professions.
2. See Chapter 3 for more details on promoting competition in local services.
3. Regional-government restraints on retail competition are discussed in Chapter 7 on commercial distribution.
4. Other recommendations about regulation from the competition chapter of the 2001 Report will be examined in Chapter 4 on professional services and Chapter 7 on commercial distribution.

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Chapter 4

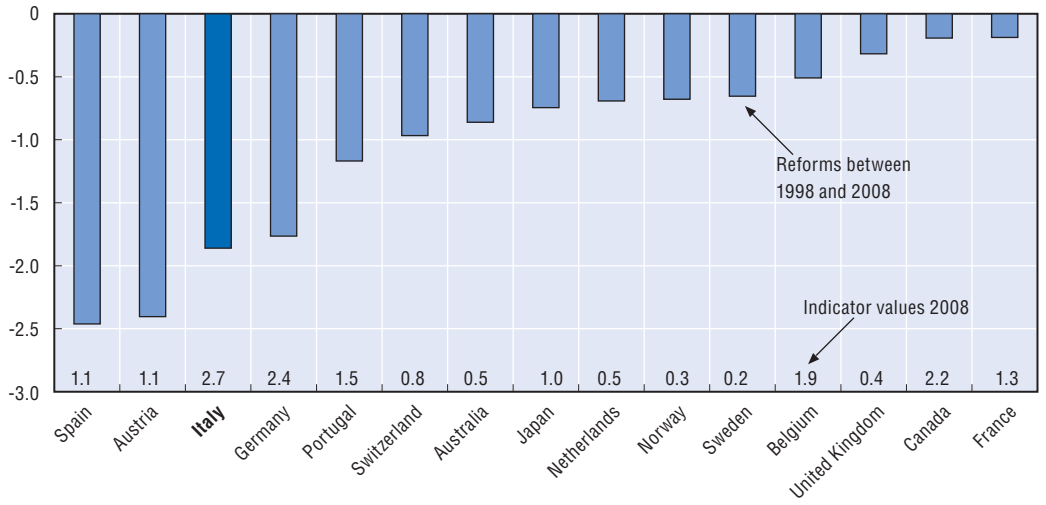
Competition and Regulatory Reforms in Professional Services

This chapter discusses the core challenges for competition and regulatory reforms in professional services. The chapter presents the context for the 2006-07 reforms of liberal professions, the so-called Bersani reforms. The chapter analyses the various dimensions of conduct regulation, including prices, advertising, quality of services and forms of business, with a specific focus on pharmacists, engineers, architects, accountants and lawyers including notaries. This involves issues related to fee regulation and calculation methods, as well as the abolition of minimum and fixed prices. The chapter addresses the exclusive tasks for designated professionals, including limitations of notaries' reserved tasks in the recent period as well as related issues for pharmacy services, with implications for the sales of OTC products.

Background

Italy has been, until recently, one of the countries with the highest degree of regulation in professions. Pharmacists were particularly heavily regulated. Italy has made significant progress over the period 1998-2008 in terms of reducing the restrictiveness of its conduct regulations for liberal professions, even if they tend to remain higher than in a large number of comparable countries (Figure 4.1).* This section examines the progress made in eliminating or revising unjustified regulation of professional services since the 2001 OECD report, *Regulatory Reform in Italy*, notably the reforms that were adopted in 2006 and 2007. The examination targets six professions: lawyers, notaries, engineers, accountants, (*commercialisti* and *ragionieri* or *esperti contabili*), architects and pharmacists.

Figure 4.1. **Trends in conduct regulation in selected service sectors**[1]



1. Index scale from least to most restrictive.

Source: OECD Regulatory Database, 1998, 2008.

These liberal professions were traditionally subject to pervasive regulation of entry and conduct in the market. Entry has been controlled, not only by setting qualification standards such as a minimum period of education, a professional examination or a minimum period of professional experience, but also by requiring membership in a professional body, by reserving the rights to perform certain services and in some cases, such as notaries and pharmacies, by limiting the number of providers on the market. Conduct in the market has been controlled through regulations that set or recommend prices, that prevent or restrict advertising and that limit or prohibit business structures. Most of the rules on the conduct in the market have been revised over the last few years.

* For further detail on these indicators, see Wölfl *et al.* (2009).

The starting point for discussion of the regulation of professional services, including self-regulation by professional bodies, is set out in a 1997 report of the Italian Antitrust Authority. The Antitrust Authority recommended reform so that regulation would be based on the principles of necessity and proportionality. That is, regulation should be limited to addressing market failures, particularly the asymmetry of information between professionals and consumers, as well as externalities and the public goods produced by certain professional services.

Following the Antitrust Authority report, a large number of draft laws were proposed to reform systematically intellectual professions. None were adopted. The large representation of members of these professions in the legislature presents a challenge for the reform process, in Italy as in other countries.

The central government retains the power to regulate the liberal professions after the reform of the second part of the Italian Constitution in 2001. The State still has exclusive power over "the institution of new professional orders, the conditions of access to them and the supervision of the requirements of current and prospective members". In addition, the State has exclusive competence for the protection of competition.

In 2006 and 2007, the government moved to reform several aspects of the liberal professions through the so-called *Bersani* reforms. Although these measures are not comprehensive, they represent the most important reforms in recent years, affecting the regulation of conduct in all liberal professions except medical services within the National Health Service. Following these reforms, on 1 January 2006 minimum prices were abolished and constraints on advertising and forms of business were relaxed. Some of the regulations of exclusive services were also reformed. Notaries no longer have exclusive competence over transfer of ownership of a vehicle and authentication of termination of a mortgage, and pharmacies are no longer the only retail outlet for over-the-counter pharmaceuticals.

Most of the professions objected to the content of the reforms, claiming that they could injure their image and prestige. But some associations, such as ANPA, representing young lawyers, and Codiarch, representing architects, supported liberalisation.

The instrument that the government used for the reform, the law-decree, has also been challenged on legal grounds. The professional bodies also object to the absence of consultation before measures are implemented. The Antitrust Authority noted that consultation could be particularly important here, considering the specificity and importance of the interests concerned.

The professions reacted to liberalisation measures. Some professional boards adopted and applied restrictive interpretations of liberalisation. Some of their revisions to Codes of Conduct after the 2006 reforms left anti-competitive features in place. Since self-regulation by associations of undertakings must be consistent with antitrust laws, the Antitrust Authority decided on 18 January 2007 to open another general fact-finding inquiry on professional services. Even national public regulation adopted rules that are not consistent with the reforms. For example, liberalisation about fees and forms of business for notaries has been limited. For lawyers, legislation was proposed to reintroduce *de facto* minimum fees, prohibit agreements on contingency fees and limit advertising, but it was not adopted.

The 2006-07 reforms

The 2006 reforms of liberal professions at the national level had three main objectives: to lower prices, limit the effects of information asymmetry and guarantee quality services.

They apply to all liberal professions except doctors working for or accredited by the National Health Service.

The main features of this reform that apply to many professions are:

- The abolition of minimum and fixed prices, to create conditions for a reduction in fees (but regulation may still control the awarding of legal costs incurred in judicial proceedings).
- The authorisation of informative advertising, to inform consumers about prices.
- Self-regulation of service quality, and also permission to link final fees to results achieved, so that the introduction of price competition will not lead to service deterioration.
- Inter-professional co-operation, to support service modernisation.

These reforms could increase competition among providers though might not lower prices for professional services. Providers may also compete in terms of the level of quality and choices they offer to customers and clients. Thus, one result of greater competition in professional services could be the introduction of new service packages at different price levels.

Reforms aimed at pharmacies have the same objectives: lower prices, limit the effects of information asymmetry and guarantee quality services. The principal features of these reforms are:

- Opening the distribution of drugs sold without medical prescription (often called over-the-counter drugs, or OTC) to retail trade.
- Permitting discounts off retail prices, with clear terms to facilitate the spread of information.
- Requiring direct assistance of a pharmacist when drugs are sold retail, to guarantee the quality of the service.
- Flexibility on the quantity and variety of medicines stocked by wholesalers which are not paid for by the National Health Service.
- Permission for partnerships of pharmacists to manage more than one business (but no more than four), and to manage one outside their province of provenance.
- Abrogation of the hereditary principle.

The reforms on notaries ended their exclusive competence in the case of transferring ownership of vehicles and terminating mortgages.

The Bersani reforms concern all of the 27 professional categories organised in orders or associations. There are close to two million members in these professions, and their numbers increased by approximately 10% between 2000 and 2006. The following subsection describes measures adopted by professional boards and Regions after the 2006 reform and, to the extent data is available, how markets have responded to the Bersani reforms.

Conduct regulation

Prices

Professional associations often contend that price competition would undermine the quality of their services and thus harm consumers. But no causal link has been established between setting minimum or fixed fees and higher quality professional services. Rather, if the price the provider can charge is fixed, then *a priori* the provider's incentive would be to reduce costs, and thus, perhaps, quality. Most importantly, fixed and minimum prices deny

clients one of the principal benefits of competitive markets, which is the opportunity to choose among different offers of price and quality.

Fee-setting regulations are rarely a benchmark for clients. Most clients do not need the reference. Businesses account for 90% of the demand for professional services, and businesses, who use these services regularly, know what to expect and need less, if any, protection through regulation. Thus it is not surprising that the rules for some professions, such as engineers, architects, bookkeepers and accountants, permit derogation from fixed or minimum prices. If fee regulation can, at least in theory, provide consumers with information about the average cost of services, there are alternative methods to reach the same goal, such as the publication of historical or survey-based price information by independent parties such as a consumer association.

Fee regulations may not improve transparency for users, because the methods for calculation often obscure total costs while encouraging the provider to increase them. This is particularly true for lawyers' fees, which are calculated according to a very complex chart which assigns a fee scale for each individual act. Accordingly, it is very difficult for a client to estimate the costs as it is impossible to foresee all the individual activities that may become necessary.

The method of computing fees can influence the intensity and quality of services performed, particularly the amount of time and effort expended. For example, for lawyers in civil court cases, different methods may encourage longer or shorter processes, and some may provide a stimulus to seek mediation or to follow an alternative path towards dispute resolution. Setting fees per hour could encourage increasing the amount of time spent on a case. Setting a bundled fee for the whole service could encourage greater efficiency; however, there is a risk that the provider could reduce his efforts if the costs end up exceeding the total bundled fee. Setting the fee per act performed encourages longer procedures, regardless of the chances of success, in order to increase the number of fees. In four of the five European Countries with shortened civil procedures, regulation of fees is not related to the time spent in trial.

Fee regulation

The Bersani decrees did not abolish previously existing decrees that set minimum tariffs for some professional services, but those decrees are no longer binding. These were typically developed with the participation of the professional bodies themselves. The national board of notaries used to formulate a resolution on professional fees, including honoraria, allowances and principles for reimbursement of expenses, which was reviewed and approved by the Minister of Justice. The lawyers' professional board did the same thing. For the engineers and architects, proposals by the professional boards were submitted to ministerial merits control. In practice, very often the legislation replicated fee proposals made by professional associations.

Notaries' and lawyers' fixed prices were binding until 2006. Lawyers could choose not to apply them only in cases of "clear disproportion". Fixed prices were strictly applied by lawyers' professional bodies, through disciplinary proceedings imposing sanctions for breach of minimum and maximum tariffs. In 2006, there were 157 proceedings concerning all breaches of the lawyers' Code of Conduct (Table 4.1). By contrast, engineers and architects had set only minimum fees. They also permitted a 20% discount for public works. Since 2000, non-binding reference prices are recommended for accountants. The

Code of Conduct of one category of accountants, the *commercialisti*, permits derogation from the minimum prices set by national regulation.

Table 4.1. **Disciplinary sanctions against lawyers in 2006 (157 proceedings)**

Warning	26
Reprimand	32
Suspension	59
Crossing out professional's body register	10
Dismissal	8

Source: National Bar Council (*Consiglio Nazionale Forense*), *www.consiglionazionaleforense.it*.

Before the 2006 reform, all Codes of Conduct developed by the professional boards referred to tariffs fixed by law, and most of them obliged members to respect the regulated fee levels (Table 4.2). Since the 2006 reforms, the legislation on minimum fees is still in force, but compliance is no longer compulsory. Individual professionals are free to set their prices, and professional boards cannot limit their members' contractual freedom.

Table 4.2. **Fee regulation before 2006 reforms**

Professional service	Fees established by law	Compulsory fees	Respect of fees required by the Code of Conduct
Engineers	Yes	Yes	Yes
Architects	Yes	Yes	Yes
Notaries	Yes *(fixed prices)*	Yes	Yes
Ragionieri	Yes	Yes *(minimum)*	No
Commercialisti	Yes	Yes *(minimum)*	No
Lawyers	Yes *(minimum and maximum)*	Yes *(minimum)*	Yes

Source: Italian Antitrust Authority, 2005.

Fee calculation method

In most of the liberal professions, abolishing minimum prices has not corrected the lack of transparency on total costs. The fee calculation method for lawyers is based substantially on particular actions, such as case studies, consultation with the client or representation at hearings. Practitioners must also observe rules for calculating travel and office expenses. Thus, fees do not depend on the amount of time the lawyer has invested. Fees for civil, administrative, fiscal and criminal judicial cases are calculated per single act, having regard to the court that is competent and the value of the case. Parties can negotiate fees as long as the minimum and maximum rates given for each service by official tariffs are respected. Since the 2006 reforms, though, the minimum rate level is no longer binding. Although professionals are required to issue a detailed bill for their services, the fee calculation method per single act could have repercussions in terms of transparency. Fees for extrajudicial services are determined per single act, per percentage or per hour.

Notaries' fees are graduated for acts having a determinate or determinable value. In other cases, fees are fixed for particular acts, such as acceptance of inheritance or minutes of meetings. Clients have the right to receive a detailed bill upon request.

Fees for accountants are calculated per single act taking into account the value of the service or the professional. The client can negotiate an agreed fee, having regard to the characteristics of the task, their value and their outcome. Since the 2006 reform, the

Table 4.3. **Lawyers' fee calculation methods**

UK	Per hour.
Spain	Freely agreed between lawyer and client (for example, on a lump sum basis or per hour). They are recommended, non-binding reference prices.
France	Freely agreed between the lawyer and the client, usually on a lump sum basis or per hour.
Germany	Fixed by law or through agreement, but minimum fees have to be respected. In 2006, the fees for extrajudicial consultation were liberalised.

Source: Senato della Repubblica-Servizio studi, Riforma del'ordinamento forense – Diritto comparato, January 2008.

minimum fee is no longer binding. The parties generally settle a lump sum for certain basic services such as bookkeeping or income tax returns.

For engineers and architects, fees are usually set as a "percentage" (determined by the amount of work). Fees for advice can be calculated by "period" (in relation to the time taken) or at the discretion of the professional. Fixed costs are charged a percentage or as a lump sum.

The fee calculation methods were not changed with the 2006 reforms. The regulations concerning the fee calculation methods are still in force, but their references to minimum fees are no longer compulsory. The method of calculating fees is still typically done by a single act or by time required (and sometimes a combination of methods). Setting a lump sum fee for the entire task is a possibility that is open only to accountants. Thus despite the reforms, it is not easy for users to know in advance the final total cost of services.

Abolition of minimum and fixed prices

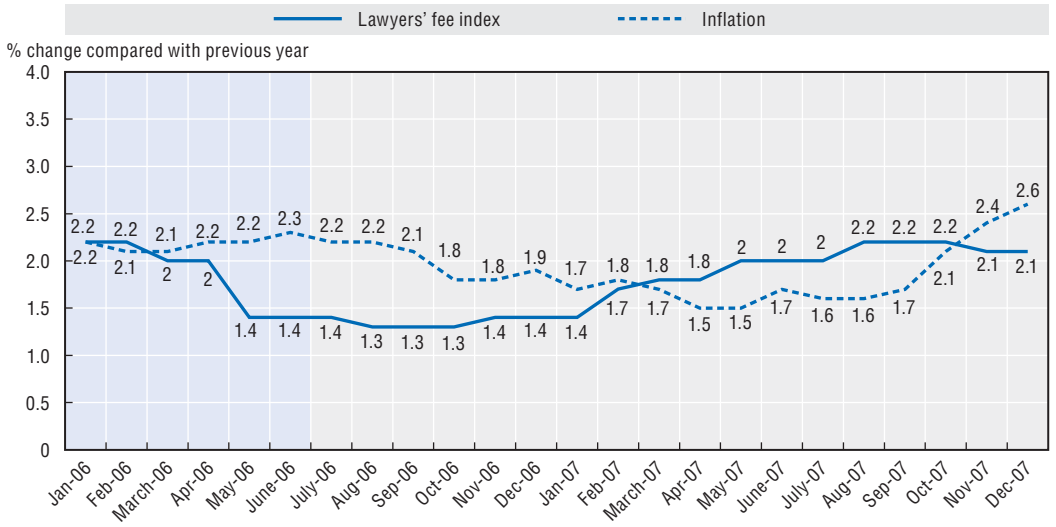
All of the professional bodies have now abolished compulsory minimum prices and changed their Codes of Conduct (Table 4.5). But a fixed fee schedule still applies to the award of legal costs incurred in judicial proceedings. The latest reform of the Code of Public Contracts suppressed minimum prices for public works, but the *Finanzieria* may be reviving the practice. More broadly, abolition of minimum prices has been broadly resisted and even reversed, and consumers have seen little benefit from price competition.

Some professional bodies have resisted the new rules on liberal professions by narrowly interpreting them. For example, the National Bar Council has recognised that liberalisation would permit setting fees below the minimum tariffs, but has cautioned that low fees might nonetheless be considered inconsistent with the Code of Conduct if the lawyer's dignity is injured, so that a disciplinary sanction could be applied. Similarly, the national council of engineers announced that fees below minimums could indicate a breach of Article 2 233 of the Civil Code, concerning respect for the decorum of the profession. An accountant who accepts a fee below the minimum tariff must be able to demonstrate that the quality of the service is not compromised.

Notaries contend that minimum tariffs still apply to notarial activities which are an expression of public functions. In addition, the previous schedule of notaries' tariffs is still used as a reference point, for computing fees for complex services and for computing the notaries' compulsory contributions for archiving tax, social security and the professional organisation. Notaries contend that their profession deserves special consideration because it performs public services, by providing a kind of preventative justice which, in a strongly litigious country, helps to limit disputes and ensure the reliability of public land registries. Legislation adopted post-liberalisation forbids "unfair price competition" among notaries, for example fee discounts. Such behaviour could be punished through disciplinary sanctions, such as warning, suspension or dismissal.

Though, some judicial decisions have resisted these interpretations. One ruled that any interpretation of legislation concerning professionals that is inconsistent with the abolition of minimum and fixed prices must be avoided, and no disciplinary sanction may be applied for fees set below minimum or fixed tariffs. In addition, a professional board decision or guideline that has as an objective to maintain minimum or fixed prices can be considered as a decision of an association of undertakings which could have a negative impact on competition.

Figure 4.2. **Lawyers' fees**



Note: The lawyers' fee index is computed using a basket ranked by type of case. Istat collects data monthly on fees set by the professional order, and quarterly on fees charged by a sample of professionals in provincial capitals. Changes took effect after June 06.

Source: Istat, report on consumer prices.

Figure 4.3. **Accountants' fees**



Note: The accountants' fee index is computed by Istat from quarterly data on fees charged by a sample of professionals in provincial capitals.
Changes took effect after June 06.

Source: Istat, report on consumer prices.

Price regulation reforms of pharmaceutical products

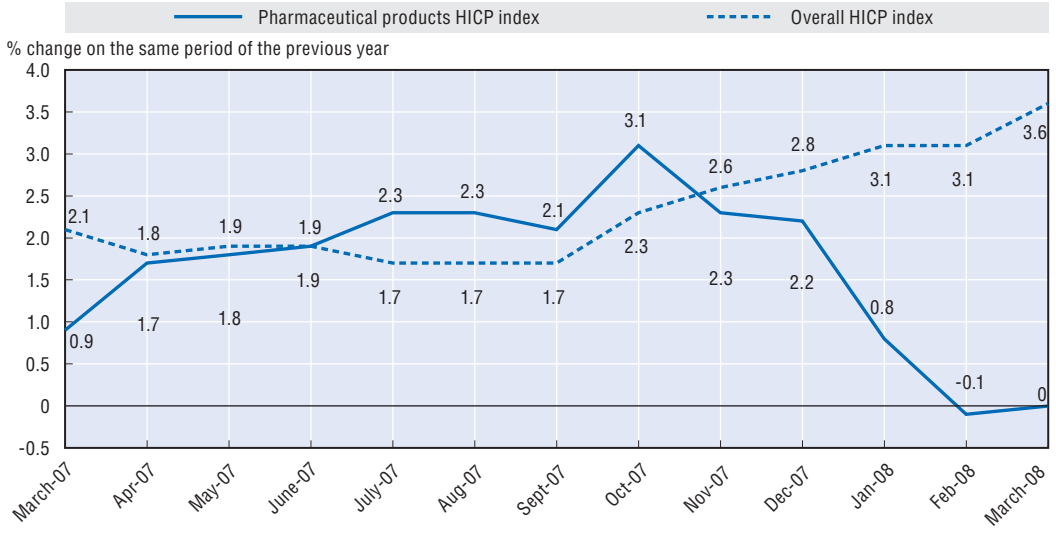
Prior to the 2006 reforms, prices of pharmaceutical products reimbursed by the National Health Service were fixed by law, while prices were formally liberalised for non-reimbursed products but that still required a medical prescription, and for over-the-counter (OTC) products. But producers or distributors print retail prices on the packages of non-prescribed and OTC products, and these serve as maximum prices for the national market. These prices can only be revised every two years. Discounting from this printed retail price was allowed, up to maximum 20%. The Antitrust Authority pointed out that it would have been better to simply avoid price indications. Fixing resale prices, even as a maximum, and printing it on packages stabilises behaviour and encourages collusive strategies since producers can easily monitor each others' prices. Limiting price adjustments to a two-year cycle stabilises behaviour by reducing uncertainty about producers' competitive strategies. It also delays or prevents cost reductions for consumers.

The Bersani reform made it possible for retail outlets other than pharmacies to sell OTC products. It also eliminated the 20% discount limit off the pre-printed price indicated by the producer or the distributor, for both pharmacies and retail outlets (Article 5, Law 248/2006). As of 2008, the retail prices of OTC products were liberalised both at pharmacy and at retail outlet levels, and pre-printing prices for non-prescription and OTC products is no longer required.

Over 3 700 retail shops other than pharmacies now sell OTC pharmaceutical products. Of these, 86% are small shops and 14% are medium-sized outlets and large-scale distribution outlets. This number is small, compared with the 17 000 pharmacies. Nevertheless, these reforms contributed to a 6.6% decrease in price between 2007 and 2008. The rate of increase in consumer prices for pharmaceutical products has fallen far below overall inflation rate (Figure 4.4). This effect of reform was supported by lower producer prices for these products (Figure 4.5).

Figure 4.4. **Consumer price trends of pharmaceutical products and inflation (HICP index)**

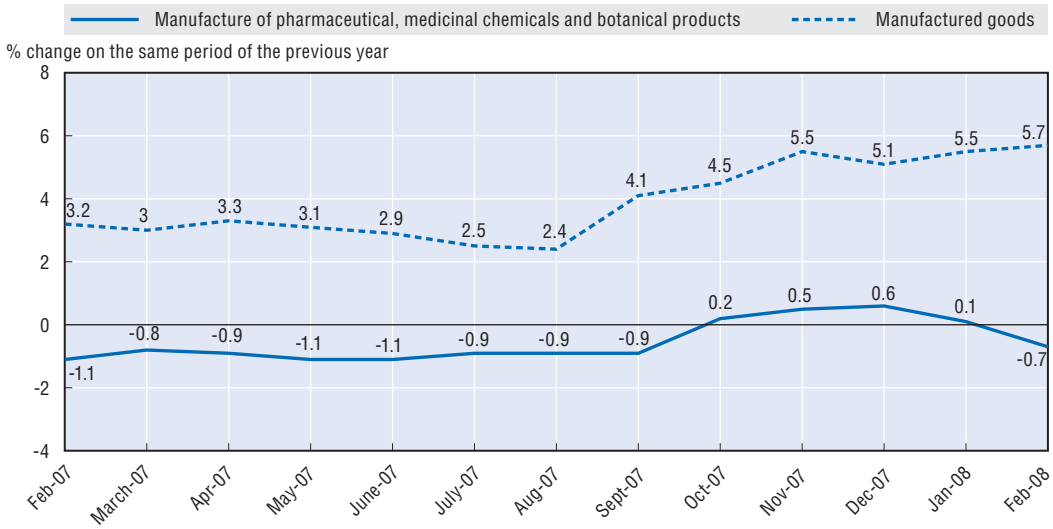
(% change on the same period of the previous year)



Note: The Harmonised Index of Consumer Prices (HICP) of pharmaceutical products includes the medicinal preparations, medicinal drugs, patent medicines, serums and vaccines, vitamins and minerals, cod liver oil and halibut liver oil and oral contraceptives (veterinary products and articles for personal hygiene are not included in its definition).
Source: Eurostat.

Figure 4.5. **Producer price trends of pharmaceutical products and products for medical use, and of overall manufactured goods**

(% change on the same period of the previous year)



Source: Ministry of Economic Development, March 2008, *www.osservaprezzi.it/approfondimenti/newsletter/2008/aprile/#focus.*

Some of the new outlets, particularly large-scale stores, have discounted more aggressively. According to an inquiry by Altroconsumo, the average discount for pharmaceutical products in pharmacies is 8% per packet (11% per packet, only considering discounted pharmaceutical products), but in large-scale distribution the average discount is 22%. The large-scale stores do not offer as wide a range of products as pharmacies do. The small "*parafarmacie*" shops are less competitive, offering a smaller range of products and lacking economies of scale. For them, the average discount is 15.8%.

Opening new channels of distribution stimulated 13% of pharmacies to offer discounts of approximately 15-20%, in order to compete with large scale outlets. Some pharmacies asked regional authorities to give them more flexibility about opening hours to compete with the new outlets. But reforms also generated resistance to change. Some distributors refused to supply the "*parafarmacie*" shops and some associations of pharmacists tried to limit discounts, which led to investigations for breaching the competition law.

Table 4.4. **Price liberalisation of professional services and pharmaceuticals**

Professional services	Minimum/fixed prices abolition
Pharmacists in retail trade (5 Dec. 2006)	No: drugs paid for by the National Health Service (*fascia A*) Yes: over the counter drugs, drugs sold without medical prescription and with medical prescription (*fascia C*)
Engineers (1 Dec. 2006)	Yes (Art. 4.4, Code of Conduct)
Architects (20 Dec. 2006)	Yes (Art. 15, Code of Conduct)
Notaries (13 Dec. 2006)	Yes
Accountants (5 Sept. 2007)	Yes (Art. 15, Code of Conduct)
Lawyers (14 Dec. 2006)	Yes (Art. 43-45, Code of Conduct)

Advertising

Professional boards have historically regulated advertising, emphasising the asymmetry of information between practitioners and consumers and the need for consumers for

protection against misleading or manipulative claims. But advertising about the characteristics and prices of services is an important instrument to overcome information asymmetries. Experiences of professional boards and the Italian Antitrust Authority confirm that advertising can be abused. Nonetheless, limitations on advertising imposed by professional Codes of Conduct result in barriers between clients and professionals and prevent clients from making informed choices. The professional associations themselves only give general advice and thus offer little help in making this choice. For example, associations of notaries provide only a list of all of the notaries in the area.

Codes of Conduct typically consider advertising to be prejudicial to the decorum and dignity of the profession. According to some, advertising should be subject to limits based on "moderation" and "good taste".

Prior to the 2006 reform, the level of advertising permitted by the different professions' Codes of Conduct varied considerably. At one extreme, engineers did not regulate advertising. At the other, pharmacists (and other medical professions) could advertise only name, address and specialisation in telephone directories, newspapers and specialised magazines subject to prior approval of the professional board and mayoral authorisation. Several of the limitations on pharmacy advertising in the Code of Conduct (such as permitting advertisement only of the existence of a pharmacy) were eliminated after intervention by the Italian Antitrust Authority. Advertising by notaries was totally forbidden until 2004, when informative advertising was allowed subject to several limits. For example, the sign outside the notary's office could not be too large and the name listed in the telephone book could not be too prominent, and it was forbidden to make an announcement in the media or to have the name included in any guide that did not include all of the notaries in the district.

Advertising by lawyers was forbidden until October 2002, when some forms of publicity were allowed, such as signs outside one's office, brochures and Internet sites. Rules limited the substance of the advertising. Lawyers could offer consultation services as long as the consultation was not for free and the offer clearly identified the lawyer who would follow the case. Advertising could indicate quality certificates and provide information about the professional practice and specialisations allowed by universities. Compared with the other Codes of Conduct, this Code was considered the most restrictive by the Italian Antitrust Authority.

There has not been a general prohibition of advertising by accountants since 1999. But interpretations by professional bodies prohibited methods considered inconsistent with the honour and dignity of the profession, including billboards and flyers, general solicitations via mail, fax or e-mail and direct solicitations through visits or phone calls. And the interpretations prohibited conveying information about tariffs or the names of clients and results obtained.

Abolishing restraints on advertising is a necessary complement to the liberalisation of tariffs. Advertising may facilitate competition by informing consumers about the quality and price of services that best meet their needs. The 2006 reform permits informative advertising, of titles and specialisations, characteristics of service, prices and total costs. Professional boards may check to ensure that the message is truthful and not misleading. Their competence is different and must not produce decisions that overlap or contradict those of the Italian Antitrust Authority, which has the exclusive power to apply the rules about misleading and comparative advertising.

The permission for "informative" advertising should not be interpreted in a way that could prevent effective and useful communication. The law on misleading and comparative advertising is well equipped to deal with situations where the decorum of the profession is thought to be at stake.

All of the Codes of Conduct have been reformed since the reforms permitted advertising (Table 4.5). But most of the Codes allow only some type of publicity and form of communication.

Table 4.5. **Advertising liberalisation in the Codes of Conduct**

Professional service	Advertising liberalisation
Pharmacists	Yes, before Law 248/2006 (Art. 20, Code of Conduct)
Engineers	Yes, before Law 248/2006 (advertising is not regulated by the Code)
Architects	Yes (Art. 36, Code of Conduct)
Notaries	Yes (Art. 18-21, Code of Conduct)
Ragionieri	Yes (Art. 12-14, Code of Conduct)
Lawyers	Yes (Art. 17-17*bis*, Code of Conduct)

Retail pharmacists cannot promote their activities through a medical centre, but they can advertise services, prices and the individual department of a shop. All advertising is subject to previous notice to the professional board.

The Code of Conduct for lawyers still limits advertising about specialisations to those that are recognised by universities. It also prohibits advertising the names of clients, even if they have given their consent. It bans both misleading and comparative advertising. In general, a lawyer cannot emphasise professional ability. It is also prohibited to offer professional services at the customers' house and in public places. The use of Internet sites is controlled. Sites must have the lawyer's own domain name or be directly traceable to the lawyer or the firm. The professional body has a power of preventive control over the content of websites and of authorisation of lawyers acting as columnists.

The notaries' Code of Conduct eliminates explicit limitations on advertising. Instead, it sets out examples of informative advertising, such as areas of specialisation which are allowed by universities, publications, lectures, days and working hours, cabinet organisation, and foreign languages. There are no particular limitations on the form of advertising. The Code includes examples such as Internet sites.

There is no general prohibition in the 2008 accountants' Code of Conduct. Their advertising may indicate the name of clients, if they have given their consent. Misleading advertising is still forbidden, and advertising must respect the dignity of the profession. Reference to names of clients and fees is forbidden for architects who can only use the Internet to a limited degree.

Methods of advertising that are used most often are, for engineers, newspapers and magazines, websites and direct contacts. For accountants, websites and participation at seminars and conferences. For notaries, some have websites (no more than 100) but only one has advertised in a local newspaper. For pharmacists: newspapers, websites and billboards.

Quality of services

The 2006 reform provides that Codes of Conduct can include measures to ensure quality to avoid poor and incompetent services. These measures include regulation of

continuing education. Other measures to guard against poor quality service include standards governing access to the profession and disciplinary rules to ensure compliance with professional ethics. The risk that the professional would face civil liability for harm due to incompetent service is also a check. In addition, recent reforms now permit professionals and clients to enter contingent fee agreements, under which the professional might not be paid if the quality of service is inadequate.

Continuing education

Continuing education should be a means of ensuring quality. Its requirements should not be used as a device for preventing entry or competition. To ensure choice and accessibility, professional bodies should adopt objective, non-discriminatory criteria for accreditation of training courses that are not organised by the professional orders themselves.

Lawyers and notaries recently adopted regulations requiring continuing education. The subject had been previously dealt with simply as a general duty of keeping up-to-date. A National Bar Association regulation, adopted 13 July 2007 and effective in 2008, establishes a duty of continuing education and regulates training courses. The National Board of Notaries adopted a regulation requiring continuing education in 2005, effective in 2006. The rules specify the obligation for continuing education in terms of the number of credits or hours undertaken over a three year period, for lawyers, and over two years, for notaries. This can be done through participation in seminars and congresses that are organised or accredited by the national associations.

Continuing education for accountants became mandatory from January 2003. Accountants must take a minimum of credits every three years in programmes adopted by the national professional bodies, which co-ordinate the local branches' activities. For all these professions, the breach of mandatory continuing education involves a disciplinary sanction. For lawyers, it would have an impact on the content of advertising. A lawyer may not advertise about an area of professional practice in which the lawyer has not complied with continuing education requirements.

The pharmacists' Code of Conduct, in Article 9, foresees a duty regarding continuing education, to be organised at the cost of the national federation or their professional board. (In 1992, the government set up a general programme for medical workers of continuing education). The pharmacists'professional body has not yet adopted a specific regulation. The same is true for engineers and architects.

Agreements on contingency fees

Italian law traditionally prohibited lawyers from entering agreements on contingent fees. Such fee agreements were null and void. Professional bodies have defended this prohibition on the grounds that it discouraged unscrupulous hunting for clients and protected clients' interests in vigorous representation. That is, a professional with a contingent fee agreement for a small or weak case would not pursue it vigorously or would demand more of its value as compensation. These outcomes might be avoided if the professional's pay did not depend on the result of the service. But the alternative to a contingent fee arrangement for such cases could be no representation at all. Moreover, under a fixed total fee, there could also be a risk that service quality would decline if the case ends up costing more than the agreed total fee would cover. If fees are assessed per act performed, the burden is on the client to decide whether the matter is worth pursuing,

without the professional's insight about how many acts might be needed. Novel or risky cases might be discouraged.

Before the 2006 reform, it was possible to consider performance in setting a lawyer's fee, through an agreement to pay an additional amount in case of success. The additional amount must be fair, and the agreement must be in writing. The laws and rules applied to the legal profession have been modified. The Civil Code and the Code of Conduct have been amended to remove the prohibition. Contingent fee agreements must be in writing, and it remains forbidden for lawyers or notaries to "become beneficiaries in a transfer of rights over the object of dispute in any judicial procedure in which they have been engaged to act". The reform opens the way to the *pactum de quota litis*, which means an agreement by which "the client undertakes to pay the lawyer a share of the result regardless of whether this is represented by a sum of money or by any other benefit achieved by the client upon the conclusion of the matter". The Code of Conduct specifies that remuneration must be in proportion to the activity. Thus an agreement about a contingency fee could be permitted by the Italian Civil Code, although it might violate the Code of Conduct if the remuneration is considered disproportionate.

The new "class action" law could lead to more changes in the lawyers' Code of Conduct. As of June 2008, consumer associations will be able to pursue class actions for damages against practices such as abuse of standard form contracts, unfair trade practices such as false advertising, and anticompetitive practices affecting consumers. The class action has been opposed by the professional association, for one of the same reasons that it raises to criticise the *pactum de quota litis*, namely that it would deprive damaged consumers of full compensation and encourage unscrupulous hunting of clients.

All liberal professionals may now make agreements about contingency fees. Other than the lawyers, none of the professions had regulated this practice.

Form of business

The form of business was traditionally regulated very rigorously for all liberal professions. A 1939 statute barred the exercise of a profession in the form of a company of any kind. This regulation was aimed to ensure that practitioners took personal responsibility towards their clients and to avoid the influence of a non-professional's capital. Sectoral legislation prohibited notaries from forming commercial enterprises.

Those limitations have been relaxed. Although the legislative decree that was supposed to regulate the subject was not adopted, decisions by the Council of State and the civil and administrative courts have made clear that the incompatibility between professional activities and a company structure is considered eliminated.

Today, members of technical professions, such as engineers and architects, are allowed to join together into partnerships, or *società di persone*, and co-operatives between member of their professional bodies (called *società di professionisti*), as well as from engineering companies (*società di ingegneria*) in the form of *società di capitali*. In these entities, both of which act in the field of public works, only members of the professional board are personally responsible, although the engineering companies can have non-professional partners. Lawyers can now create general partnerships (*società in nome collettivo*).

The 2006 reform enables *società di persone* and *associazioni di professionisti*, for which professional services are their exclusive task, to offer interdisciplinary services. Lifting

restrictions on ownership structure and expanding the scope for collaboration among professionals are aimed at permitting modernisation and improving quality, through new services or cost-efficient business models such as integrated tax advice. The moves may also enable new entry and expansion through access to new sources of capital. This is subject to three conditions: the activity of the entity must be solely professional, the activity and responsibility must be strictly personal and a professional cannot be a partner in more than one such entity. These conditions are intended to protect professionals' fiduciary obligations and personal liability. Indeed, it is feared that the professional's duty to clients might be compromised if financial liability could be limited or shared or if the professional is under investment control of someone not subject to ethical requirements.

Some professional orders consider that the forms of *società di persone* are not able to guarantee appropriately the personal character of the service. Some Codes of Conduct maintain limits on inter-professional companies. For example, lawyers are obliged to communicate immediately any project to create an association or professional company (Art. 24), and architects can only create *società semplice* or general partnerships. Other professional orders have not imposed any specific conditions on inter-professional companies.

Regulation of opening or owning a pharmacy has traditionally been very rigorous. A pharmacy could be owned only by a pharmacist or by a company of associated pharmacists (while a "public pharmacy", which is owned by a local authority, could be managed by any company). If an owner died, members of the deceased pharmacist's family who are not themselves pharmacists could take charge of their relative's pharmacy for up to ten years. Other aspects of ownership and operation that have been tightly regulated include incompatibility between distribution and retail sale of pharmaceutical products, limitation on the number of pharmacies according to the number of inhabitants and the minimum distance with respect to the maximum number permitted in each community, the wholesalers' obligation to stock 90% of medicines to guarantee a timely supplying to pharmacies.

After the 2006 reform, pharmacists may set up more than one company of pharmacists (the possibility to own a family pharmacy without a pharmacist title is abolished) and pharmacy companies can hold several pharmacies. But the maximum number that can be held in common ownership is four, and they must be located in the same district where the company has its corporate headquarters. Heirs who are not themselves qualified to be owners must sell the business or the shares within two years. These limits impede the creation of distribution networks like those in the United Kingdom. As a result of these limits, only nine companies own more than a single pharmacy, and only 64 pharmacists have set up more than a single company.

Restrictions on the acquisition of holdings in pharmacies by enterprises active in the distribution of pharmaceutical products (or having links with companies active in this area) and on their ownership of pharmacies were removed end 2007. The European Commission challenged these restraints, as inconsistent with Articles 43 and 56 of the EC Treaty (concerning the freedom of establishment and free movement of capital) and as more restrictive than necessary to achieve the objective of protecting health. The European Commission contended that the risk of conflicts of interest could be avoided by measures short of banning cross-ownership, while requiring the presence of a pharmacist to dispense drugs to patients would be sufficient to achieve the objective of protecting public

health. The same infringement proceeding challenged regulations in Spain and Austria, limiting the number of pharmacies according to the number of inhabitants and setting a minimum distance between pharmacies.

The Bersani reforms introduced an important element of flexibility on the quantity and quality of medicines stocked by wholesalers, by limiting the obligation to stock 90% of medicines or drugs which are paid for by the National Health Services.

Table 4.6. **Inter-professional co-operation**

Professional service	*Società di persone* and *associazioni di professionisti*
Pharmacists	No (not regulated by the profession's Code of Conduct)
Engineers	Yes, before Law 248/2006 (not regulated by the Code of Conduct)
Architects	Yes (Art. 12, 13, 41 Code of Conduct)
Notaries	No (Art. 15 Code of Conduct)
Accountants	Yes (Art. 6, 9 Code of Conduct)
Lawyers	Yes (Art. 17*bis* Code of Conduct)

Exclusive tasks

Reserving categories of tasks exclusively for designated professionals can lead to unjustified distortions of competition. This point has been emphasised repeatedly by the Italian Antitrust Authority, European institutions and the OECD. Exclusivity could be justified only where the exercise of the profession is strictly linked to the safeguarding of public interest and where there is no less restrictive mechanism to guarantee the quality of services. The new regulations on liberal professions relax a few of these constraints, concerning notaries and pharmacies.

Limitations of notaries' reserved tasks

In Italy, there are many reserved exclusive rights to perform activities. For instance, access to the public register for deeds requires authentication of the signature by a notary, and inheritances and gifts can only be completed with a public deed before a notary. Some powers have been transferred from judges to notaries, such as validating certificates of incorporation and decisions about articles of association and bond issues by limited companies.

Recent reforms have reduced a few of these restraints. The notaries' monopoly over transferring ownership of movable assets such as cars or boats was eliminated. These transfers can be authenticated by the municipality, by car agencies or directly through the provincial offices of the Public Car Register-*Pubblico Registro Automobilistico*-PRA. According to the notaries, this change led to a loss of work of 15% overall, but savings to consumers were probably small. The cost of ownership transfer through the municipality is only a stamp duty (EUR 14.62) plus a small administrative charge, while notaries typically charged EUR 3-30 plus TVA. But municipalities cannot complete the procedure through the transfer transcription in the Public Car Register, and car agencies, which are connected to the register and can perform this function themselves, demand about EUR 130. In addition, the reform abolished the requirement for a notary's authentication of the termination of a property mortgage once the mortgage payments have been made in full.

Pharmacy services in retail trade distribution

Traditionally, pharmacists have the exclusive right of preparation, storage and dispensation of pharmaceutical products, which are solely distributed through pharmacies.

Experience elsewhere has shown, and the Italian Antitrust Authority has argued on several occasions, that allowing other outlets to sell products which do not require a prescription would lead to a substantial increase in competition and significant price reductions, of up to 30% on the basis of the UK experience.

In line with this idea, Law 248/2006 limited the scope of the pharmacies' monopoly to prescription-only drugs. Other retail channels may sell OTC products and those that do not require medical prescription. Sale through these other channels is subject to several conditions. The outlet must notify the Ministry of Health and the Region in advance. There must be a dedicated counter set up inside the shop for these products. And there must be a pharmacist who is a member of the professional board to provide direct assistance to customers. These conditions would be more of a burden for small and medium enterprises than for large chains and distribution stores.

Some Regions have tried to make the restrictions even more onerous. Additional burdens have included requiring that the dedicated counter be separated behind a wall or a window (Lombardia, Lazio and Puglia) and that a separate cash register be used for recording sales of these products (Umbria, Puglia and Sicilia). The Italian Antitrust Authority in 2006 required regions that implemented restrictive measures to make them conform to the competition law, and the government followed up asking for reports from these regions on how they had complied with this request. Other obstacles to liberalisation came from the conduct of some wholesalers (which were sensitive to the interest of pharmacists), who co-ordinated their market behaviour to exclude the small *parafarmacie* shops from selling non-prescription products. The Italian Antitrust Authority fined four operators who had restricted competition in three Regions.

Conclusions

Recent reforms of the regulations that prevented competition in the liberal professions lifted several prohibitions and restrictions on fees, advertising and forms of business. These long-overdue changes, which the Antitrust Authority has been urging since the 1990s, are welcome, although they are not comprehensive. The Antitrust investigation was just concluded in March 2009 and is in line with the findings of this report. After the entry into force of the Bersani reform no disciplinary sanction could be applied to fees below a minimum. Any guideline of a professional board implying fixed or minimum fees is inconsistent with the competition law. Reforms to date, supported by growing international competition between professionals and by a drive for renewal from some professionals themselves, could lead to further necessary steps toward treating providers of professional services as enterprises under the Community law. Assessing the overall impact of reforms in these areas would require observing net effects on long-term outcomes, such as health and legal security, which are inherently difficult to measure. Some market place results are already evident, though, as they have improved consumers' welfare.

Changes in pharmacy retailing have led to the clearest marketplace results, improving availability and putting downward pressure on prices. Such effects would be expected after weakening a retail cartel such as this one, which owed its survival to protective regulation. Removing the exclusive right of pharmacies to sell OTC drugs and eliminating the producers' single price and the limits on discounts have created a degree of choice for about 10% of the overall pharmaceutical market, in terms of turnover, and 18% in terms of

volume (excluding hospitals). Opening alternative channels for retailing OTC products is estimated to have saved the average family about EUR 50 annually.

For most of the other changes, marketplace effects are hard to discern yet, in large part because the changes are recent and the professions are still adapting to the situation. Some professions have allowed flexibility in fees and discounts, as in the case of accountants and engineers. But the method of calculation still results in a lack of clarity about the total, especially for lawyers. Their method of setting fees per act performed could make an offer of a discount a moot point.

The culture of the professions is adapting to change hesitantly. Advertising and competition over prices are resisted. Some in the professions fear that these novelties could undermine their image, and some associations considered applying their disciplinary codes against members who cut their fees too much. Reform to permit more advertising has not yet had significant effects, in the view of the professional organisations. Permitting more inter-professional services has also had limited effects. Some professional orders, notably accountants, have expressed uncertainty about which form of organisation would comply best with the requirements that the activity must be solely professional and that responsibility for a matter must be personal. They are evidently awaiting clarification of these points.

The reforms were implemented with only limited consultation, using the tool of the law decree. Use of that tactic for this purpose has opened the reforms to procedural challenges in court. Greater consultation might have laid a foundation for acceptance of the changes; on the other hand, it might have delayed their adoption.

Policy options

Further liberalise prices for pharmaceutical products

In pharmacy retailing, the obvious next step for reform should be to liberalise the sale of those drugs which are non-reimbursable but require a prescription, the so-called category C drugs. This was provided by a first draft of the bill on liberalisation which was supposed to complete the 2006 reforms. This would have opened up another 10-15% of the market, in terms of turnover. Such sales should still be subject to supervision appropriate for their prescription status, of course. Another straightforward step would be to base a pharmacy's obligation to stock products *on their active principle, rather than on their product label or source.* This would not require that prescription be written only in terms of the active principle. Nevertheless, the Italian Antitrust Authority considers that this rule could be a determining factor in the development of the distribution of "generic medicines", which are sold at lower prices, to the advantage of both consumers and National Health Services.

Liberalise pharmacy ownership, to permit creation of efficient distribution systems

The most important reform in the pharmacy sector, though, would be to re-examine constraints on ownership that prevent achieving efficiencies in distribution. The government has contended that linking ownership to management protects the public health. It is undeniable that, to ensure proper professional service to customers, a pharmacy must be supervised by a pharmacist who can advise the consumer. But that does not depend on the location, ownership or business format of the retail outlet. The outlet does not need to be owned by a pharmacist to ensure that service. Permitting ownership by others, and permitting many outlets to be under common ownership, would enable

creation of larger, integrated distribution networks which could offer better consumer prices and services. The competitiveness of the alternatives to large-scale distribution could be strengthened by reforming the constraints on ownership. Limiting the ownership of pharmacies to pharmacists, and limiting the number and scope of operations, prevents achieving economies of scale and attracting sources of capital, as would be the case in other European countries. Removing these limits would open the market to new operators and permit the creation of chains of stores.

Remove limits on number and location of pharmacies

Intrusive structural regulation, fixing the number of pharmacies on the basis of population and imposing minimum distance requirements, seems to be more connected to protection of incumbent's rent than to protecting widespread availability. This aim could, in fact, be attained through instruments, which are less restrictive of competition (such as the incentive mechanism that is already in place to encourage pharmacies to locate in smaller and more remote places). The lifting of the fixed number of pharmacies is one of the reforms considered as fundamental to facilitate economic growth by the "Attali Report". The lifting of the fixed number of notaries is also considered an essential reform for economic growth.

Permit greater flexibility in methods of computing professional fees

Methods for computing fees should also be re-examined, to increase flexibility and choice and counter the current system's incentive to prolong litigation. To be sure, lawyers' fees are not high compared with those of others countries. But the method for calculating them encourages long, costly civil proceedings. Fees are set per act, so the longer the process, the higher the final fee. The incentive to prolong the process could be eliminated by setting lump sum fees. As long as fees are only calculated per act or per hour, reforms about fee levels and advertising are unlikely to reduce costs or make the final total more transparent at the outset. The National Bar Association has proposed a tariff of fees for court services, setting the charge for each phase (such as study of the case, introduction to the judgment, preliminary investigation and decision), each level of judgment and each competent court (civil, criminal, administrative, fiscal). Limiting the number of possible charges and fixing them in a public schedule would indeed make the process somewhat more transparent, and it would put an upper limit on the possible total. Moreover, this proposal could be considered a simplification, but, as with the current method, is inconsistent with a system based on free agreements between professional and client and does not guarantee fee transparency (a client cannot know in advance in how many phases of the process he will be involved).

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PART III

Multi-level Governance

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Chapter 5

Key Issues

This chapter introduces key issues for multi-level governance in Italy. These are presented in the context of the relative economic performance among Italian regions and the persistent regional disparities. The chapter discusses the evolution towards increased decentralisation following the recent constitutional reforms. It presents competitiveness and regional development policies in the multi-level governance framework. Finally the chapter also discusses the issues at stake for the liberalisation of local public services in Italy, with past and recent efforts, as well as economic and structural challenges.

Introduction

The 2001 constitutional reform created a new allocation of regulatory competences between the state and the regions. This has implications for the implementation of regulatory reform and liberalisation policies. A multi-level regulatory governance approach will assess tools, policies and institutions for regulatory reform in the interaction between national and local levels for key economic sectors. This chapter takes a specific focus at two economic sectors: commercial distribution and local public transport, where regions have explicit regulatory powers while national economic standards are applicable. The approach will focus on the regulatory framework and its economic outcomes, while further issues related to clustering and innovation, as well as fiscal federalism *per se* fall beyond the scope of this chapter.

A first section will provide an overview of the socio-economic performance across Italian regions as a whole, analysing the interface between the national and regional authorities in designing and implementing regional development policy. Throughout 2000-06, Italy developed an elaborated system of performance indicators, which is outcome-based. A second section will focus on regulatory quality tools and policies, to enhance regulatory co-ordination and coherence across levels of governments, as well as on local cutting red tape initiatives. The issue of local public services is also addressed as it is a key element of liberalisation policies at the local level. Specific chapters follow that focus on:

- *Commercial distribution*: the regulation of this sector, both at national and regional level, involves significant challenges for local development and is also intertwined with urban planning and local development policies. This sector has nationwide implications in terms of inflation, as well as living standards, in a context of rising prices for foods and basic commodities.
- *Local transport in metropolitan areas*: the regulation of this sector involves the monitoring, bidding processes and organisation of local public services. The definition of universal service (*servizi minimi*) at local level as well as the size of catchment areas are key factors. The analysis covers local railways, urban buses, tramways, metro and transport on sea when relevant. The issue of taxis, which is indirectly linked to local public transport, is also discussed.

Economic performance among Italian regions: Large and persistent regional disparities

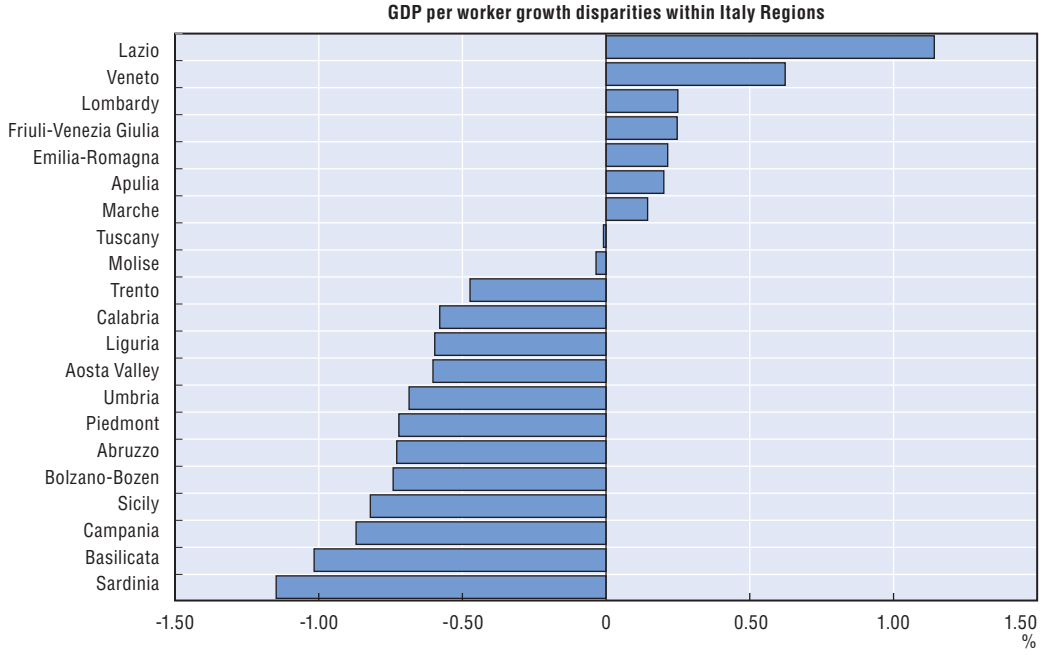
As noted in Chapter 1, Italy is characterised by a sharp economic divide across regions. While this may be linked to historical and social factors, the gap between *Mezzogiorno* and the northern regions remains, despite a number of policy interventions over the past 50 years (D'Antone, 1996; Cafiero, 2000). In recent years, some of the disparities across regions has tended to persist and even to widen, as the highest economic growth has been experienced in Lazio, where Rome, the capital city, is located.

First, these trends take place in the context of an aging population. Italy is now one of the oldest countries in the world, close to Japan. For every 100 Italians aged 15 or under, there are currently 141 citizens aged 65 and over. Istat figures reveal that in 2006 the average Italian woman had 1.35 children. In addition, life expectancy in Italy is one of the highest in Europe, which represents a significant economic and social achievement. The average for Italian women is now 84 years; for men it is 78.3 (Istat, 2008). The aging trends are particularly pronounced in the South, as the most significant decline in population growth over 1995-2005 are all located in the *Mezzogiorno*, except for Liguria (–0.40%). Calabria and Basilicata register the lowest rate with –0.72% and –0.68%, respectively.

Economic disparities have increased across a number of dimensions. According to the 2008 Istat report, there are 88 firms in the south for each 1 000 working age residents (15-64 year old), against 125 in the centre-north. The number of jobs in the private sector is double in the north (545) than in the south (274), although here some dynamic trends such as the job creation rate have been higher in the recent past.

A deeper analysis of labour productivity trends at regional level confirms those trends. The *Mezzogiorno* has recorded negative growth in GDP per worker over 1995-2005. The only exception is Puglia with an increase of +0.19%, even if the Northern regions of Liguria, Piemonte and the Aosta Valley, Bolzano and Trento, as well as Umbria, also experienced a decrease (Figure 5.1).

Figure 5.1. **Productive disparities within Italian regions**

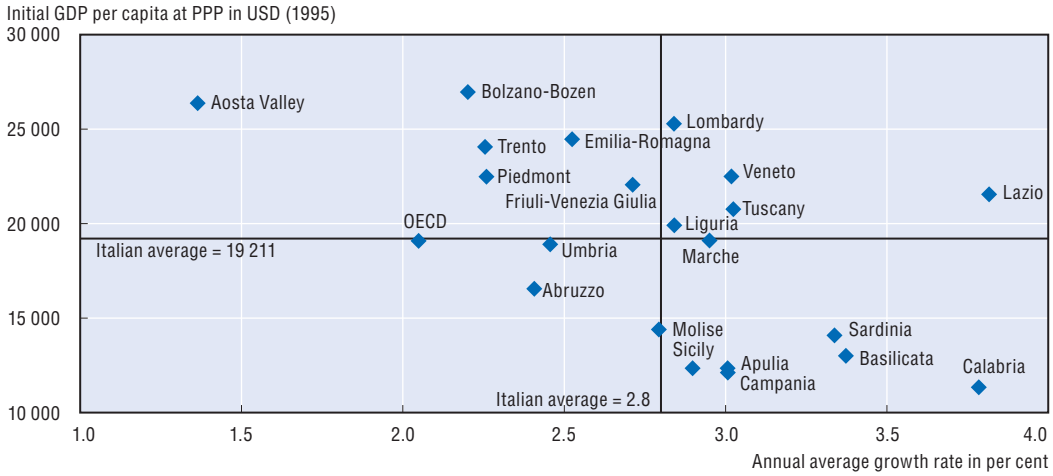


Source: OECD regional database.

An analysis of the relationship between recent growth rates and initial GDP per capita at PPP between 1995 and 2005 offers further insights. While the Italian average is broadly in line with the OECD one (about USD 19 200 per capita), all the northern regions show higher values, whereas in the south only Abruzzo exceeds the USD 15 000 threshold. Symptomatically, centre regions such as Marche, Umbria, and to a lesser extent Tuscany and Lazio position themselves around the average value (Figure 5.2). The 2008 SVIMEZ

report indicates that the *Mezzogiorno* has grown less than the rest of the country for the sixth consecutive year. The GDP per capita of the southern regions represents only 57.5% of the value for the centre-north,[1] and the regions of *Mezzogiorno* remain among the least advantaged in Europe (Centro Studi Confindustria, 2008). Over 1995-2005, Italian regions have recorded higher annual average growth rates than the OECD average. Over that longer period, the regions registering the highest growth rates were a mix of northern and central regions, including Lazio, Veneto, Tuscany and Lombardy, as well as southern regions such as Calabria, Basilicate and Sardegna which were catching up.

Figure 5.2. **Income and growth in Italian regions (1995-2005)**

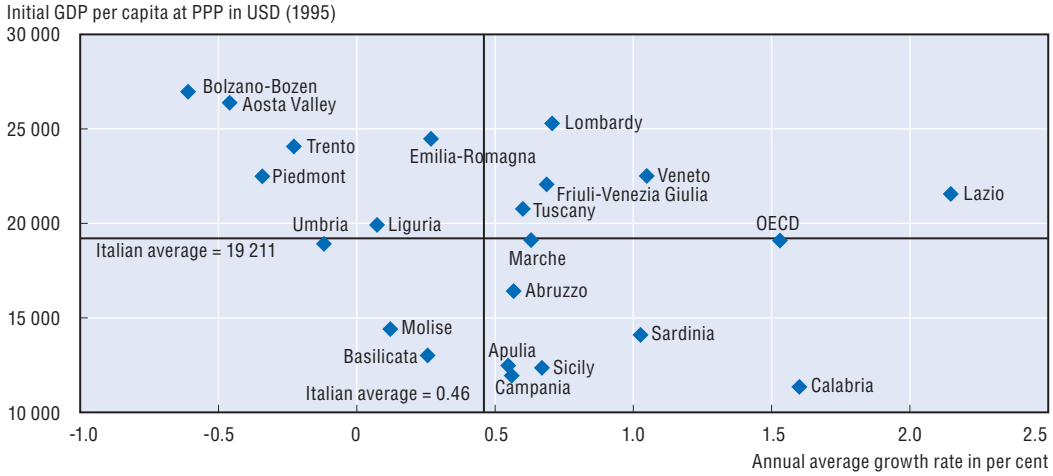


Source: OECD regional database.

Trends are less favourable over the most recent part of that period, from 1999 to 2005, where Italy as a whole experienced more adverse trends (Figure 5.3). As a result, the Italian average sharply falls below the OECD average over that sub-period. All regions, including the northern ones are falling behind. Only two regions, Lazio in the centre, and Calabria in the south, have kept growing faster than the OECD average, out-performing the other Italian regions by far. Over this more restricted time frame, Sardinia and, to a lesser extent, Sicily and Campania have performed better than the Italian average, as was the case for a set of northern regions, including Veneto, Lombardy, Friuli Venezia Giulia and Tuscany.

Therefore, the overall results remain mixed. Further data on the impact of growth factors on regional performance between 1995 and 2005 would support the view of reduced economic differentials.[2] These results are also visible in terms of employment rates, where over recent years southern regions are performing well: Calabria has recorded a +2.21% to the national rate; Campania +1.15%; and Sicily and Sardinia +1.04% and +0.94%, respectively. By contrast, regions of the centre-north have registered negative rates: Veneto –0.63% and Lombardy and Emilia-Romagna –0.55% each.[3] This evidence suggests that there has been a general increase in the efficiency of the local labour market in the *Mezzogiorno*. However, this has very often occurred in low productivity sectors (ISTAT, 2008). However, some of the figures need to be considered with caution, including the official unemployment figures for the *Mezzogiorno*, where adjusted data, taking account of the informal economy, are likely to be higher, while the centre-north was until recently closer to full employment.[4] The shadow economy concerns anywhere between a fifth and a quarter of the workforce in the south, compared with less than 10% in the rest of Italy.

Figure 5.3. **Income and growth in Italian regions (1999-2005)**



Source: OECD regional database.

Agriculture, retail trade and services are the sectors with the highest concentrations in irregular workers.[5]

Multi-level governance in Italy: The evolution towards increased decentralisation

Most OECD countries face the need to manage multi-level arrangements, irrespective of the status of their constitution. The distinction between federal and unitary countries may not fully catch the entire range and variety of institutional contexts. As outlined in a recent OECD study, "the Italian experience is illustrative" (OECD, 2007a). Italy consists of 20 regions, 106 provinces and 8 101 communes. In the past sixty years, the country has experienced various pushes for decentralisation and devolution of competences from the central to the sub-national levels. Although enshrined in the 1948 Constitution, Italian regions were formally established only in 1970. From the beginning of the 1970s, major reforms shaped the relationship between the state and the lower forms of government. By 1972 regions were required to issue their ordinary regional basic laws (*statuti*), and in 1977, competences enshrined in Articles 117 and 118, Para 2 of the Constitution were transferred to the regions.

A significant acceleration of the reform occurred through Laws 59/1997 and 127/1997, which reinforced the principle of "vertical subsidiarity". The powers of the state were explicitly delimited, and non-specified powers were left to regions and local authorities. Among the latter powers were competences and controls on issues related to agriculture, transport and trade, industrial and energy sectors, public investment, community amenities, cultural and historical heritage, education and professional training. Law 59/1997 also provided the framework for the introduction of administrative simplification instruments, such as one-stop shops.

The most significant changes were introduced by the far-reaching reform of Title V of the Constitution in October 2001.[6] Constitutional Law 3/2001 significantly widened the competences and legislative powers of the regions and abolished in principle most direct supervisory controls of one level upon the other (on controls, see below). The reform created a framework for new institutional structures, with budgetary, regulatory and administrative implications (see Box 5.1).

Box 5.1. **The 2001 reform of Title V**

The reform of the Constitution of 2001 formalised the transfer of legislative and regulatory powers from the state to the regions in a wide range of policy areas, most notably in relation to matters of concurrent competences. The key aspects are referred to in the following articles of the Constitution:

Article 114 recognises that the Italian Republic consists of municipalities, provinces, metropolitan cities, regions and the state. All these are autonomous and equivalent entities with their own statutes, powers and functions according to the principles defined by the Constitution.

Article 117 of the Constitution defines the role and the legislative powers between the state and the regions, indicating those matters for which the state has exclusive legislative power and those for which concurrent legislation of both the state and the regions is possible. Compared with the previous text, the new article defines the competences of the state as only related to those matters expressly mentioned in the Constitution, while any other are granted to the regions. As a result, the regions have sufficient power in areas where they have exclusive power, such as agriculture, tourism, retail trade, handcrafts, transportation, professional education, etc. as soon as these activities guarantee the social and civil rights of the population along the country.

Article 118 introduces the subsidiarity principle, according to which all functions are exerted by municipalities, while the possibility remains to confer them to higher levels of governments (metropolitan cities, provinces, regions, central state) to guarantee the uniform implementation of spending functions across the country.

Article 119 relates to the financing of sub-national governments and introduces the possibility for lower levels of government to establish and levy their own taxes and other own revenues in accordance with the Constitution and in co-ordination with the national public finance and tax system. In addition, sub-national governments must be ensured with a sufficient amount of unconditional revenues such as their own taxes or transfers – either in the form of tax sharing arrangements on national revenues or of equalisation transfers – to finance decentralised spending functions.

In general terms, competences have been distributed as follows. In those areas where the existence of 20 different regional laws would seem impractical, competences have been allocated to the concurring competence at the state level. This is the case for instance of transport and navigation networks; energy, foreign trade and R&D. In other matters, competences have been attributed to the exclusive competence of the regions (*e.g.* local development in the industrial, commerce, handicraft and tourist sectors). The State at national level retains legislative powers in matters that have a highly "transversal" nature, such as competition policy, environment and equalisation of financial resources. It also may exercise substitutive powers with respect to regions and local bodies, for example in cases of failure of compliance with EU directives.

As a result, the 2001 reform has favoured the integration of competences among levels of government rather than their strict separation. Article 118 of the Constitution and Article 7 of Law 131/2003 basically overturned the hierarchic levels and attributed to the Republic a "bottom up" structure based on the subsidiarity principle. Such an approach, which implies a strong co-operation[7] among all institutional actors concerned, has generated significant domestic debates. In many instances, questions have emerged

concerning the competences between the state and the regions, especially in areas where the regions had not adopted regional legislation and the central government provided the regulatory framework. In addition, tensions across the various levels were accentuated by the regions' lack of explicit power to produce legislative instruments, such as decree laws. The silence of the Constitution as to which level should react in cases of urgent and dangerous matters complicated the transition phase.

Remaining issues were addressed through the legislature at national level. Law 131/2003 (the so-called "*Legge La Loggia*")[8] set up the general limits to the legal powers of the state and the regions; delimited the concurrent legal powers between the state and the regions; confirmed the equivalence of explicit and inferred principles; transferred administrative powers to the regions and local authorities; defined the legal power of the local authorities; outlined the status and legal power of the regions in relation to EU legislation and international law; clarified the new competences of the Court of Accounts (*Corte dei Conti*); and integrated the right to appeal to the Constitutional Court.

Clarifying competences and preventing conflicts: the role of the Constitutional Court and conciliation practices

Further to the reform and because of the need for institutional adjustments,[9] the Italian Constitutional Court was called upon to rule on an increasing number of disputes.[10] Case law produced by the Constitutional Court since 2002 has clarified the interpretation of the matters referred to in Article 117. Further contentious points have concerned the function of the Parliament; the role of the Court itself in arbitrating conflicts arising between the state and the regions; the necessity to have a *locus* for institutional and political mediation where such conflicts could be prevented; and the budgetary autonomy of the regions.[11] The suppression of the notion of "principle of national interest" by Constitutional Law 3/2001, led the court to identify possible alternatives.

The interpretation and allocation of matters and competences is a key issue.[12] Overall, the case law produced by the Court between 2002 and 2007 confirmed the exclusive competence of the state in a number of matters, in accordance to Article 117, Para. 2 of the Constitution, pointing out however that the list of matters mentioned there should be considered flexible and not exhaustive. Some of those matters are cross-cutting (*materie trasversali*),[13] notably those covering the protection of competition; but also those related to basic standards of welfare, civil and social rights; the protection of the environment, the ecosystem and the cultural heritage.[14] The application of these matters touches upon the entire policy spectrum (Anzon, 2003; Felici, 2007). In accordance with Article 118, Para. 1 of the Constitution, on the basis of the principles of subsidiarity and adequacy, the legislature could grant administrative powers to the State in exercising its exclusive and concurrent competences.[15] However, the Court made the point that these cross-cutting matters must abide by boundaries and cannot justify any "vertical" intervention of the state in areas of regional competence. The Court indicated when and how the state can legitimately impinge upon regional powers in the exercise of such cross-cutting competences.[16] The criteria set by the Court are that the overlap of regional competences on the state must be: *i*) proportionate; *ii*) "should not be unreasonable after a strict constitutionality check; and *iii*) be agreed with the concerned region. The delimitation of the exact boundaries between the state and the regional laws remains difficult, with a blurred and dynamic interface.

In general terms, the Court confirmed that whenever cross-cutting and concurrent matters are at stake, State legislation shall be limited to determining basic principles.[17]

The State shall set the overall objectives and parameters, with eventual clarifications by lower level regulation, if necessary, provided that regions are adequately involved.[18] The Court justified the State having recourse to decrees in cases where legislative action is urgent, if regions fail to timely intervene with regional norms.[19] As to the allocation of competences, case law has identified the respective powers of the state and the regions in the field of health, territorial governance as well as professions.[20]

Besides the case law of the Court, improved co-ordination mechanisms established between the state and the regions, and conciliation practices by the Regional Affairs Department also help. In fact, the Department for Regional Affairs also launched an alternative dispute settlement system in 2004, to prevent disputes related to the interface between the state and the regional levels. This follows the difficulties experienced following the lack of provisions in the Constitution which would allow forcing regional or state legislatures to comply with signed agreements. The agreements stemming from the resolution system are not binding and rely upon loyal collaboration. The system is triggered on the initiative either of the state or the regions, although it can be solicited by sectoral and professional associations. It can work preventively, *i.e.* before the legal act is adopted, or subsequently, once the law is published and within the deadline of 60 days before a formal challenge is filed with the Constitutional Court. The system has so far been very successful, particularly as a tool for preventing disputes. Initiatives for dispute settlement have mainly been launched by the regions, especially in relation to clarifications on the allocation of competences and on adaptation to existing regional legislation. Ninety per cent of the cases were handled positively. In the second case, the state has been the principal initiator and it has avoided recourse to the Court in 40% of the cases. In only one instance was the outcome resulting from the dispute settlement system not complied with, which gave the state the ground for sue a region in the Court for infringing upon the principle of loyal collaboration. As a result, the level and number of constitutional disputes (*contenzioso*) has significantly decreased in recent years.[21]

Competitiveness and regional development policies in Italy's multi-level governance framework

Background

The distribution of functions and powers between the state and the regions since 2001 has had an impact on the distribution of financial resources across the layers of government. Although the Constitution explicitly states that municipalities, provinces, metropolitan cities and regions enjoy revenue and expenditure autonomy (Article 119), fiscal federalism is still a field in progress on the Italian policy agenda. Policies supporting regional development and economic growth are therefore given particular importance for the economic development in Italy. These policies need to be analysed as they interact with the multi-level regulatory governance framework.

Traditionally, regional policy in Italy has focused on the development of the southern regions, to reduce economic disparities. A central entity, the *Cassa per il Mezzogiorno*, used to devise many of those interventions. In 1998, EU economic and social cohesion policies prompted a radical reform, which resulted in an extension of the targeted areas to less developed areas of the centre-north; the abandon of the centralised system (the *Cassa per il Mezzogiorno* was abolished in 1984) in favour of a multiplicity of institutions, including central ministries and local authorities; a shift from top-down policies to contractual and

concerted forms of planning; and an increased use of targets as well as co-ordination and monitoring mechanisms. The reform of Title V of the Constitution and the related decentralisation created new challenges and triggered further reform, as a growing number of actors with differentiated agendas and competences needed to be co-ordinated (Brezzi, Raimondo, Utili, 2008). The country's approach to regional development policy relied on new policy delivery mechanisms. The current framework for national territorial development policies is characterised by a two-tiered approach:

- A properly called regional policy, which is specifically aimed at addressing structural socio-economic imbalances across territories. It is financed through additional resources originating both from the EU budget (notably the Structural Funds) and the national budget (the fund of national co-financing to the structural funds and the fund for underdeveloped areas – *Fondo Aree Sottoutilizzate*, FAS).
- An ordinary policy drawing on ordinary financial resources coming from the state budget and addressing broader development objectives that are not related to specific territories.[22]

The link between the two policies is established by the Document for Economic and Financial Programming (*Documento di Programmazione Economica Finanziaria*, DPEF), the National Reform Plan elaborated in the framework of the implementation of the Lisbon Strategy, and the Strategic National Framework (*Quadro Strategico Nazionale*, QSN). The current QSN covers the period 2007-13, and is the document that Italy is required to submit to the European Commission in order to direct the resources that the EU cohesion policy will make available.[23] Worked out after the national and regional governments as well as the autonomous provinces have broadly confronted each other, the NSRF contains important choices aimed at matching cohesion policy with the innovation and competitiveness targets set in the Lisbon Strategy. The NSRF strengthens the endowments earmarked for priorities and interventions consistent with the Lisbon Strategy, thereby reinforcing the link between regional and competitiveness policies. Both regional and ordinary policies are implemented at various levels by the central government, by the regions and by the local authorities.

One of the most important innovations in the field of regional policy is the introduction of a result-oriented approach to planning and expenditures in order to improve efficiency and effectiveness. The reform was prompted by supra-national pressure to introduce performance measurement in Italy and drew heavily from the EU experience. From 2000 onwards, regulatory requirements related to the Structural Funds imposed mechanisms such as the de-commitment rule, the EU performance reserve and the mid-term evaluation process, which all aimed at assessing different aspects of programme performance. Before that, very little performance management had taken place. Committed to improve the quality of the programming process and the effectiveness of public investment, the Italian government complemented the EU initiative over 2000-06 with a separate national performance mechanism.

Co-ordination institutions and mechanisms

The Ministry of Economic Development is the administration responsible for building up the productive system and granting direct financial incentives to firms. The Ministry is also in charge of planning, co-ordinating and monitoring EU cohesion policies and for the implementation of interventions for territorial development, as well as promotion and

regulation of competitiveness and market, communications, international trade and energy policy. The Department for Development Policies (*Dipartimento per le Politiche di Sviluppo*, DPS) provides for the setting, co-ordination, implementation and evaluation of the interventions for development and cohesion in the field of unitary regional, national and EU policies. Furthermore, it performs the supervision of the "National Agency for the Attraction of Investments and the Development of Enterprise" (*Invitalia*) that the Ministry of the Economic Development is responsible for. The DPS is charged with negotiating the programming approach with regions and other competent central ministries. A Technical Unit of Evaluation and Control of Public Investments (*Nucleo tecnico di valutazione e verifica degli investimenti pubblici*) (directly dependent on the Chief of DPS) provides specific evaluation on the conformity of public investment plans with the aims of economic policy, verifies and enforces investment projects of civil services, carries out technical support to the administrations, elaborates and divulges methods of evaluation, in order to optimise the use of EU structural funds.[24]

The Inter-ministerial Committee for Economic Planning (*Comitato Interministeriale Programmazione Economica*, CIPE) The CIPE co-ordinates intervention of the national economic policy and mainly in the underdeveloped areas, elaborates targets for the different sectoral policies, set guidelines to the negotiated planning; defines the guidelines for the administrations which are authorised in the public domain, approves investment plans by earmarking appropriate endowments. Within the CIPE operates the Technical Unit of Project Finance (*Unità Tecnica Finanza di Progetto*, UFP), aimed at increasing the participation of private funds in the building and management of public infrastructure.

With specific reference to EU regional policy and its structural funds, formal co-ordination between the central administrations and the regions exists through the National Committee for the co-ordination and the supervision of unitary regional policy (*Comitato nazionale per il coordinamento e la sorveglianza della politica regionale unitaria*). This Committee is provided for by the NSRF as a tool of governance not only for the European planning, but also for the regional policy taken as a whole.

At the sub-national level, co-ordination and management of EU-related funding is exercised through the Regional Operational Programme (*Programma Operativo Regionale*, POR), which set the strategic guidelines for the use of EU structural funds during a given period. The POR define the development strategy of each region and the priorities and identifies the conditions for economic growth.

The national agency for Inward Investment Promotion and Enterprise Development, *Invitalia* (formerly the *Sviluppo Italia*),[25] supports inward investments in order to boost the economic and productive development and is charged with enhancing Italy's attractiveness for international companies by promoting business opportunities. It acts as the one-stop shop for foreign investors who intend to set up or expand their business by providing support in every phase of their installation process, from the search for the best location to the disbursement of incentives. The core mission of the agency has been recently reformed and re-defined.[26]

Regional development policy instruments

Regional and local authorities may have access to two further particular sources of revenue to address structural imbalances across the territory. The first is an equalisation fund with no allocation constraints, which was envisaged as per Article 119, Para. 3 of the Constitution, and was designed to finance ordinary activities in areas with lower per capita

taxable capacity. However, it has not been created yet, and is subject to the current government's proposal on fiscal federalism. The second form of financing refers to "additional resources" and "special interventions" (Article 119, Para. 5), which are aimed at promoting economic development and other social cohesion objectives. This second source is the only form of financial transfer with allocation constraints allowed after the 2001 constitutional reform.[27]

In 2003, the "national additional resources" for regional development policies attributed to the Ministry for Economic Development and to the Ministry of Productive Activities were unified and they are now allocated by the CIPE as a joint Fund for Under-utilised Areas (*Fondo per le Aree Sottoutilizzate*, FAS). The FAS was created in order to ensure predictability and to facilitate management according to criteria compatible with those adopted for EU funds. The rules for using FAS resources include (OECD, 2007b).[28]

- Monitoring provisions to ensure respect of expenditure commitments and flexibility in the allocation of funds.
- *Ex ante* evaluation of the effectiveness of public investments in achieving their stated socio-economic objectives.
- A system of bonuses to speed up expenditures and to promote the co-operation of the various actors involved.
- A principle of co-operation among the various levels of government according to which the central government is responsible for elaborating the general strategy of development, regional governments decide on the territorial allocation of resources, and local governments elaborate the concrete design of projects and stipulate alliances with the relevant local actors.

The 166/2008 CIPE decision enforcing the NSRF introduced new formalities in the FAS planning. The key feature of the new regime is the unitary planning of national and EU development funds. In this respect, the Budgetary Laws for 2007 and 2008 allowed for a unitary strategy over a certain number of years (until 2015). Three core objectives have been identified and are the same as those defined for the European cohesion policy: Convergence; Regional competitiveness and employment; and European territorial co-operation. A number of "programmes" are developed to achieve each objective.[29] The unitary approach bears the potential of substantially boosting Italy's development policies.

The Framework Programme Agreement (*Accordo di Programma Quadro*, APQ, is one of the primary multi-level governance instruments for Italian regional development policies. APQs are signed by the interested region, by the Ministry of Economic Development and by one or more central administrations, depending on the nature and the sector of intervention. APQs reflect broad, preliminary agreement reached by the central government and the regions or autonomous provinces on the definition of the objectives, the sectors and the areas where infrastructures essential to territorial development should be built. APQs are therefore the expression of a strong co-operative approach as they are implementation agreements that concretely frame the interaction between the regions, the Ministry of Economic Development and one or more competent central administrations.

The scope of application of APQs has extended. APQs now gather multiple sources of financing, including ordinary resources, national additional resources for the depressed areas, EU funding and private resources. APQs present both an implementation section (*sezione attuativa*) and a programming section (*sezione programmatica*). The latter lists interventions that are in accordance with the general objectives, but for which the required

technical and/or financial conditions are not completely satisfied. Such a two-fold structure allows for quicker programming over time. In any case, APQs indicate for each intervention the actors responsible for the implementation and their tasks as well as the procedures and the actors responsible for monitoring and evaluation of the outcomes.

Each year, the CIPE deliberates on the distribution among regions of the fraction of the FAS destined to the APQ. Broadly, 15% of these funds are allocated to centre-north regions and 85% to southern regions. Funds are then allocated on the basis of three indices: *i)* a size and population index; *ii)* an index expressing the structural problems (inverse of the GDP, unemployment rate, infrastructure deficit); and *iii)* an index expressing the negative factors affecting the region (*e.g.* being an island, or having a particularly small size). Finally, each region selects the sectors for intervention and shares the choice with the competent central administrations and with the DPS. APQs are widely used in all major policy sectors, ranging from natural resources to network infrastructures and industries. The agreements also vary significantly with regard to the complexity of the projects to be implemented.

The introduction and management of performance indicators in Italy

In many OECD countries, regional development crucially contributes to the overall national competitiveness and economic performance. The governance of regional development policy is more efficient if it is linked to a sound system of performance indicators, through a systematic collection of information to measure and monitor the activities of government. Indicators are a useful tool to channel information and incentives, if coupled with realistic quantified targets. They can be used to enhance the effectiveness of decisions regarding policy priorities, strategies and resource allocation. The design and implementation of such a framework is vital to maximise the performance of public actors (see Box 5.2).[30]

Box 5.2. **Indicators for performance-based regional development policy: Lessons from the OECD experience**

In recent years, indicator systems have been implemented both to monitor and to enhance the performance of regional development policies in OECD countries. The design and use of indicators presents however a number of challenges, which relate to the specific characteristics of regional policy, various capacities of stakeholders, data availability issues, as well as the "costs" associated with running the system. Virtuous mechanisms include, among others, engaging stakeholders at all levels of government and at an early stage; launching pilot projects to test systems prior to nationwide implementation; having recourse to external expertise if needed; streamlining procedures to minimise administrative burden; and anticipating and budgeting for training and capacity support.

Indicator systems are most effective if they are integrated in a larger toolkit of good governance. If well implemented, indicator systems can close information gaps, thereby improving the delivery of public policies at different levels of government. Specific good practices are nonetheless linked to a number of key success factors that can be drawn from experience in OECD countries. The factors relate to the following international findings:

- *There is no "optimal" design for performance indicator systems*. The design and use of the system depends heavily on the objectives established for the monitoring system and programme objectives under consideration. Establishing clear objectives from the outset will greatly facilitate indicator selection, choices regarding incentives, and the proper use of information.

Box 5.2. **Indicators for performance-based regional development policy: Lessons from the OECD experience** *(cont.)*

- *The strength of incentives depends on how information will be used and by whom*. Closely linked with the use of indicators, incentives such as explicit rewards, or sanctions, can be a powerful way to encourage effort and improvement. Explicit monetary incentive is nonetheless not a sufficient condition for success.
- *Partnership between central and sub-central levels of government is crucial*. Vertical interactions between institutional levels, as well as horizontal co-operation and peer processes facilitate the attainment of precise objectives, identifying relevant indicators, setting realistic and stretch targets, and devising appropriate incentive mechanisms. Moreover, strong *ex ante* commitment from all levels of government to rigorously assess performance reinforces the effectiveness of rewards and sanctions.
- *The importance of a "holistic" approach*. As regional development policy produces outcomes in the mid- and long-run, orienting an indicator system solely toward those outcomes can produce a deficit of information in the short term. Even when considering outcomes-based indicators, the system should strive to produce information on inputs, processes, and outputs that is relevant for ongoing activities.
- *Indicator systems promote learning*. Developing and using indicator systems provides all stakeholders new information about performance and, capabilities. Regular feedback allows for continuous improvement of both policies and the indicator system itself. Evolution is facilitated if the system is sufficiently flexible to accommodate user feedback.

Source: OECD (2008), "Linking Regions and Central Governments: Indicators for Performance-based Regional Development Policy", 12 June, GOV/TDPC(2008)7.

The national performance reserve scheme of 2000-06

Italy introduced an indicator system linked to regional development policy in 2000, applying to funds related exclusively to regional policies. The "national performance reserve scheme" drew from the instrument devised for the 2000-06 Structural Funds programming period (Ministero dello Sviluppo Economico, 2008). As in the EU case, the Italian performance reserve scheme sought to improve programme management and effective spending. This involved setting aside a reserve of a programme's budget and distributing it only if specific objectives were achieved. Compared with the EU model, the Italian scheme involved an additional 6% of a programme's budget in addition to the 4% of the EU scheme. The national scheme also promoted public administration modernisation. The scope of application of the scheme also changed: while the EU variant applied to all Structural Funds programmes (*i.e.* under Objectives 1, 2 and 3), the national performance reserve applied only to Operational Programmes (OPs) under the CSF Objective 1 regions. Seven regions in the southern part of Italy and seven national administrations were the recipients of such funds. This translated into seven regional OPs and seven national OPs.[31]

The objective of the national programme was to improve the administration's capacity for reform, rationalise decision-making and streamline procedures. It went beyond the strict implementation of Structural Funds. In particular, the specific objectives of the national performance scheme were to:

- Modernise the public administration and diffuse institutional innovation necessary to accelerate and make effective Structural Funds spending decisions.

- Promote reforms in some of the sectors crucial for achieving the CSF development objectives.
- Balance the constraints to rapid Structural Funds spending implicit in the de-commitment rule, by creating incentives to select and organise more complex and higher quality projects.

Related to these objectives, a total of twelve performance indicators applied to the regions and five to the central government. The indicators were selected and their weighting decided through negotiations between the central and regional managing authorities. At the national level, the main actors were the DPS and its evaluation unit (UVAL). The European Commission was also involved in the process. Institutional partners, stakeholders and experts were formally consulted.

However, the 2000-06 national performance reserve faced insufficient capacities at the regional and sub-regional levels (FORMEZ, 2007). Changes in the scheme required regulatory amendments, thus involving political decision making rather than administrative management. Performance depended on political actions that were not always under the control of the authority in charge (*e.g.* adoption of laws by the regional Assembly).

Overall, the experience produced some positive results. Outcomes varied from region to region, but many specific objectives were achieved. In the water distribution sector, for instance, all southern regions now have the adequate normative regulation formally in place. The experience also triggered intense vertical co-ordination between levels of government, notably as far as the definition of indicators and targets. The co-ordination in the assessment and allocation mechanisms of the premium was less evident. The scheme benefited from the systematic involvement of stakeholders. This increased the amount and quality of information to be processed. Experience shows that once indicators and targets were selected, vertical co-ordination with regions continued during implementation.

"The question remains as to whether these results are to be attributed *only* to the initial stimulus given by the national performance reserve mechanism. Some analysts would argue that objectives endorsed by the performance reserve *had* to be reached to enable further policy implementation, for example the Regional Environment Agency had to be created in order to receive funding. But even so, it is difficult to deny the performance reserve its role as a catalyst."[32] Certainly, the scheme contributed to raise the awareness of the need for certain skills and competences among the administrative staff, and prompted the regions to endorse the objective of implementing incentive mechanisms. Transparency and accountability have been enhanced and are now explicitly part of regional policy making.

The publication every two years of monitoring reports prepared by the regions and submitted to the Technical Group also helped maintain momentum. Setting up a Technical Group was decisive in securing the overall credibility of the scheme. Its reports offered a platform for dialogue and common understanding. Besides the explicit monetary reward, the reputational component of the incentive scheme seems to have played a significant role in promoting regional development. The publication and diffusion of the results contributed to transparency and accountability, and they triggered peer review and benchmarking between regions.

A new indicator system (2007-13)

In 2006, both the EU and the national performance reserve schemes came to an end. The Italian government decided then to continue using indicators, but changed the underlying rationale and the form. Rather than following an incremental approach and drawing on the lessons from the previous scheme, a new system was introduced. The main innovation consisted in shifting from a performance assessment of processes and output indicators with intermediate objectives (*e.g.* to monitor the institutional set up) to one based on *final outcome indicators*. As an integral part of the National Strategic Framework for 2007-13 (financed by EU Structural Funds and by Italian Fund for Under-utilised Areas), the new system concentrates on four strategic goals to be met in 2013 by the southern regions:

- *Education*: improve students' competences, reduce drop-outs and broaden population's learning opportunities.
- *Child and elderly care*: increase the availability of child and elderly care to favour women's participation in the labour market
- *Urban waste management*: protect and improve the quality of the environment, in relation to urban waste management
- *Water services*: protect and improve the quality of the environment, in relation to integrated water services.[33]

Overall, the reserve amounts to about EUR 3 billion (from the Fund for Underutilised Areas) for the entire period. The sum will be allocated on the basis of 11 indicators associated to these strategic goals (see Table 5.1).

Table 5.1. **Objectives, indicators, and targets in the new performance reserve for 2007-13**

Objective	Indicator	Baseline (in %)	Target in 2013 (in %)
Improve students competence and reduce drop-outs	% of early school leavers	25.5	10.0
	% of students with poor competencies in reading	35.0	20.0
	% of students with poor competencies in math	47.5	21.0
Increase the availability of child and elderly care	% of municipalities with child care services	21.1	35.0
	%. of children (age 0-3) in child care	4.2	12.0
	% of elderly people beneficiary of home assistance	1.6	3.5
Improve environment quality as far as urban waste is concerned	Amount of urban waste land filled	395 kg per capita	230 kg per capita
	% of recycled urban waste	8.7	40.0
	% of composted waste	2.6	20.0
Improve environment quality as far as integrated water services are concerned	% of water distributed	62.6	75.0
	% of population served by waste water treatment plants	56.6	70.0

Source: Department for Development Policies, Ministry of Economic Development; *www.dps.tesoro.it/obiettivi%5Fservizio/eng/ml.asp.*

Quantified, measurable and verifiable targets are set for the eight regions of the *Mezzogiorno* and for the Ministry of Public Instruction. As in the past, the objectives, indicators and targets were selected on the basis of extensive consultations between the central government and the regions, with the involvement of a Technical Group. Regions are left free to chose how best to reach the targets.[34] Up to date, implementation plans for all the regions have been approved. The remaining plans are currently being approved. Two deadlines have been identified. A target date (2009) will be used to compare progress with the current baseline and allocate funding proportionate to the results achieved by the region. No sanctions are foreseen. At the approach of the second deadline, in 2013, it will

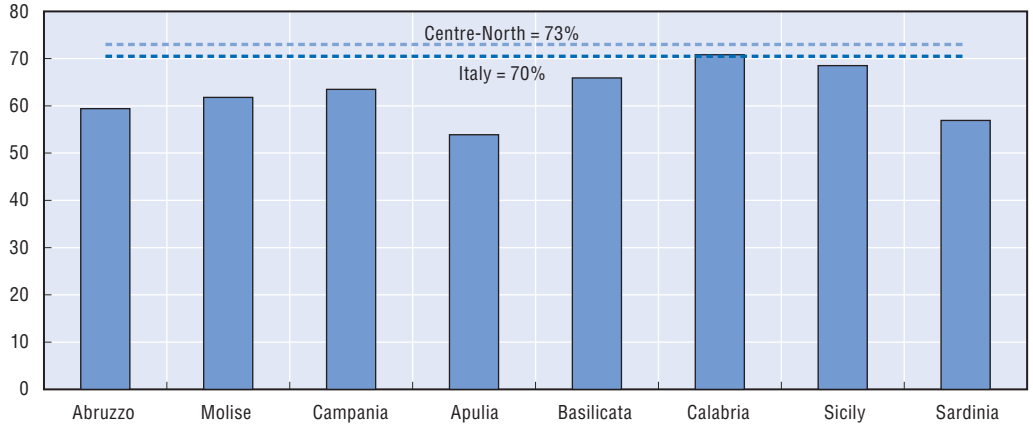
be assessed whether the minimal thresholds, equivalent to the minimum acceptable service standards, have been reached. By so doing, the premium mechanism is closely conditioned to the efforts made by the region.

The new scheme confirms the general approach of introducing competition elements (monetary premium and reputational benchmarking) among the regions, while collectively and consensually deciding on the priority areas, the targets, the indicators and the procedures. It involves a strong emphasis on results that closely affect public services provision and conditions essential for development. This seeks to overcome a system in which intermediate and formal objectives such as the enactment of a law may eventually not meet with the citizens' expectations. The previous system suffered from too many objectives and from insufficient links to the political priorities of the government. In the new scheme, by contrast, the final objectives can be better understood and are closely integrated to the policy agenda.

The choice of explicitly quantitative targets constitutes a welcome innovation. The targets are ambitious in some cases, but are in line with national and European standards, and they are considered achievable. For instance, one of the sub-objectives of the first strategic goal ("Education") is to reduce the rate of young people prematurely abandoning their studies from 26% to 10% by 2013. The latter is the target set by the EU Lisbon Strategy for 2010. As a comparison, centre-north regions had a rate of 17% case of study abandon in 2006.

A second example which is related to local public services refers to "water supply". A sub-objective requires regions to reduce the water loss ratio from 37% to 25% by 2013. In 2005, water supplied in centre-north regions constituted 73% of the overall amount of water introduced in the communal distribution network, with a national average of 70%. By contrast, only Calabria reached similar results, despite the fact that all southern regions adopted relevant legislation in the field (Figure 5.4).

Figure 5.4. **Supplied water out of overall amount of water introduced in the distribution network (in %, 2005)**



Source: ISTAT, *Sistema indagine acque.*

The liberalisation of local public services in Italy

"Local public services" usually refer to the distribution of natural gas, the distribution of electric power, water supply services, waste collection and disposal, and local public transport. Reordering the production and provision of services at the local level is one of

the key elements of the Italian strategy to progress towards a more competitive and market-friendly economy as part of its Lisbon strategy. The notion of public service delivery is based on the same rationale as for public intervention, namely the existence of market imperfections, natural monopoly, public good, externalities and redistribution imperatives.

The economic context

Overall local public services represent a significant share of the economy (about EUR 42 billion, 1.4% of GDP and 4% of national industrial production)[35] – and its share remains stable. In 2005, some 1 000 businesses registered to *Confservizi* operated at the local level, 40% of which registering less than EUR 5 million turnover, while 22% registered more than EUR 25 million turnover. In 2006, they employed 170 000 people, *i.e.* 4.1% of the employed labour force in the industrial sector. Investments in local utilities grew in real terms at 7% (annual average rate) between 2004 and 2006, while annual growth rates did not exceed 1.2% (in real terms).

However, local public services are of significant relevance in terms of competitiveness. Given its importance, the Bank of Italy has devoted significant analytical efforts to the sector in 2007-08 (Giacomelli 2008).[36] Costs for transport, water, energy, represent a significant element of SMEs production costs, and have implications for the competitiveness of the economy as a whole, as well as for the location of various economic activities through the territory. Local production network and clusters are highly dependent on the quality, variety and costs of local services.

Most of the Italian local utilities provide only one type of service. Only one public utility out of five has diversified its services. The number of businesses is higher in the north of the country. Multi-service utilities are for 70% in the north, 24% in the centre and 6% in the south. Particularly significant are the territorial disparities in the energy sector where southern region businesses, which in 2005 represented 17% of the sector, totalled only 3% of the production, revenue and total production costs share and 1.7% of the Earnings Before Interest and Taxes (EBIT) value. Still in the energy sector, which by itself covered one third of all local utilities, the efficiency of the employed labour varies considerably from northern to southern regions. The ratio of labour costs to economic value added was 52% in the *Mezzogiorno* as compared with 21% in the north. Such differences are less significant in the local public transport, waste and water sectors (AA.VV., 2007). More in general, the nature, size and concentration of local public utilities on the territory reflects the typical geographical distribution of manufacturing plants and activities in Italy. In turn, these have implications for the future growth and geographical location of businesses across regions.

Public monopolies continue to persist in all sectors, which may result in inefficiencies and disproportionate costs for consumers and tax payers. A 2006 study by *Confservizi* reports that almost three-quarters of the businesses considered belong entirely to the local government agency (*ente locale*) (Confservizi, 2006)[37] and that in the instances of joint venture capital, 65% of the capital is publicly owned. The opening to private capital remains slow.

Past efforts to reform local public services in Italy

As mentioned above, local public services are strategically important for urban development, territorial governance and economic performance despite their nominally limited contribution to overall GDP. Italian interventions to reform local public services

date back to the early 1990s (Law 142/1990), as a response to two sources of inefficiency. A first element was the lack of budget balance among utilities and incentives to control costs remained limited. A second element was the extreme fragmentation of the system. The high number of municipalities, producing their own services, has prevented the sector from benefitting from economies of scale and exploiting potential for higher productivity (Bognetti/Robotti, 2003; Termini, 2004; and AA.VV., 2007).

Reform of the sector occurred in subsequent waves. The first interventions addressed the form of management of local public utilities, and the related legislation was specifically designed to cut costs and reduce deficits, not least because of EU-wide financial constraints. Local public utilities were granted greater independence, which stimulated more efficient management. A second round of reforms occurred in the mid-1990s and was prompted by a series of EC directives and regulations introducing important innovations and regulating specificities in sectors such as public transport, electricity and gas.[38]

In recent years, one pressing rationale for reforming the sector has been the control and reduction of tariffs and prices. The 2002 Budgetary Law (Law 448/01) constituted a further step in the reform, modifying Article 113 of the Consolidated Act on Local Authorities.[39] The 2002 Budgetary Law made a distinction between local public services of industrial interest and non-industrial utilities. This implied different management forms foreseen for each category. This regime was nonetheless replaced one year later (Law 326/2003), at which time the notion of "service of economic interest" was introduced, stating that the companies owning networks and other capital assets must be entirely publicly held. The thrust for enhancing forms of privatisation and competition slowed down with the new law.

Apart from general legislative measures on local public services, a number of punctual interventions progressively reformed specific sectors. Thus water was regulated by the "*Legge Galli*" (Law 36/94) and waste by the "*Ronchi Decree*" (Legislative Decree 22/97). Local public transport was reformed in 1997 and 1999.[40] The so-called "*Letta Decree*" covered the gas sector and the "*Bersani Decree*" the electricity sector.[41] These interventions paved the way for further reforms and introduced innovative and valuable provisions for competition and market openness. The "*Burlando Decree*" and the "*Letta Decree*" for instance established recourse to formal public bids and set criteria for those bids. However, the sectoral approach also made the legislative environment more complex and opaque, as shown in the chapter on local transport. The lack of clarity resulting from the existence of different requirements enshrined in EC law, in sectoral legislation and in the general legislation governing local public services has led local authorities to delay the opening of bidding and hindered other forms of innovation at the local level.

Current economic and structural challenges

The measures introduced since the 1990s in Italy to tackle the public deficits of the local public services have been broadly successful, as all local public utilities sectors are now profitable on the average – with the exception of local transport. This may have occurred at the expense of consumers, through tariff increases (see below). However, local public services in Italy have gone through a formal rather than a substantial privatisation.[42] The shift from the *municipalizzate* – the old local public enterprises – into joint stock companies has not been complete. The transformation was meant to give more freedom to managers but was accompanied by incentives to internal efficiency that are

limited as the producer is integrated in the public administration structure, since he is then constrained by rules and norms that were originally formulated to guarantee respect of procedures aimed to prevent "bad utilisation" of public money rather than to promote efficiency.[43]

Challenges have legal and structural origins. The provision of public services of economic interest is defined by law[44] to be awarded to three types of companies:

- Joint-stock companies identified through public tender procedures.
- Mixed capital public-private companies in which the private shareholder is selected through a public tender procedure.
- Companies having an entirely public capital, on condition that the public body or bodies owning the capital exercise over the company a control similar to that exercised over their own services and that the company performs the most important part of its activities with the public authority or authorities which control it (so-called "in-house providing").

The institution of "in-house providing" refers to the creation of a relationship between the authority and the operating company which cannot be considered a contractual relationship between two autonomous and separate subjects. Under such an organisational structure, the controlling public authority has the direction, co-ordination and supervision power over the activities of the awarded company, thereby not giving rise to any real externalisation of the activity (Bognetti and Robotti, 2007).

The legislation set the above three options on an equal footing. In particular, the recourse to in-house practices was considered neither exceptional nor residual. This has contributed to hinder the incentives for local entities, especially small municipalities, to call for public tenders and to seek private participation in the provision of the service. This created infringements to Community law that resulted in rulings by the EU Court of Justice.[45]

In addition, legislation has tended to grant each local authority the discretion as to whether to privatise and liberalise public utilities or not. This approach has built upon ruling 272/2004 of the Constitutional Court which limited the legislative competence of the state with regard to local public services so as to provide a guarantee from the competition principle. The legislative framework, moreover, has not clearly defined the responsibilities of the central, regional and local authorities, and the Conference system has proven to be slow in determining the instrument and the extent to which co-operation should work.

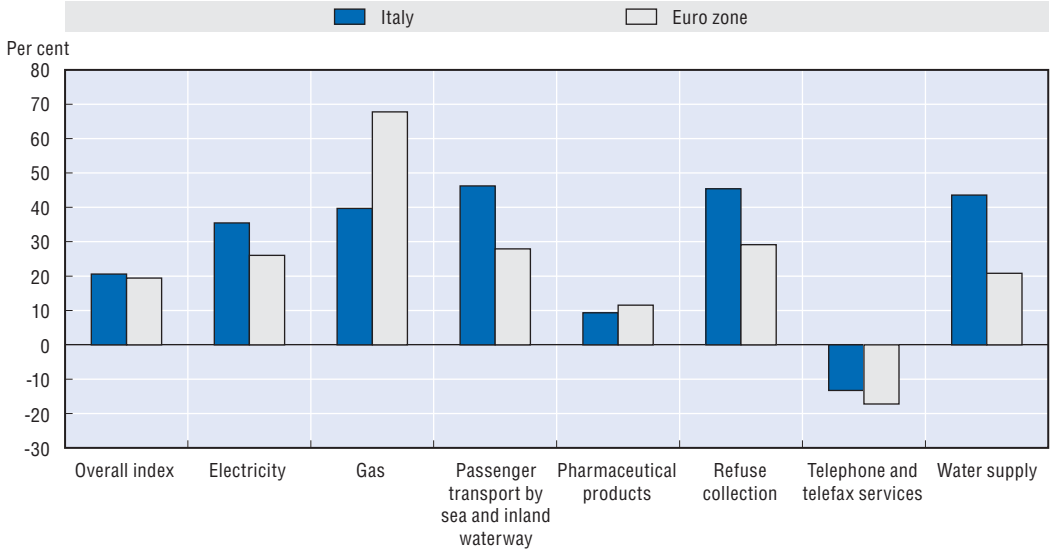
Past reforms have also suffered from conflicting pressures. The confrontation between market-oriented, privatisation and liberalisation forces on the one hand and vested political and economic interests, often strongly represented by municipalities, struggling to preserve the *status quo* and control local public services on the other hand, led to an uncertain and contradictory path of reform. As a result, relatively few bids were opened and efficient mixed enterprises actually created, often putting local authorities in the conflicting position of being simultaneously the regulator and the entrepreneur. This situation is illustrated in the chapter on local transport.

Similarly, the lack of autonomous regulatory authorities at national level for some of these sectors, has had implications. In particular, sectoral authorities do not exist for transport, environmental services, and water, despite a recent law proposal on the topic

(see Chapter 2). In the latter case, implications of a sub-optimal administration of the water sector are significant for a significant share of the population. While in 1997 about 9% of Italian households suffered from poverty-specific problems related to the consumption of public services, in 2004 the proportion fell to 7.6% for heating-related (gas) consumption and to 5% for the consumption of electric power, but rose to 10.7% for the consumption of water-related services (Miniaci *et al.*, 2007).

This has implications for tariffs, as a sound structure of controls, evaluation and (market) sanction mechanisms has not yet been put into place while local public utilities' management strives towards a more entrepreneurship and innovation spirit. In many key sectors, tariffs have remained high and increased more in Italy than in neighbouring EU countries. A comparison between Italy and the Euro zone countries shows that in recent years Italian tariffs have increased more than in the rest of the Euro zone for sectors such as passenger transport by sea and inland waterway, waste collection and water supply (see Figure 5.2). Differences are even more pronounced over the recent period (2005-08), (see Figure 5.3). This contrasts with the positive experience of other sectors where autonomous regulatory authorities exist at national level: gas, telecommunication services, or where significant liberalisation efforts have been undertaken recently, such as in the case of pharmaceutical products. In all these sectors, tariffs have increased less than the Euro zone average. In the case of pharmaceutical products, prices in Italy have even decreased since 2005 while they were still growing in the rest of the euro area. However, data limitations prevent a specific analysis of local transport as a statistical category.

Figure 5.5. **Cumulated total variation in consumer prices, in % (2000-08)**



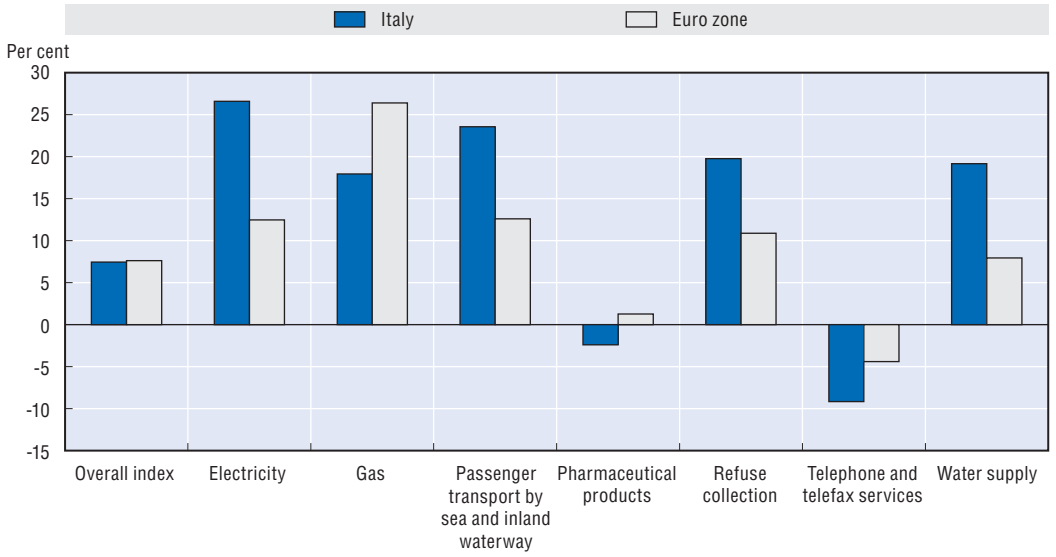
Note: Data is computing the total variation in the CPI components for the services between the January 2000 value and the January 2008 value. In the Eurostat classification of HICP, "pharmaceutical products" are defined as follows: the medicinal preparations, medicinal drugs, patent medicines, serums and vaccines, vitamins and minerals, cod liver oil and halibut liver oil and oral contraceptives. Veterinary products and the articles for personal hygiene such as medicinal soaps are excluded.

Source: Eurostat, Harmonised Indices of Consumer Prices (HICP). Monthly data, index 2005 = 100.

Recent reform initiatives

The 2009 budget law[46] lays out new provisions for local public services of economic relevance (see Box 5.3). Recourse to open bidding is enshrined on the basis of principles of,

Figure 5.6. **Cumulated total variation in consumer prices, in % (2005-08)**



Note: Data is computing the total variation in the CPI components for the services between the January 2000 value and the January 2008 value. In the Eurostat classification of HICP, "pharmaceutical products" are defined as follows: the medicinal preparations, medicinal drugs, patent medicines, serums and vaccines, vitamins and minerals, cod liver oil and halibut liver oil and oral contraceptives. Veterinary products and the articles for personal hygiene such as medicinal soaps are excluded.

Source: Eurostat, Harmonised Indices of Consumer Prices (HICP). Monthly data, index 2005 = 100.

among others, economy, effectiveness, impartiality, transparency, non-discrimination and proportionality. However, the law allows for exemptions and the potential impact of these exemptions from a competition perspective, could be questioned. They may give local authorities some leeway for limiting competitive bidding in practice. Law 133/2008 repeals Article 113 of the 2000 Consolidated Act on Local Authorities, and calls on the government to harmonise the existing sectoral legislation with the new approach within six months after the entry into force of the 2009 Budgetary Law. However, the policy debate remains open. A number of regions (Piedmont, Liguria and Emilia-Romagna) have filed appeals to the Constitutional Court against Art. 23-*bis* of Law 133/2008. More generally, discussions are still ongoing but the issue is very complex and enshrined in a complex system of local and national interests (see Box 5.2).

Box 5.3. **Reforming local public services in Italy: Recent progress**

The 2009 Budget Law (Law 133 of 6 August 2008), encourages competition for the market. The new law stipulates that public bidding is mandatory with some exceptions, in the case of particular economic, social environmental and geo-morphological characteristics of the area. In such cases, the municipality has to motivate the choice through a written statement to the Competition Authority. The law also requires the government to issue regulations in order to rule on the details, including how to ensure the separation between regulation and control.

This new law, which finally enacted reform, built on the debate over the reform of local services, with the discussions over the legislative proposal on reforming local public services under the previous legislature (Ddl 772/2006, so-called "Lanzillotta proposal"). This proposal aimed to harmonise the legal framework, and overcome inefficiencies and

Box 5.3. **Reforming local public services in Italy: Recent progress** *(cont.)*

boost liberalisation practices within the sector.[1] However, the end of the XV Legislature in February 2008 brought the procedure to a halt. In May 2008, a revised version was tabled, which is at present going through the first reading in the Chamber,[2] and which among other provisions, sought to overcome the sectoral approach and provide a common regulatory framework for all local public services; strengthen the definition and use of quality and transparency criteria for the biddings; extend the use of social shock absorbers (*ammortizzatori sociali*); overcome fragmentation and inefficiencies by forcing communes with less than 20 000 inhabitants to aggregate and jointly administer the management functions of the local public services; establish the criteria for the definition of bidding areas (*bacini di gara*) for each sector; clarify, in accordance with European case law, and limit the instances of a direct assignment of the service as well as the recourse to "in-house" entities, and prohibit the acquisition by direct trustees of any further right to manage other services in a different territory; standardise the contents of service contracts; ensure transparency of tariffs and bills and general information to the consumers, notably through the so-called *carta dei servizi pubblici locali*.

1. L. Sciandra (2007), "Le tendenze in corso nei servizi pubblici locali: Aspetti economici e normativi", in Rapporto ISAE, Finanza Pubblica e Istituzioni, ISAE.
2. Camera dei Deputati, Proposta di Legge sulla Disciplina dei Servizi Pubblici Locali, No. 948, presented on 9 May 2008.

Notes

1. See *Associazione per lo Sviluppo dell'Industria nel Mezzogiorno* (2008), *Rapporto SVIMEZ 2008 sull'Economia del Mezzogiorno*, Il Mulino, at *www.svimez.it/Pubblicazioni/il_rapporto.htm*.
2. See OECD (2008), *The Sources of Economic Growth in OECD Regions. Overall Growth Trends and Decomposition Method*, GOV/TDPC/TI(2008)5, "Territorial Disparities Within Countries Between TL2 Regions and Between TL3 Regions, 1995-2005", pp. 5-6.
3. OECD regional database.
4. Only 235 000 southern unemployed have actually found a new job out of the 635 000 unemployed that have no longer been reported as such over the period 2000-07. The remaining 350 000 unemployed have simply statistically disappeared, as they are neither searching nor finding a job.
5. See SVIMEZ Report 2008.
6. Before this, other important changes were introduced by the Constitutional Law 1/1999 of 22 November 1999.
7. See the ruling 31/2006 in which the Constitutional Court states that the so-called principle of loyal collaboration (*principio di leale collaborazione*) must underpin any type of relationship between the various institutional entities.
8. See Law 131/2003 on *Disposizioni per l'Adeguamento dell'Ordinamento della Repubblica alla Legge Costituzionale 18 ottobre 2001*, No. 3.
9. On this point, see for instance, *Osservatorio sulla Legislazione della Camera dei Deputati, Rapporto 2004-05 sullo stato della legislazione*, XIV Legislative Session, 11 July 2005, p. 247 ff.
10. Over 2004-06, almost 10% (123 out of the some 1 160) of the regional legislative acts examined by the national government have been challenged in court. A quantitative analysis of the judicial dispute is provided by the *Servizio Studi del Senato, Il Contenzioso Stato-Regioni: Dati Quantitativi*, Dossier No. 17, June 2008.
11. On the latter point, see *Osservatorio sulla Legislazione della Camera dei Deputati, Rapporto 2007 sulla Legislazione tra Stato, Regioni e Unione Europea*, XV Legislative Session, 29 October 2007, p. 291 ff.
12. For a discussion on the types of competence and their allocation between the state and the regions, see B. Caravita di Toritto (2005), "Tra federalismo e regionalismo: La Costituzione italiana

dopo le riforme del Titolo V", in M. Covino (a cura di), *Pubblicazione Finale del Progetto Scenari del Federalismo*, FORMEZ.

13. See *Osservatorio sulla Legislazione della Camera dei Deputati, Rapporto 2004-05 sullo Stato della Legislazione*, XIV Legislative Session, 11 July 2005, p. 269 ff.
14. Rulings 282/2002; 303/2003; 6/2004; 378/2007; and 401/2007.
15. Rulings 303/2003 and 6/2004. See *Osservatorio sulla Legislazione della Camera dei Deputati, Rapporto 2007 sulla Legislazione tra Stato, Regioni e Unione Europea*, XV Legislative Session, 29 October 2007, p. 303 ff.
16. In this sense, the Court ruled for instance on matters related to particularly risky activities (ruling 407/2002), hunting (ruling 536/2002 and 129/2004), detention and trade of exotic animals (ruling 222/2003) and on the location and construction of plants generating electromagnetic emissions (ruling 307/2003). As to competition cases, the Court limited state aid measures to instances showing objectively a macroeconomic importance, taking into account the general principles set at the EU level (ruling 14/2004), whereas any other economic intervention appertains to the regional legislature.
17. Rulings 303/2003 and 30/2005.
18. See *Osservatorio sulla Legislazione della Camera dei Deputati, Rapporto 2003 sullo stato della legislazione*, XIV Legislative Session, November 2004, pp. 95-99.
19. Rulings 6/2004 and 196/2004.
20. Rulings 355/2005; 153/2006; 423/2006; 424/2006; 449/2006; and 57/2007.
21. A selected database on the constitutional case law mentioned above can be accessed at *www.affariregionali.it/Normativa/EsameLeggiRegionali/Contenzioso/Default.aspx*. For a complete account, see also the related web pages of the Institute for the Study of Regionalism, Federalism and Self-Government (ISSiRFA), at *www.issirfa.cnr.it/1457,1457.html*, and *www.issirfa.cnr.it/318,46.html*.
22. For further information on the co-ordination between national and regional policies, see Para. V.3 and in particular Box Z: "Integration between Ordinary and Regional Development Policies: Main Institutes and Co-ordination Offices" ("*Integrazione fra politica ordinaria e politica regionale di sviluppo: principali istituti e sedi di coordinamento*") of the 2007 Department for Development Policies (DPS) Yearly Report p. 256-261.
23. See *www.dps.tesoro.it/qsn/qsn.asp*.
24. See *www.dps.tesoro.it/*. *Cf*. the Decree of the President of the Republic "Regulation dealing with the re-organisation of the Ministry for the Economic Development" (*Regolamento recante la riorganizzazione del Ministero dello Sviluppo Economico*), DPR 28 November No. 197 and DPR 28 November 2008, No. 198.
25. See *www.en.sviluppoitalia.it/*.
26. *Cf*. Box AA: "The Settlement, the Re-Organisation and the New Mission of the National Agency for the Attraction of Investments and the Development of Enterprise" – "*Il Riordino, la riorganizzazione e la nuova missione dell'Agenzia Nazionale per l'attrazione degli investimenti e lo sviluppo d'impresa*" – 2007 DPS Yearly Report p 261-264.
27. With the exception of those indicated in its Article 119, Para. 5, the use of earmarked grants has not been allowed by the Italian Constitution since 2001. The same constitutional provision constitutes the legal basis for interventions complementary to those funded through the EU cohesion fund.
28. See OECD (2007b), p. 100. The publication provides a contractual analysis of the Framework Programme Agreement (see below).
29. Para. IV.1.2 of the 2007 DPS Yearly Report, pp. 157-168.
30. See OECD (2008), *Linking Regions and Central Governments: Indicators for Performance-Based Regional Development Policy*, Draft Report, 12 June, GOV/TDPC(2008)7. This section largely draws from that publication.
31. Programmes in Objective 1 regions received more than 70% of the total Structural Funds.
32. Quoted from OECD (2008), *Linking Regions and Central Governments: Indicators for Performance-Based Regional Development Policy*, Draft Report, 12 June 2008, GOV/TDPC(2008)7, p. 101.
33. See *www.dps.tesoro.it/obiettivi_servizio/*.

34. See Delibera CIPE 82/2007 on *Regole di Attuazione del meccanismo di incentivazione legato agli Obiettivi di servizio del QSN 2007-13*.

35. To illustrate, the manufacturing sector weighted 22% in 2005.

36. Giacomelli S. (2008) La distribuzione di Gas Naturale in Italia: l'attuazione della riforma e i suoi effeti, Bank of Italy, Occasional Papers, n° 21, September.

37. Confservizi (2006). This figure has not changed in the past few years. In another report two years earlier, Confservizi assessed at 73% the percentage of companies with capital fully owned by the local authority. See Confservizi (2004).

38. For instance, see Directive 92/96/EC (on electric power) and 98/30/EC (on gas).

39. (*Testo unico delle leggi sull'ordinamento degli Enti Locali*, Legislative Decree 267/2000).

40. Legislative Decrees 422/1997, or "Burlando Decree", and 400/1999, respectively.

41. Repectively Legislative Decree 164/2000 and Legislative Decree 79/1999.

42. Confservizi (2004;2006); AA.VV. (2007); Bognetti/Robotti (2007).

43. Quoted from Bognetti/Robotti (2007), Conclusions.

44. Legislative Decree 269/2003 and Law 350/2003 (Budgetary Law for 2004). Such a distinction does not apply however to the electric power, gas and public transport sectors.

45. See in particular the so-called "Teckal" ruling of the European Court of Justice, C-107/98 of 18 November 1999. On this point, see A. Le Donne/C. Pierotti (2006), "Gestione *in house* dei servizi pubblici locali: Contaminazioni, suggestioni, soluzioni", in *ASTRID-Rassegna*, No. 5; and L. Manassero (2008), "*In house* providing e concorrenza: il ddl governativo, le procedure di infrazione promosse dalla Commissione UE, le posizioni dell'Autorità Garante per la Concorrenza ed il Mercato, l'istruttoria dell'Autorità per i Contratti pubblici", in *Diritto dei Servizi Pubblici*, at *www.dirittodeiservizipubblici.it/articoli/articolo.asp?sezione=dettarticolo&id=297*; A. Cavaliere (2005), "Le riforme dei servizi pubblici locali: effetti economici e finanziari", in ISAE, IRES Piemonte e IRPET (a cura di), *La finanza locale in Italia. Rapporto 2005*, FrancoAngeli, Milan, pp. 233-256.

46. Passed by Parliament in August 2008, Article 23-*bis* of Law 133/2008. See also Legislative Decree 112/2008 on *Disposizioni Urgenti per lo Sviluppo Economico, la Semplificazione, la Competitività, la Stabilizzazione della Finanza Pubblica e la Perequazione Tributaria*.

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Chapter 6

The Challenges of Efficient Regulation in a Multi-level Governance Context

This chapter discusses the challenges of efficient regulation in a multi-level governance context. The chapter analyses the role of the new regional statutes and of the co-ordination mechanisms between the national, regional and local levels. The chapter discusses the interface between the regions and the EU. The use of regulatory tools at regional level is analysed in some detail, including legal drafting, consultation and communication, regulatory impact analysis, as well as legislative and administrative simplification. The chapter also discusses compliance, enforcement and dispute settlement mechanisms at local level, as well as legislative review and ex post *evaluation.*

Enhancing an effective multi-level regulatory governance framework

Ensuring quality regulation across all levels of government is an important part of the broad regulatory policy agenda. "In the same way as for the national level, regulatory policy should serve to boost economic development and consumer welfare by encouraging market entry, innovation, and competition at sub-national levels of government (OECD, 2008)."[1] Multi-level regulatory governance has become a priority in many OECD countries. The OECD 2005 *Guiding Principles for Regulatory Quality and Performance*, (p. 5), fully acknowledged this by encouraging "better regulation at all levels of government", calling on governments to "improve co-ordination and avoid overlapping responsibilities among regulatory authorities and levels of government". The framework of analysis follows on previous reviews of Sweden (OECD, 2007a), as well as a pilot study on Italy (OECD, 2007b) carried out in joint collaboration with a sample of four Italian regions.

Multi-level regulatory governance[2] involves numerous challenges. They may include the risk of duplication of rules, overlapping and low quality regulations. Governments need to avoid that high-quality regulation at one level be undermined or reversed by poor regulatory policies and practices at other levels. The issue is critical as it may impede adequate public service delivery at the local level, affecting citizens' perception of local and national authorities. It also places unnecessary burdens on business services and activities as well as on investment and trade. Conversely, co-ordination and coherence can vastly expand the benefits of reform and bring improvements to the regulatory system as a whole. This can also be aligned and co-ordinated with e-government policies and tools using new information technologies in order to offer continuous and integrated services to citizens and businesses.

This section addresses issues related to the capacity of the Italian system to ensure high-quality regulation across levels of government. Elements of regulatory policies such as legislative simplification, the use of RIA and legal analyses, recourse to consultation, the implementation of administrative simplification and e-government as well as the discussion on compliance and enforcement of legislation and appeals will be considered. The analysis is supported with specific insights from 6 regions which provided specific information for the study.[3]

Administrative and legal framework for multi-level regulatory policy in Italy

A first issue concerns the level that bears primary responsibility for carrying out regulatory policy (Carbone *et al.* 2007; Nocilla, 2003). Until the adoption of Constitutional Law 3/2001, regulatory reform had been promoted, designed and implemented mainly at national level. With the reform, such a centralised approach lost juridical and political ground. At the same time, responsibilities for the development and implementation of Better Regulation policies have not been explicitly allocated to either the State, the regions or the local authorities. Hence, the responsibility for Better Regulation and regulatory reform lies with each of the levels of government in the matters where they exert

legislative powers. Similarly, there is no overall competence at central level to monitor and control regulatory reform programmes at the local level.[4]

Improving the quality of regulation is a key objective for Italy as part of a competitiveness-oriented strategy, which also needs to be pursued at lower levels of government. However, multi-level regulatory governance is seen as one of the most promising fronts from which regulatory inflation and the proliferation of administrative procedures can be tackled. Because of their important role in imposing regulations on businesses and citizens, regions and local authorities have been called to be part of a consistent and structured strategy to improve decision making and its outcomes. The institutional framework that resulted from the various constitutional amendments is characterised by the predominant delivery of public services at the local level. This setting constitutes a challenge for lower levels of governments, for they need to provide better economic incentives to make service delivery more efficient, as well as to develop appropriate regulatory tools such as consultation practices and impact assessments. In addition, regional and local authorities are called upon to pursue simplification of both their legislative stock and their administrative procedures.

Most of the regions have introduced some tools and mechanisms for regulatory quality, such as measures for administrative simplification, Regulatory Impact Analysis (RIA) and a comprehensive and formal procedure for drafting law proposals. Even before the constitutional reform, and particularly thereafter, administrative simplification and regulatory quality have been progressively embedded in the autonomous initiatives of the regions. In some cases, regions have played a pioneering role and the activity at lower levels in the field can be traced back to the early 1980s. In Tuscany, for instance, a handbook for legal drafting was issued in 1984. Tuscany was also among the first regions to adopt simplification laws, in 1999.[5] In Lombardy, an Annual Programme for Simplification and De-legislation was adopted in 2001,[6] and the first regional simplification law dates back to 2002 (Regional Law 15/2002). As to RIA, practices were launched in Tuscany at the end of the 1990s, while the first region regulating on the matter was Basilicata (Regional Law 19/2001) (Libertini, 2002). In many aspects, therefore, regions have served as important laboratories for the design and implementation of regulatory tools, sometimes beyond the experience of the national government.[7]

In the years following the 2001 reform, the constitutional and institutional transformation was not reflected in an explicit requirement to implement principles of high-quality regulation at the regional level. Nonetheless, in recent years a strategy for enhancing regulatory policy at all levels has been progressively designed in Italy. The debate enjoyed renewed attention further to the publication of a report by industrial associations setting guidelines for regulatory quality in 2004.[8] The awareness of the regions emerged in particular from their contribution to the National Integrated Programme for Growth and Employment (PICO) in 2005,[9] in which the regions commit to a programmatic framework for regulatory reform policies. A few regions have explicitly included regulatory quality in the work programme for the VIII Regional Legislature. Finally, as of 2006, most of the new regional statutes issued further to the Constitutional reform have included principles and elements underpinning regulatory policies.[10]

Reforming the regional context in Italy: The new regional statutes

A number of regions have adapted their statutes further to the reform of 2001, abiding by Article 123 of the Constitution, which imposes that the regions have "a statute

determining the form of government and the fundamental principles of the organisation and the functioning of the region in accordance to the constitution". At the end of the VII Regional Legislature, 11 of the 15 regions with ordinary statutes granted themselves a new charter.[11]

All the regions have opted for the direct election of the President of the regional executive bodies (*Giunte*) (Osservatorio sulla Legislazione della Camera dei Deputati, 2007). At the same time, however, all the new statutes enhance the autonomy and control powers of the legislative bodies, the Regional Councils (*Consigli regionali*). Further innovations have been introduced, including:

- Apart from the one of the region: Apulia, all new statutes devote an explicit section to the legislative decision-making process.[12]
- In Emilia-Romagna, the new function of "rapporteur" (*relatore*) is introduced, a member of the Council charged with following the legislative procedure of a specific proposal.
- The statutes of Tuscany and Emilia-Romagna contain a provision on regional "falling norms" (*norme cedevoli*), which refer to matters where local authorities have competence. Such norms cease to be effective as soon as local legislative acts are enacted on the specific matter.
- A further innovation refers to the commitment by all regions to enhance the citizens' right to direct participation in decision making through referendum and popular initiatives.[13]

Most of the regions have seized the update of their statutes as an opportunity to introduce specific provisions on the need for quality regulation and the integration of the use of regulatory tools in the law-making process.[14] Until recently, reference to regulatory quality in the statutes constituted a novelty. The Emilia Romagna region integrated an explicit requirement for assessing impacts of law proposals and the need to monitor the results of their application (Article 53). Similarly, Article 61 of the regional statute of Umbria lays out that the region "ensures the quality of the legal texts, adopting tools for the impact assessment, for their design and feasibility". The regional statute also contains a provision on public consultation during the law-making process (Article 4). However, the comprehensiveness and the scope of the approach differ from region to region (see Box 6.1).

Of particular relevance is the provision enshrined in the Tuscan statute to issue a general law on regulation (Article 45). If adopted, this would be the first legal act which would serve as a sort of Administrative Procedure Act in Italy, as the Italian legal system does not contemplate organic laws. The Tuscan executive (*Giunta*), moreover, decided in July 2006 to adopt a *Manuale operativo del processo strategioc giuridico-legislativo*, a handbook in which the procedural steps for the elaboration of legislative proposals by the *Giunta* are specified.[15] With respect to the normative initiatives of its executive, the Veneto region relies on a note of the Secretary of the *Giunta*.

Co-ordination mechanisms between the national and regional and local levels

The system of Conferences

To achieve multi-level regulatory reform, co-ordination mechanisms are essential to organise the relationship between national, regional and local levels. In Italy, the centre and the regions co-operate in carrying out good practices for regulatory quality. The main

Box 6.1. **Regulatory reform provisions in the new regional statutes**

The eleven new statutes adopted further to the 2001 constitutional reform include a number of provisions directly related to and affecting the quality of the regulatory process and its outcomes. Overall, 16 articles and 55 paragraphs cover these issues.[1] The statutory provisions can be distinguished between the following headings:

- **Regulatory quality** – While in some cases, such as the Campania and the Piedmont regions, the statute contains only a general article on the matter, which refers to the adoption of a dedicated regulation for the practical implementation, clear references to impact assessment (both *ex ante* and *ex post*) and to the clarity of drafting are common in most statutes.[2] The statutes of Marche and Tuscany also foresee the creation of dedicated structures. The Tuscany regional charter, moreover, includes the explicit rejection of legislative proposals that do not meet the regulatory quality standards laid down in the statute.
- **Codification** – The recourse to consolidated texts (*testi unici*) for the consolidation and simplification of sectoral legislation is almost generalised, although the procedures differ from one case to the other. The statutes of Emilia-Romagna and Calabria lay out the possibility to unify legislative and regulatory provisions in one single text (*testi unici misti*). In the Lazio statute, a review of the codes is foreseen, while the Emilia-Romagna goes as far as explicitly foreseeing possible de-legislation and administrative streamlining. Only the statues of Campania, Liguria and Puglia do not contemplate the use of *testi unici*.
- **Transparency and participation** – Only the statutes of Emilia-Romagna and Tuscany contain a requirement to motivate the adoption of a piece of legislation. The regions Abruzzo, Lazio, Tuscany and Umbria decided to make the online publication of their regional legislation obligatory. Moreover, those statutes commit the region to enhance the online communication of its legislative activity to the citizens. Generally, the right of the citizens to be informed is recognised and extended to the entire administrative activity. The statute of Piedmont is the only one to explicitly articulate participation and consultation practices.
- **Programming and planning** – Many statutes (Abruzzo, Lazio, Piedmont, Tuscany and Umbria) include provisions on planning and programming as a strategic method to rationalise, streamline and better organise the public administration.
- **Oversight body** – In two regions (Abruzzo and Umbria), a so-called Committee on Legislation (*Comitato della legislazione*) is statutorily foreseen and made responsible for controlling the quality of regulation. In Abruzzo, the Committee should be composed equally by Council members from the majority and the opposition, and serve as an advisory body. The Committee reports on its activity annually to the Regional Council.

By contrast, the new statutes do not introduce innovative changes in the relationship between the regional level and the local authorities, failing thereby to fully acknowledge and deepen the implications of the new constitutional status of the latter (Articles 114 and 118 of the Constitution).

1. Only the statute of the region Liguria does not address regulatory quality. In general, it should be noted that the absence of specific and explicit provisions on regulatory quality and reform in the statute does not prevent the region from establishing dedicated institutions and developing procedures and tools.
2. In Piedmont, nonetheless, an article explicitly entrusts the Consiglio with the responsibility for ensuring regulatory quality and checking the effectiveness of the legislation adopted.

mechanism is the so called "Conference" system, which consists of three distinct co-ordination bodies (Box 6.2):

- The Conference of State-Regions.
- The Conference of State-Municipalities and other Local Authorities.
- The Unified Conference of State-Regions-Municipalities and Local Authorities.

Box 6.2. **Multi-level co-ordination in Italy: The system of Conferences**

Held in the Prime minister's Office and managed by the Department for Regional Affairs, the co-ordination system distinguishes between the following three *conferenze*:

- **The Conference of State-Regions** – Instituted at the end of the 1980s (by Law 400/1988), and enhanced ten years later (Law 59/1997 and Legislative Decree 281/1997), it constitutes the "privileged platform" for multi-level political negotiation and collaboration in Italy. It is composed of the Prime minister (or the Minister of Regional Affairs) as its chairman; the Presidents of the regions; and other ministers whenever matters related to areas of their competence are discussed. The central government consults the Conference on any legislative initiative related to areas of regional interest. At least twice a year, the Conference State-Regions meets in a so-called "Community session" to address European Union matters that also affect regions and provinces. The Conference can play an advisory, normative and programmatic role and serve as a platform facilitating information sharing.[1]
- **The Conference of State-Municipalities and other Local Authorities** – Active since 1996, its functions include: the co-ordination of the relations between state and local authorities; and the study, information and discussion of local authorities' issues. This conference consists of the Prime minister, as President of the Conference, the Minister of Interior, the Minister of Regional Affairs, the Minister of the Treasury, the Minister of Finance, the Minister of Public Works, the Minister of Health, the President of the Association of Italian Municipalities (ANCI), the President of the Association of the Italian Provinces (UPI) and the President of the Association of Italian Mountain Communities (UNCEM), 14 mayors and 6 presidents of provinces.[2]
- **The Unified Conference of State-Regions-Municipalities and other Local Authorities** – Since 1997 (Decree 281/1997), this conference is the institutional place for relations among the central government, the regions and local authorities. It is to be consulted on any act in fields of common competence, notably on the financial law and on the decrees concerning the allocation of personnel and financial resources to regions and local authorities. The Unified Conference is charged with implementing the 2002 Inter-institutional Agreement on the implementation of the reform of Title V of the Constitution. It includes all the members of the two other Conferences.

1. See *www.statoregioni.it/*.
2. See *www.palazzochigi.it/Presidenza/CSCA/index.html*.

The agreement on regulatory simplification and quality

All Italian authorities are required by law to sign agreements and memoranda of understanding to improve the quality of regulation.[16] On 29 March 2007, the regional and local executive offices signed an agreement with the national government on normative simplification.[17] Besides defining common principles for the improvement of the quality and the transparency of the normative system, the document commits all parties involved

to improve their evaluation practices, both *ex ante* (through ATN, RIA and feasibility studies) and *ex post* (VIR). The agreement foresees improved communication on legislative issues among levels of government and better access to regulation by the citizens. Moreover, parties committed to adequate consultation mechanisms with social partners, trade associations and consumers for those laws or regulations of greater impact on the activity of citizens and enterprises. The *Tavolo permanente per la semplificazione*, established in 2006,[18] is a privileged platform reinforced by the *Accordo*. Article 9 of the agreement extends to the regions the target of a 25% reduction in administrative burdens on business by 2012 set at the central level. Regions commit to consider harmonised procedures and legislation across the national territory. In order to guarantee a better knowledge of the normative actions, the agreement calls for the creation of specific databases led by the national Parliament and the Regional Councils, and the standardisation of the regional and national guidelines and handbooks for legal drafting.

The agreement is rather political and non-legally-binding, and is subject to relatively soft monitoring, relying mainly on the goodwill of the parties involved. Since 31 May 2007, a *Tavolo tecnico paritetico Stato-Regioni* oversees the implementation of the *Accordo*. Initial measures included a draft agreement on business start-up notification (*Denuncia di Inizio Attività*) in the building sector; and a draft agreement on the identification of *essential levels of service* as required by Law 241/1990.[19] The Department for Regional Affairs has contributed to streamline the work of the Conference State-Regions by inviting the latter to jointly discuss regional legislative proposals with a view to achieving smoother implementation and avoiding possible legal challenges.[20] Similarly, working groups of the Conference of the Presidents of the Regions, and notably its First Commission on Institutional and General Affairs, examine the government's legislative proposals and issue a non-binding opinion addressed to the Conference State-Regions. The end of the XV Legislature at the beginning of 2008 delayed the implementation of many actions included in the *Accordo*. The subsequent appointment of a minister explicitly responsible for simplification nonetheless indicates the firm commitment of the Italian executive to continue the established co-operation policy with the lower levels.

Co-ordination on administrative burdens

The simplification of administrative requirements on businesses has been one of the key action points of the Italian government in recent years. Simplification Law of 2005 (Law 246/2005) specifically addressed this matter. Its Article 5, Para. 2 gives the states and the regions the possibility to sign agreements on issues related to the business activity, which would facilitate the co-ordination of the application of relevant normative competences; favour the harmonisation of the related legislation; help achieve minimum levels of simplification of the requirements; and identify specific forms of simplification of administrative requirement across the national territory. Any agreement signed in this context needs to encompass all "better regulation" tools and techniques in order to simplify the administrative environment for businesses.[21] This makes administrative burden reduction a central policy objective around which a number of regulatory reform initiatives pivot across various levels of government.

Other forms of co-ordination

Since 2003, an Office for Administrative Federalism (*Ufficio per il federalismo amministrativo*) is active within the Department for Regional Affairs.[22] This office not only

advises on legal and administrative matters arising from the implementation of Article 118 of the Constitution and of Article 7 of Law 131/2005, but it also promotes measures supporting the transition to a more developed federalist system. The office collaborates with administrations both at the central and the sub-national level.

Within the framework mentioned above, a defining instrument for state-region co-operation is the so-called "Institutional Agreement" (*Intese istituzionali di programma*) (see above). Institutional Agreements are then carried out by several regional Framework Programme Agreements. Framework Programme Agreements lay down the foreseen initiatives and the related financial resources; allocate role and responsibilities; define mechanisms for monitoring; and establish procedures for dispute settlement.

The participation of local authorities in national decision-making occurs through different channels, including: *i)* formal and informal consultations, which sectoral ministries carry out in accordance with the principle of loyal co-operation; *ii)* specific legal provisions on opinions, agreements and understandings, which are enshrined in the rules of procedures of the State-Region Conference and the Unified Conference (Legislative Decree 281/1997); and *iii)* parliamentary hearings of local administrators. Moreover, regional councils have the right and power to table legislative proposals to the national parliament following specific procedures.

As to the interface between the regional and the local levels, good practices exist for co-ordination and support within the limits sets by the Italian Constitution. The executive of the Veneto region set up a dedicated "Directorate for Local Authorities", which offers technical and operational assistance in matters of regional competences.

Co-ordination among legislative assemblies

Enhanced multi-level co-operation takes place not only on the executive front but also among legislative bodies. On 28 June 2007, a related Protocol (*Protocollo di Intesa fra il Senato della Repubblica, la Camera dei Deputati e la Conferenza dei Presidenti dei Consigli Regionali*) was signed to promote further exchange of expertise and experiences; the publication of studies; and the development of better regulation tools and training between the legislative assemblies at the national and local levels. A specific committee was established consisting of three Senators and three Deputies, the President of the Parliamentary Committee for Regional Affairs and three Presidents of the Regions, appointed by the Conference of the Presidents of the Regions.[23]

The Italian Parliament has acknowledged the importance of regulatory quality and has contributed to its diffusion at different levels of government by establishing the Observatory on Legislation. The Observatory serves as a technical support of the Committee for Legislation, and as a documentation centre. In addition, the Observatory prepares specific guidelines, such as the Guidelines for Legislation. It also carries out analyses of legal trends, based on computerised data collection. The Observatory publishes the *Annual Reports on the Status of Legislation*, promoted by the Committee for Legislation, which compiles all the data regarding legal activity; and the *Committee's Notes*, which are published three times a year on specific legislative issues. Finally, the Observatory takes care of the inter-institutional relations on the different problems confronted by regions on the quality of regulation and legal techniques. It organises seminars and facilitates agreements on these matters.

Forms of vertical interventions

Despite the changes brought about by the constitutional reform of 2001 (see above), a number of vertical interventions persist in Italy. They refer for instance to the duty of the government to control and intervene where necessary in substitution of local authorities. The intervention can take the form of legislative measures or the appointment of an extraordinary commissioner (*commissario*).[24] Sectoral legislation may establish *ad hoc* controls and obligations to report to the higher level. In cases of inertia, for example lack of action on an EU directive, this may lead to grant substitutive powers to the central level (the sectoral ministry or the Council of Ministers), which intervenes instead of the local level.[25] Controls may also be carried out by prefectures in cases of inspections or interventions replacing activities by municipalities on acts pertaining to the marital status, registry office, military service, etc.

The Court of Accounts (*Corte dei Conti*) and the Competition Authority also carry out some forms of oversight, notably in terms of management control, accountability and enforcement practices. The Court of Accounts can perform audits of any administrative body and present it in its annual report. The Constitutional Court has explicitly made clear that the supervisory role of the Court of Accounts does not interfere with the autonomy of the regions, but ensures respect for the budgetary balances among local levels of government and a sound financial management. The Competition Authority's enforcement activity has increased further to a number of market abuses based on regulatory measures and practices launched by local governments. The Competition Authority has acknowledged that "in the future, Regions and local authorities should be involved in a co-ordinated and not fragmented legal framework, so reforms can become sharper and facilitate the emergence of a more competitive environment, with significant benefits in terms of economic growth and job creation."[26]

Horizontal co-ordination

Horizontal co-ordination among local governments also contributes to implementing successful, holistic regulatory reform. The consolidation of a permanent dialogue in which regulatory quality is commonly understood and regulatory and administrative practices harmonised can help foster economic activity and make regulatory decisions more effective. Horizontal co-ordination can also facilitate the exchange of experiences about the costs and benefits that regulation imposes on citizens and businesses.

Italy has a longstanding tradition of promoting horizontal co-operation among regions, notably in the forms of the Inter-regional Legislative Observatory (*Osservatorio Legislativo Interregionale*, OLI).[27] Created in 1979 as a tool for exchange and training among all the legislative offices of regional Councils (*Consigli*) and the regional executive bodies (*Giunte*), the OLI organises periodical meetings in which issues of interest for the regions are discussed, such as recently approved laws, particularly challenging policy objectives, the sentences of the Constitutional Court, the acts of the EU that are relevant to the regions, etc. Members of the national assembly, the Senate, the central government, universities and research institute are also invited to participate in the debates. The OLI also publishes specific thematic studies and handbooks. In 2002, the OLI published a Manual on Legislative Techniques, which contains rules and suggestions for the drafting of legal instruments. The approach is focused more on the formal aspects of regulatory quality. Many Italian regions use it as a point of reference to harmonise practices in legal drafting. The OLI has a permanent secretariat in the region of Tuscany.

A further platform promoting permanent co-ordination is the Conference of Presidents of the Regional Assemblies (*Conferenza dei Presidenti delle Assemblee Regionali e delle Province Autonome*),[28] which in 1991 launched an information system that helps the legislative activity, sharing standards for communication and experiences among regions and the centre. One of the results was the creation of a shared database of regional laws in 1996. Since 2003, after a long process of discussions and agreements, the portal *Normeinrete*[29] has provided a complete overview of the Italian legislation at different levels of government, with increased transparency and accessibility.

An example of horizontal co-ordination refers to the preparatory work that led to the adoption of regional laws on administrative simplification for the health sector. In February 2006, a mixed technical working group including representatives of the regions and the Ministry of Health produced a final report approved by the Presidents of the Regions that served as a basis for the subsequent regional legislative activity in the matter. The agreement of February 2006 in the State-Regions Conference constitutes a further example of successful co-ordination for the simplification of food safety.

Besides the common form of horizontal co-operation between Italian regions, a number of regions have established co-operation agreements with trans-border regions. In the framework of the EU INTERREG programmes, Piedmont, Lombardy, Veneto, Friuli-Venezia-Giulia, Valle d'Aosta and the autonomous province of Bolzano have developed close partnerships with their counterparts in Austria, Switzerland and Slovenia. The collaborating regions go beyond neighbouring regions, as shown by the Italy-Malta initiative INTERREG IIIA, managed by the region of Sicily.

The supra-national dimension: The interface between the regions and the EU

The 2001 constitutional reform affected not only the relationships between the centre and the regions but also the interface between the latter and the European Union. Article 117, Para 5 of the Constitution states that "regarding the matters that lie within their field of competence, the regions [...] participate in any decisions about the formation of Community law. The regions and autonomous provinces also provide for the implementation and execution of international obligations and of the acts of the European Union in observance of procedures set by state law." For the first time, regions have been granted an autonomous role in the preparation, adoption and implementation of Community legislation.[30]

Supra-national co-ordination is the object of formal mechanisms. For the transposition of EC directives, Law 86/1989 (the so-called *Legge La Pergola*) introduced some guidance on the way regions could participate in the regulatory process of the EU and the implementation of the Directives regarding their exclusive and concurrent legal power. The matter is now regulated by Law 11/2005 and the principal tool in this respect is regional law, which serves to transpose the directives.[31]

The Conference State-Regions and the Unified Conference play a role in the transposition and implementation of EU legislation whenever recourse is made to legislative decrees or government regulations. In these cases, one or the other Conference expresses an opinion, depending on whether the matter pertains strictly to regional competence or includes that of local authorities. This form of consultation with the lower levels of government is obligatory, but not binding. The deadline for the Conferences' opinion is set to 20 days, after which implementation measures are adopted. Nonetheless,

the government has traditionally sought to reach consensus for the implementation of EU legislation through a participatory approach. It should furthermore be noted that any implementation act adopted by the government on matters of regional legislative competence contains a "fall back clause" (*clausola di cedevolezza*), according to which the act is in force until equivalent measures are adopted by the region. Moreover, the regions, the autonomous provinces and the local authorities are jointly responsible for the application of the Community *acquis*, thereby.[32]

In order to facilitate the co-ordination and sharing of information across levels of governments, a co-operative General Agreement concerning the participation of the regions and autonomous provinces in the preparation of Community acts was signed in the Conference State-Regions in March 2006, but still remains to be fully implemented. Other specific agreements have been signed within the unified Conference on the ways to abide by the Community *acquis*. A first improves the dialogue between administrations at various levels of government in order to prevent sentences of the European Court of Justice and in any event to identify the roles and responsibilities in instances of infringement procedures. A second calls for harmonising and simplifying the communication to the European Commission of information related to infringements of Community law.

Despite these arrangements, most of the regions still face challenges in transposing and/or implementing EC legislation timely and fully. Difficulties in the communication between the supra-national and the regional levels are often reported. In particular, regions are not always sufficiently equipped to directly and efficiently access and monitor EU decision making and its outcomes. The Regional Council of Tuscany is currently examining a proposal for a codified text including dispositions on the participation of the region in EU decision-making and the procedures for implementing Community acts.[33] Moreover, the agreement by the unified Conference of January 2008 on the modalities for implementing Community obligations and on the guarantee to information by the government, also with reference to the elaboration of the national annual Community Law, should contribute to improve the situation.

With regard to the so-called "ascending phase", *i.e.* the process enabling regions to contribute to EU decision-making, Law 11/2005 also foresaw the creation of an Inter-ministerial Committee for Communitarian European Affairs (*Comitato interministeriale per gli affairi comunitari europei*, CIACE).[34] Regions can request to participate directly in this Committee and they are informed about any EU legislation and initiative affecting them. This allows regions to contribute to and consolidate the Italian official position. If the proposed regulation concerns a matter of exclusive competence of the region, the government has to convene the State-Regions Conference to find a common position that will be defended in the EU Council of Ministers. Representatives of the regions are also allowed to participate in the work of various EU working groups and committees,[35] and in accordance with the resolution taken in the State-Regions Conference in March 2006. The latter agreement foresees that regions notify the name of their representatives participating in the various EU bodies. Discussions are still ongoing concerning the modalities for co-ordination and the functioning of the national delegation. Guidelines have been drawn in 2008 and a list of working groups has been proposed to the regions. The regional representations to the European Union continue to be a fundamental contact point and antenna for the regions in Brussels. Besides this, Italian regions are active members of the European Union committee of the regions, which is supporting EU wide efforts for better law making,[36] and is to hold its annual meeting in Milan in 2009.

The so-called Community sessions (*sessioni comunitarie*) of the Conference State-Regions are an important moment for co-ordination and information-sharing between the central and regional levels on EU matters. Community sessions may take place several times during the year and are devoted to the examination of the annual proposal of Community Law as well as the discussions on general approaches for implementation and criteria and ways to abide by EU legislation. Throughout 2007, efforts have been made to reform the organisation and strengthen the efficacy of the Community sessions with the aim to ensuring more timely and complete information from the government on EU legislative proposals and, more generally, EU-related dossiers.

Resources and training

Perhaps even more so in multi-level contexts, an adequate level of financial, human and technical resources is necessary for regulatory reform to succeed. A rational and efficient allocation of the financial resources across the levels of government is essential to implement policies and make optimal use of policy tools. Regulatory reform cannot be carried out and rooted in the public administration if it is not supported and shared by skilled administrators and regulators. Regular training and capacity-building across the administration are complementary measures whose development national governments should encourage and assist at the local and regional levels.

The Italian central government supports the regions through specific actions, technical assistance and focused training, with the aim to develop policies of high-quality regulation at regional and local levels. While such support is granted across the entire national territory, particular attention is given to the development of the *Mezzogiorno*.

At the regional and local levels, projects for professional training of civil servants working on the legislative process are supported by FORMEZ (*Centro di Formazione Studi*). This agency of the Department of Public Administration contributes to capacity-building over a wide range of policy areas, including regulatory policies. Overall, FORMEZ's budget for activities has amounted to EUR 180 million over 2005-07. FORMEZ has been active on promoting RIA practices within regional administrations (Box 6.3), and it has managed the projects *Simpliciter* on introducing and reinforcing administrative simplification tools at the local level. These projects seek to simplify and accelerate administrative procedures at the regional and local levels, enhance transparency and public participation in the administrative work and actively promote local and territorial economic development.

Assessment

Multi-level institutional settings are complex by definition. They consist of a multiplicity of actors and procedures. For an optimal co-ordination among the various levels, and in order to successfully promote and implement regulatory reform, it is fundamental that the system of institutions in place combine leadership and political commitment with technical skills and capacity. Successful multi-level regulatory reform depends on a mutually sustaining logic: civil servants need to be backed by committed decision makers whose support is constant and consistent; and the latter need to rely on competent and knowledgeable bureaucrats that know how the administrative and regulatory machinery ought to work. Centralising the steering functions at the higher

Box 6.3. **Capacity building at the regional level: Regulatory Impact Analysis**

Since 2002, FORMEZ has designed and organised RIA-related projects at the regional and local levels in Italy. Two cycles of activities can be identified, each consisting of a training phase, a trial phase and a phase in which results were analysed and diffused. The first cycle ran from 2002 to 2004 and sought to raise the awareness of the regional administration of the need for and benefits of having RIA systems in place. This involved participation by OECD experts. The second cycle (until 2007) has focused on the organisational aspects and it included a monitoring exercise of the status of implementation of RIA practices.

Overall, some 255 civil servants and managers have been trained from 15 regional administrations (Aosta Valley, Lombardy, Piedmont, Veneto, Emilia Romagna, Umbria, Abruzzo, Molise, Lazio, Campania, Calabria, Basilicata, Apulia, Sicily, Sardinia). Some 60% of the participants came from executive offices (*Giunta*), and 40% from the Regional Councils. During the second cycle, each RIA course lasted five days (seven days in Calabria, which had joined the project for the first time). Eleven regional administrations (for a total of some 130 officials) then participated in the subsequent trial phase, some of them working on more than one measure: Piedmont on three measures, Umbria, Veneto, and Campania each on two. Each administration proposed the measures they wanted to work on and the final decision was made jointly between the administration and the project staff. Finally, results and best practices were shared at regional seminars, three international conferences on regulatory quality, as well as through publications.[1]

Besides its projects on training and support, FORMEZ has carried out comparative analyses, including monitoring and benchmarking at various levels. In the framework of the EU, and commissioned by the Italian *Dipartimento della Funzione Pubblica* and the Group of European Directors for Better Regulation (DBR), FORMEZ compared RIA methodologies in 10 EU member states. At the same time, a study was produced assessing the capacity of the Italian regions to ensure high-quality regulation. Finally, FORMEZ collaborated on the latest OECD multi-level study of Italy.[2]

1. See FORMEZ, "L'Analisi di Impatto della Regolamentazione. Le Esperienze Regionali", in *Materiali Formez*, October 2003 (2nd edition in 2006); "L'Analisi di Impatto della Regolamentazione. Le Esperienze Regionali 2003-06", in *Materiali Formez*, March 2006; "La Qualità della Regolamentazione: Casi Italiani e Confronti Internazionali", in *IterLegis* 2-3/2004, Atti del convegno.
2. See FORMEZ, "L'Analisi di Impatto della Regolazione in Dieci Paesi dell'Ue", *Quaderni Formez*, No. 32, January 2005; F. Basilica (eds) (2006), *La Qualità della Regolazione*, Maggioli Editore, pp. 235-538; and OECD (2007), respectively.

political level may be an option, provided that the same policy priorities are shared and mutual support is ensured from all institutions.

This chapter has identified positive trends in a few regions in terms of political commitment (*e.g.* Lombardy, Tuscany and Veneto) in which regulatory reform ranks high among the political priorities. Paradoxically, the absence of a consolidated normative framework at the regional level offers opportunities to build consistent and structured regulatory policies without suffering from legal, institutional and procedural obstacles inherited from the past. The relatively small dimensions of the regional administrative system should allow comparative advantages with respect to introducing regulatory reform and instilling a new culture at the central level. However, regions face potentially more pressing constraints in terms of financial resources and access to skilled staff. The *Accordo* of 27 March 2007 represents a positive step, as it can serve as a catalyst of political

support and commitment. Co-ordination initiatives offer opportunities to pay attention to Better Regulation policies.

However, co-ordination remains loose, with insufficient identification of respective responsibilities. No structured approach has been implemented to harmonise regulatory policies among the various regions and between the regional and national levels. In this respect, the system of conferences may not be entirely equipped to fully address the implications of the changes brought by the constitutional reform. More generally, the *Accordo* is not specifically aimed at establishing vertical co-ordination on the matter, and so far its implementation has not been subject to *ex post* assessment and control. In December 2006, a law proposal sought to unify the three Conferences into one institutional body. Despite the positive contribution of the work co-ordinated by OLI, horizontal co-ordination still often depends on informal and non systematic contacts.

Over the past years, differences of appreciation have arisen between the State and the regions on EU-related matters. The new approach designed for the ascending phase, in particular, concerns areas of intervention traditionally related to the State's sphere of action, where not all the regions have yet developed adequate structure and know-how. For instance, the composition of the official delegations remains an unresolved issue, and the creation of the CIACE implies some tradeoffs and balances, given the interface with the Conference State-Regions. The co-ordinated participation of the regions in the preparation of EU legislation is one of the more complex areas where progress has been less evident. Regions are unevenly equipped, and adequate structures are often not in place to cope with the Community agenda. The descending phase has also presented challenges for many regions struggling to cope with their new responsibilities because of difficulties in organising new structures, meeting pressing policy deadlines, or contrasting policy agendas and priorities.

Making use of regulatory tools

Regulatory reform relies on the use of a wide range of tools. In a multi-level context, their implementation presents some challenges. In particular, balance and consistency need to be struck in terms of their design and scope, as well as in relation to the modalities of their use at the central and sub-national levels of government. The main challenge in this respect is to find the way "to maximise the benefits of certain tools and to make a coherent choice of which level should be in charge of their implementation". Tools for high-quality regulation at different levels of government should be designed and used with the aim to reduce transaction costs and to identify the "optimal level" of application. The multi-level dimension requires that policy makers consider avoiding possible overlapping in the use of certain tools (OECD, 2008).

Legal drafting

The Conference of the Presidents of the Legislative Assemblies of the Regions and the autonomous provinces produced a handbook in collaboration with OLI, whose third edition was published in December 2007.[37] On an individual basis, Tuscany uses specifically elaborated indicators, which to date are the only attempt to measure and benchmark regulatory quality in Italy (Box 6.4).[38] Abruzzo, Emilia-Romagna and Lombardy also present some forms of monitoring, although not as elaborated.

Almost all regions perform preliminary legal analyses (*Analisi tecnco-normativa*, ATN) both for acts issued by the *Giunta* and the Regional Council. Normally, the reference guidelines for such an analysis are outlined in the handbook produced by the OLI. This

Box 6.4. **Towards a comprehensive approach to high quality legal drafting: The Tuscan experience**

Tuscany has an established track record in using instruments to ensure legal drafting quality, both in the executive and in the legislative branches. A dedicated unit of the Presidency's Legislative Office (called *Area di coordinamento attività legislative e giuridiche*) has co-ordinated the contribution and expertise of the various sectoral Directorates-General on the issue. The unit has also directly contributed to defining general principles and orientation, and to establish technical normative standards. One of the most important initiatives has been the publication of an Operational Handbook (*Manuale Operativo del Processo Trasversale Strategico Giuridico-Legislativo*) in 2006.* The use of the handbook is mandatory for the regional administrations.

The manual provides general criteria for preparing and drafting legal acts, including specific standard formula frequently used. The handbook complements the use of the manual issued by the Inter-regional Legislative Observatory in 2002 (and updated in 2007) on *Regole e Suggerimenti per la Redazione dei Testi Normativi*. The Operational Handbook is not limited to legal drafting provision. Criteria are indicated that help regulators reduce primary rule-making. A whole section of the manual is moreover explicitly devoted to outlining procedural steps of the regional executive decision making, as provided for by Decision 11/2004 of the *Giunta*, and in accordance with the relevant articles of the new regional statute. The handbook also includes templates for legal acts and important documents supporting the preparatory stages. The handbook constitutes a critical tool that integrates legal drafting into a wider, comprehensive understanding of how decision making is structured and its functioning organised. This approach combines the emphasis of high-quality legal drafting without framing it into a rigid legalistic perspective.

* *www.consiglio.regione.toscana.it/leggi-e-banche-dati/Oli/Corso-qualita-normaz-UNIFI/06-LEZ-07-mar-08/Manuale_operativo.pdf*.

wide use of ATN contrasts with the limited implementation of RIA, reflecting a general tendency by the Italian administrations to follow a strictly legal approach. In Lombardy, a formal checklist is used by the legal services of the *Giunta* and the Council enforces ATN, while some regions (Marche, Molise, Tuscany and Aosta Valley) grant the power to amend the legislative proposal without consulting the responsible administration.

Consultation and communication

Although not formalised, consultation practices are also diffused at the regional level. They take various forms and rely on various means and procedures. Most commonly, they consist of *ad hoc* closed negotiations and hearings (*concertazione*), often leading to a "memorandum of understanding". Interested parties are invited to express their positions at different stages of the decision making, often through informal meetings. Most of the regions involve stakeholders and third parties on a facultative basis and on the voluntary initiative of the administration in charge of the legislative dossier, while only a small number of them (Calabria, Campania, Marche and Veneto) abide by their own specific legal requirements – enshrined either in their statutes or in regional laws.[39]

The following examples are worth mentioning:

- The Veneto region has acquired a certain experience with consultation since the mid-1970s (Regional Law 25/1974), with articles in the regional statute and in the rules of the

Regional Council. The executive authority has also developed and consolidated consultation practices, notably by establishing consultative boards (*tavoli*).

- In Tuscany, the *Giunta* also interacts with third parties in formalised institutions such as a *Tavolo generale* and an Inter-Institutional Consultation Board (*Tavolo di concertazione inter-istituzionale*), which is open to the presidents of the regional association of local authorities (ANCI Toscana, UNCEM and URPT). The Tuscan statute foresees consultation practices (Articles 19, 72 and 73), yet consultation remains optional for the Council's committees, while the *Giunta* can carry out consultation whenever it deems opportune. The executive offices have always consulted with local constituencies in the framework of their RIAs. More elaborated forms of consultations have been designed, such as "focus groups", and "notice and comment" practices supported by the Computer Assisted Web Interviewing (CAWI) method.
- In Lombardy, although not expressly foreseen by the law, consultation practices are also relatively well structured and consolidated within a dedicated unit of the *Giunta*'s Presidency office. In 2000, moreover, permanent sectoral tables were established to consult economic operators while Regional Law 1/2005 foresees the recourse by the region to external organisations to integrate the stakeholder's view in the framework of *ex post* evaluations.
- In Piedmont, consultations are normally carried out by the *Giunta*, and reaching out to stakeholders is promoted by the statute (Articles 2, 12, 72 and 86).

However, consultations are not systematically extended to the whole citizenship, and recourse to online practices has remained limited. In Veneto, the initiative "Terzo Veneto" seeks to expand upon the notion of e-democracy, and it foresees the access to online consultations.[40] In that region, public hearings are mandatory if so required by at least one-fourth of the members of the committee responsible for the legislative proposal or on request of the provinces, municipalities, and of the presidents of the main social and economic organisations.

The situation is more favourable in terms of overall institutional communication. All the Italian regions have official websites, which very often include the online publication of the official journal, and a dedicated Communications Office (*Ufficio per le Relazioni con il Pubblico*, URP). There is currently no overall obligation to publish the technical documents supporting the preparation of the legislative acts. Some regions have introduced a spokesperson (Calabria), implemented regional communication plans (Basilicata, Calabria and Tuscany), and open access to newsletters, journals and databases. In Veneto, a section of the website of the Regional Council is to familiarise citizens with the administrative jargon and illustrate the decision-making process.[41] In Tuscany, a law of 2007 specifically calls on the executive to promote the communication of information on legislative proposals as widely as possible.[42] In Piedmont, a database has offered access to regional norms since many years ("Progetto Arianna").

Regulatory Impact Analysis

Since the mid-1990s, models and practices of RIA have been diffused among most OECD countries. This phenomenon affected mainly the central level of government, and a less consistent evolution has occurred at the sub-national level. One reason for such an uneven pattern lies with the difficulty to ensure capacity to conduct RIA in a multi-level context. Regional authorities are not always properly staffed, lacking the necessary

resources to undertake an often costly and long process. In addition, data may be more difficult to obtain, collect and process, at sub-national level. Methodologies may be less developed than in central administrations.

However, lower levels of government share the same rationale for applying RIA to their regulatory process, as it can potentially bring valuable cost-benefit analysis for evidence-based decision making. International experience so far indicates that much depends on the specific context and sector regulated. Multi-level RIA systems will probably have to be *ad hoc* and certainly innovative, taking into account the mentioned challenges and shortcomings. Improving overall co-ordination and enhancing consultation practices appear to be factors for successful and efficient implementation of RIA (see Box 6.5).

In Italy, RIA at the regional level is still at an early stage. In a few regions, RIA was made obligatory by law: Basilicata pioneered this approach in 2001, and Lombardy and Piedmont followed in 2005.[43] The region of Tuscany has a longer-standing practice with impact

Box 6.5. **Making use of impact assessments at lower levels of government, Australian and Canadian examples**

In Australia, between 2006 and 2007 regulatory reform was an important undertaking for state and territory governments, with most implementing or continuing regulatory reform programmes. In April 2007, the Council of Australian Governments (COAG) reiterated its position concerning the regulatory impact analysis process, by including the requirements in its Regulatory Reform Plan. COAG has agreed that all governments will establish and maintain effective arrangements at each level of government that maximise the efficiency of new and amended regulation and avoid unnecessary compliance costs and restrictions on competition by: *i)* establishing and maintaining "gate-keeping mechanisms" as part of the decision-making process to ensure that the regulatory impact of proposed regulatory instruments are made fully transparent to decision makers in advance of decisions being made and to the public as soon as possible; *ii)* improving the quality of regulatory impact analysis through the use, where appropriate, of cost-benefit analysis; *iii)* better measurement of compliance costs flowing from new and amended regulation, such as through the use of the Commonwealth Office of Small Business' costing model; *iv)* broadening the scope of regulatory impact analysis, where appropriate, to recognise the effect of regulation on individuals and the cumulative burden on business and, as part of the consideration of alternatives to new regulation, have regard to whether the existing regulatory regimes of other jurisdictions might offer a viable alternative; and *v)* applying these arrangements to Ministerial Councils. Examples of RIA systems in different Australian territories are the following:

- Victoria has a comprehensive regulatory impact analysis process. This includes a statutory requirement to prepare a RIS (Regulation Impact Statement) where a proposed statutory rule is likely to impose an appreciable economic or social burden on a sector of the public. In addition, there is a requirement for a Business Impact Assessment (BIA) to be prepared for primary legislation that has a significant impact on business or competition. Where any legislative instrument results in a material change in the administrative burden imposed on businesses and not-for-profit organisations, an SCM measurement is required with results publicly reported.
- In South Australia, all Cabinet submissions require an assessment of regulatory, business, regional, environmental, family and social impacts. Where the regulatory impact is significant, a RIA must be attached to the submission. Where there is a proposed restriction on competition, the assessment must demonstrate that the benefits outweigh the costs and that the objectives can only be achieved by restricting competition. In addition, where there is a significant change proposed in relation to services or infrastructure in regional areas, a formal Regional Impact Assessment Statement (RIAS) must be prepared. After Cabinet consideration, RIASs are lodged in Parliament and published on the website.

Box 6.5. **Making use of impact assessments at lower levels of government, Australian and Canadian examples** *(cont.)*

- In Queensland (QLD), proposed subordinate legislation that is likely to impose appreciable costs on the community, or a part of the community, is subject to the preparation of a RIS as prescribed under Part 5 of the Statutory Instruments Act 1992 (Qld) (the SIA). In accordance with the principles outlined in the 1995 Competition Principles Agreement (CPA), the Queensland government requires that all new and amending primary and subordinate legislation that restricts competition is subject to a public benefit test (PBT). Where proposed subordinate legislation is likely to impose appreciable costs on the community, or part of the community, and contains restrictions on competition, a combined RIS/PBT can be prepared. Regulatory governance arrangements in Queensland ensure that impact assessment processes for both PBT and RIS requirements are properly enforced. For example, Queensland Treasury is responsible for ensuring that legislation is reviewed in accordance with the CPA. The Queensland Cabinet Handbook requires that departments consult with Queensland Treasury on any proposed legislative restrictions on competition.
- In New South Wales (NSW), the Subordinate Legislation Act 1989 (NSW) requires the preparation of a formal RIS for a proposed statutory rule. That is, the minister responsible must ensure that the guidelines in schedule 1 of the Subordinate Legislation Act are complied with before a statutory rule is made. The Act requires that the RIS take into account economic and social costs and benefits of proposals, and that costs and benefits be quantified, wherever possible. The objectives of the regulation must be outlined and tested to ensure they are appropriate and not inconsistent with other regulations. Alternative options must also be canvassed. Further to the requirements of the Subordinate Legislation Act, regulatory impact analysis is required for all new and amending legislation and regulation in NSW, and consultation is recommended.

In Canada, provinces and territories have introduced impact assessments conducted in a systematic way. For example, the province of New Brunswick started the integration of a Business Impact Test (BIT) in 2002 as part of the process for all new and/or amended legislation or regulations to prevent additional red tape. In 2005 the BIT application was extended to include policy advice to government. BIT's application ensures that decision makers are aware of the potential impacts of any new policy, legislative and/or regulatory amendment on business. The BIT will determine whether regulatory change is the best option to address issues facing government, while taking into account stakeholders' views, the impact on the province's competitiveness, and the cost-benefit to government and business.

Sources: Council of Australian Governments (2007), *Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies*, Canberra; This box has been drawn from OECD (2008), "Multi-level Regulatory Governance Issues: Policies, Institutions and Tools for Regulatory Quality and Coherence", Document GOV/PGC/REG(2008)10, p. 27.

assessment, with experience dating back to 2001. Overall, the region has carried out 15 trials since 2000. This region appears to be the most advanced in terms of *ex ante* evaluation practices, which involve stakeholders and formal consultation processes. The selection of the proposals subject to RIA takes place annually and follows a set of criteria for exclusion and inclusion.[44] A technical unit at the Presidency's Directorate General of the *Giunta* serves as the steering committee and contributes to parts of the analytical work. The findings are collected in a final technical report joined to the legislative proposal. Besides Tuscany, Emilia-Romagna has introduced forms of "feasibility analysis", which represents also an interesting attempt even if this is not a full-fledged RIA system.

However, most Italian regions are far from conducting RIA in a systematic way. This is also valid for the transposition of EU Community laws. Procedure and institutional settings remain to be adjusted. The majority of the regions[45] use evaluation clauses in specific

pieces of legislation. Besides regions, trial projects also exist at the local municipal level but this remains sporadic. The Commune of Lucca (Tuscany) has for instance worked with the *Consorzio* MIPA towards introducing RIA practices.[46]

Even if regions do not carry full cost-benefit analysis, most of them make some assessment of the financial and budgetary impacts when preparing draft proposals. However, practices vary, from systematic use in Liguria to rare implementation in Abruzzo and Calabria. The Marche region relies on external consultants, while Veneto launched the SAPER programme (*Sistema di Analisi per la Politica Economico-fiscale Regionale*),[47] which assists regulators in forecasting tax revenue and macroeconomic scenarios on the impact of national legislative activities on the region. Emilia-Romagna, Sardinia and Sicily would appear to lag behind, in terms of preparatory financial analysis (Coco, 2005).

Legislative simplification

Regions are increasingly aware of the necessity to simplify the regulatory environment, especially further to the constitutional changes of 2001. However, initiatives often remain partial and lack consistency. Not all regions have introduced the instrument of the annual simplification laws. Recourse to the *testi unici* at the regional level has remained relatively sporadic over the past regional legislatures. Overall, 17 codes and about 180 codifying laws have been adopted by the regions between 2000 and 2005, with cases where the *testo unico* represents a mere compilation of the existing stock of regulations in force. The procedures for the adoption of codes vary from one region to the other, depending on the relationship between the *Giunta* and the Council. Lombardy appears to be ahead, as in 2006, it modernised and regulated the procedure for the drafting and approval of *testi unici* seeking to codify entire sectors or policy matters,[48] which thus far has led to the adoption of five related codified acts. A number of regions have also introduced forms of "guillotine" (*taglia-leggi*), even if these often remain one-off measures aimed at repealing laws that were already considered to be unnecessary and out of date.

Administrative simplification and e-government

A study by FORMEZ and the *Dipartimento per la Funzione Pubblica* (2005) shows uneven progress with implementing programmes for administrative simplification and for streamlining administrative procedures. The so-called *Accordi di programma* agreed upon in Campania, Liguria, Sicily and Vento are reported to have had a limited impact. The Conference of Services (*Conferenza di servizi*), appear to have been particularly helpful, as they speed up procedures for authorisations, ensuring that different competing public interests are represented simultaneously. This allows for stipulating agreements, obtaining approval and commitments from the institutional bodies involved at the same time. Normally, decisions made using this instrument substitute for the provisions of standard procedures. A number of regions in Italy have introduced the Conference of Services.[49] Tuscany is even more advanced as it is about to implement an online version of the instrument.[50]

A permanent Commission on Technological Innovation in the local authorities and the regions has been established as part of the Unified Conference.[51] This Commission is chaired by the Minister for Regional Affairs, and offers opportunities for discussing technological innovation, following joint submissions for a given semester by the Ministers for Innovation and for Regional Affairs to the United Conference. This results in specific

guidelines and agreements binding local autonomies and the government, with responsibility for implementation delegated to the Permanent ICT Commission. In 2007, agreements concerned information mobility and broadband networks. The *PORE VALORE LOCALE* (see above) serves as the technical secretariat of the Permanent ICT Commission.

The Department for Regional Affairs has activated the ELISA programme,[52] which is a EUR 45 million project that over three years (2007-09) seeks to extend the application of ICT beyond internal tools of the local administration to reach out citizens. The programme is managed by the PORE VALORE LOCALE. In 2007, ELISA focused on sectors such as mobility, taxation and the land register, work computing and monitoring of online services.

Administrative simplification and the re-engineering of administrative procedures have recently received a higher profile. A number of Framework Programme Agreements on Information Society have been signed between the central administrations, the CNIPA and individual regions. Lombardy has signed an agreement with the National Association of Communes (ANCI) to unify the procedures for business start-up declarations, which represents a form of "one-stop shop" (*dichiarazione di inizio impresa*, DIA). This results into one single declaration, instead of 1 465 previously (one for each of the municipalities of the region).[53] Overall, 15 authorisation procedures have been abolished or simplified, with significant gains: for example the resulting time reduction represents a gain for businesses of about 1% of Lombardy's GDP, or about EUR 2 billion, in the food sector only (production, processing and distribution of foodstuffs).

FORMEZ has supported local initiatives related to one-stop shops since 1999, with a well organised website.[54] Useful databases are available online, notably those referring to legislation on the sectors related to the one-stop shop, on the required administrative procedures, as well as lists of one-stop shops in the municipalities. The website facilitates regional co-ordination, *i.e.* sharing information on regional and international simplification as well as best practices for the development and diffusion of one-stop shops. Studies are also organised in collaboration with business organisations, Confindustria, the CNA and Confartigianato. Veneto is very advanced, as almost all its municipalities have established one-stop shops since 1999. This reflects a bottom up approach rather than top down centralised initiatives. The projects have been carried forward autonomously, often with the public administration benefitting from the support and input of local chambers of commerce and other economic and professional associations. The role played by chambers of commerce also proved to be significant in other regions and provinces. In Campania, they have contributed to the promotion of the internationalisation of local businesses.[55]

As part of the March 2007 Unified Conference agreement, regions have committed themselves to the measurement and 25% reduction target of administrative burdens by 2012. The target is the same as the one adopted by the central government. Four regions (Emilia-Romagna, Liguria, Tuscany and Friuli Venezia Giulia) have joined a trial project co-ordinated by FORMEZ,[56] which complements state initiatives for the measurement of burdens nationwide (see Chapter 2). These pilot projects are to be extended and systematised in 2009, according to the budget law.[57]

Compliance, enforcement, appeals and dispute settlement mechanisms

Responsibility for the implementation of regional norms lies with the executive offices (*Giunta*). Administrative sanctions as well as premium clauses and subsidies provide incentives for compliance. Regions do not enjoy competence in penal matters. Local authorities are often primarily responsible for implementation and monitoring, for example through local health agencies (*Aziende Sanitarie Locali*, ASL), etc. Dedicated regional inspection offices are sometimes charged with following implementation and compliance, in cases of significant financial commitments. In Veneto, for instance, regional companies are subject to oversight by the regional directorates, audit and corporate investment activities, which are responsible for oversight and assessment of regional investments in stock companies and control of operations co-financed by structural funds. Health agencies are controlled by the regional directorate, audit and supervision of the public health sector. In some instances, such as in Tuscany, recourse has been occasionally made to evaluation clauses, according to which the executive is required to present regular reports on the progress of implementation to the Regional Council. The new Tuscan statute foresees a more frequent use of such an instrument (Article 45, Paragraph 2).[58] However, data on implementation and compliance rates remain scarce.

Two possible cases can be identified in terms of appeals concerning regulations and administrative measures:

- *Administrative appeals* are filed with the region itself or the President of the Republic. They enable the parties involved to request the adoption of a new decision on the contested case from the administrative authority above the one that took the decision, or to petition for cancellation of the contested ruling. These hierarchical appeals have lost importance with the lifting of the finality requirement for acts to be eligible for appeals to administrative justice.
- *Judicial* appeals can be filed with the Regional Administrative Tribunals (*Tribunali Amministrativi Regionali*, TAR). Only interested parties may file appeals with such courts. The challenges that Italy faces in managing overall judicial procedures, exist, and are even exacerbated, at the regional level (see Chapter 2). Delays are significant. TARs are reported to suffer from lack of staff. Another cause for delays lies with the lack of clarity and quality of regional regulations. While the Italian Constitutional Court rules on average in about 18 months, the regional administrative courts take 3.5 years (OECD, 2007b). The power of the regions to streamline the processes is limited by the fact that regions do not have any legislative competence on judicial and procedural matters, whose remit pertains to the state only.[59] However, room of manoeuvre remains. Tuscany for instance is considering the possibility of introducing conciliation offices to reduce delays.

A number of regions have established a regional Ombudsman as an alternative mechanism to judicial appeal, (*Difensore civico regionale*). The office of the regional ombudsman was first instituted in 1974 in Tuscany and was progressively diffused and consolidated in the 1990s further to Law 142/1990 on the Reform of Local Autonomy. In some regions, however, the person has never actually been nominated, or the office functions have been temporarily suspended.[60] The ombudsman is usually appointed by the Regional Council and selected among citizens with sound legal and administrative professional experience, and serves for the entire legislature. While their initial responsibility was more informative, competences have evolved over time since 1998 to cover information on the

initiatives undertaken by the peripheral offices of the State, with the exception of those administrations active in fields such as defence, public security and justice.[61] The Ombudsman constitutes an effective interface between the citizens and the regional public authorities, providing free support to citizens in cases of maladministration. In Lombardy, the *Difensore civico* currently also serves as the guarantor of tax payers and prison inmates.[62] Interventions follow *ex officio* or on online request of the parties – citizens, enterprises or associations. The Ombudsman's decisions are not binding on any administration. Efficacy therefore depends strictly on the respect of the independence of the office as well as the acceptance of its interventions by the public and the government.

At the regional level, various forms of alternative dispute settlement mechanisms have also been pioneered, with satisfactory results. For example, the National Consumer and Environment Association (Adiconsum) has implemented conciliation agreements with a number of service operators in the telephone sector. Similarly, in the insurance sector since 2004 it has been possible to resolve automobile accident disputes by conciliation through an agreement with other consumer associations and the association of insurance companies. Chambers of commerce contributed to establishing arbitration and conciliation commissions. Examples include the Chamber of Commerce of Belluno, Rovigo and Venice; Arbitration Chambers of Venice, Padua and Vicenza; and the "WebCuria On-Line Dispute Resolution" of Treviso (making it possible to conduct a full conciliation proceeding online). Chambers of Commerce are also active in southern regions: the Chamber of Commerce of Naples has for instance introduced on its Internet site an online conciliation service for informally settling disputes between companies and consumers/users and disputes with the Commune of Naples.

Legislative review and ex post *evaluation*

"Closing the loop" of the policy cycle is a key aspect of better regulation. In most OECD countries, legislative review and *ex post* evaluations are generally considered as the last link in the policy cycle chain. Italian regions have acquired some experience in this respect, although practice is not evenly diffused and initiatives are not yet systematic or consistent. There is generally no legal requirement for carrying out *ex post* evaluation, and so-called "sunset clauses" are not regularly used. Simplification and recasting exercises in the framework of *ad hoc* codifications through the *testi unici* offer opportunities to examine the relevance and effectiveness of existing legislations.

One of the most effective recent developments is the CAPIRe project, established by the Conference of the Presidents of the Legislative Assemblies of the Regions and the Autonomous Provinces in 2002.[63] CAPIRe seeks to disseminate the policy evaluation culture, building on the capacities of regional administration in carrying out evaluations and promoting the use of evaluation clauses in legislative texts. Reports on regional experiences posted on the CAPIRe website allows for information and best practice sharing. Of particular interest are the so-called "evaluation missions", which are launched on the initiative of a committee or by a quorum of regional counsellors to monitor and control legislation. The adoption of such an instrument is helpful in the absence of formal evaluation clauses in the original legislative text, and it makes the legislators themselves promote and commission such activities outside the legislative process. For those regions with longer participation in the CAPIRe project, *ex post* evaluation has become a much more established practice then at the national level. Lombardy has a dedicated office to assist the Regional Council since 2004 on this matter.[64]

Assessment

Evaluation practices at the regional level vary widely, both in terms of *ex ante* (RIA) and *ex post* assessments. Regions remain heterogeneous in terms of their awareness of regulatory tools and the type of instrument adopted. The usual geographical divide remains, together with a capacity factor linked to the size of the region. Smaller regions with less than 2.5 million inhabitants usually are less advanced in relying to such tools (Coco, 2005). Often legal requirements are in place, but are not matched by common practice. Nonetheless, a majority of regions has had some experiences, with significant support received from FORMEZ, and significant investments in simplification efforts, for example with one-stop shops. As for *ex post* evaluation, the experience accumulated by some of the regions participating in the CAPIRe project is significant, although it relates more to an assessment of policies than of legislation *per se*.

A rather legalistic approach tends to prevail at regional level, with a lack of consideration of alternatives to regulation, which reflects the limited adoption of RIA. Italy is experiencing a general increase in the regional normative stock, which is not mitigated by a systematic previous assessment of impacts of the various options. This lack of assessment of options has also had implications for regulations with significant economic impacts, as is the case for commercial distribution (see Chapter 7).

Consultation practices are widely diffused but remain uneven in terms of formal and systematic processes. A great variety of legal frameworks and practices exist across regions, without standard guidelines. Recourse to ICT remains limited in terms of consultation procedures. *Ad hoc*, informal and negotiated discussions take place between public administrations and sectoral parties and selected representatives of civil society, following the *concertazione* format. While this may help identify specific needs and interests and achieve compromise, it also increases the risk that vested interests that have better and more frequent access to public administration are those that are stronger and better organised. This accentuates the risk of capture. This element has significant implications for the regulation of specific sectors, as will be illustrated by the retail trade and local transport chapters.

Notes

1. Paper presented at the OECD Working Party on Regulatory Reform and Management of 21-22 October 2008, p. 13.
2. See OECD (2004), Multi-level Regulatory Governance, GOV/PGC(2004)10. These issues were further developed under the cross cutting work on multi-level governance undertaken as part of the 2007-08 Programme of Work, and presented to the Working Party on Regulatory Management and Reform at its meeting on 21 October 2008.
3. Piemonte, Tuscany, Veneto, Sicily, Lombardy, Molise.
4. Article 127 of the Constitution states the duty of the State to check the constitutionality of regional laws, not their substance and their quality.
5. See Regional Law 12/1999; Regional Law 19/2000; and Regional Law 11/2002.
6. See Programme Annuale di Semplificazione e Delegificazione della normative regionale (P.A.S.), adopted through the D.C.R. VII/268 of 10 July 2001.
7. See for instance the CAPIRe project outlined below.
8. Confindustrie regionali del nord-ovest d'Italia (Liguria, Piemonte, Valle d'Aosta), Guidelines per la Qualità della Regolamentazione, July 2004, at *www.semplificazione.it/Documentazione/Guidelines.pdf*. For an overview of the experiences of the regions in the field of better regulation during the

VII regional legislature (2000-05), see Osservatorio sulla Legislazione della Camera dei Deputati (2005), "Tendenze e problemi della legislazine regionale", in Rapporto 2004-05 sullo stato della legislazione, XIV Legislative Session, 11 July, p. 101 ff.

9. See Contributo delle Regioni Italiane alla Definizione del Programma Innovazione, Crescita e Occupazione (PICO) di Rilancio della Strategia di Lisbona, adopted by the Conferenza delle Regioni e delle Provincie Autonome on 22 September 2005, at *www.regioni.it/mhonarc/details_confpres.aspx?id=85131*.
10. See l.r. Calabria 25/2004; l.r. Emilia-Romagna 13/2005; l. statutaria Lazio 1/2004; l. statutaria Liguria 1/2005; l. statutaria Marche 1/2005; l.r. statutaria Piemonte 1/2005; l.r. Puglia 7/2004; Statuto Toscana of 2005; l.r. Umbria 21/2005; l.r. Abruzzo 28/2006, and Delibera 8/L/2004 (first reading) for the region Campania.
11. At least approved after first reading. The four regions that still have their old statutes in force are Basilicata, Lombardy, Molise and Veneto.
12. This however does not mean that in the regions with the old statutes still in force there is no legal basis for carrying out regulatory reform (see for instance l.r. Lombardy 1/2005 and l.pr. Trento 2/2003).
13. Further to the ruling 372/2004 of the Constitutional Court.
14. See M. Trani (2005), "I nuovi statuti regionali: Lo stato dell'arte. Prime considerazioni di sintesi", and M. Gallinaro, "Semplificazione normativa. Qualità della regolazione", both in Osservatorio Legislativo Regionale (eds), Nuovi Statuti Regionali: Lo Stato dell'Arte, at *www.consiglio.regione.toscana.it/leggi-e-banche-dati/Oli/Pubblicazioni/NUOVI%20STATUTI%20REGIONALI/Indice.htm*. See also Osservatorio sulla Legislazione della Camera dei Deputati (2005) and (2007).
15. See *www.consiglio.regione.toscana.it/leggi-e-banche-dati/Oli/Corso-qualita-normaz-UNIFI/06-LEZ-07-mar-08/Manuale_operativo.pdf*.
16. See the new Article 20-ter of Law 59/1997 as modified by the Simplification Law 246/2005.
17. Accordo fra lo Stato, le Regioni e le Province Autonome di Trento e Bolzano, le Province, i Comuni e le Comunità Montane in Materia di Semplificazione e Miglioramento della Qualità della Regolamentazione.
18. Article 5 of DPCM of 12 September 2006.
19. The Administrative Procedure Law of 1990 (Law 241/1990) focused on improving the structure of each procedure by reducing steps and mechanisms that reduced the administration's capacity to delay and forbid action (*e.g.* the "silent is consent" rule, self-certification, transformation of concessions and licences into notifications). The law complemented simplification with crucial provisions on the rights of citizens and accountability mechanisms.
20. See *www.affariregionali.it/Contenuti/?PageID=154*.
21. Such tools and techniques are RIA, *ex post* evaluation, the "guillotine" procedure, consultation, administrative simplification, self-regulation, de-legislation and identification of best practices. On this point see Carbone *et al*., 2007, p. 209.
22. DPCM of 24 November 2003. On the Office, see *www.affariregionali.it/Contenuti/Default.aspx?PageID=19*.
23. *www.consiglio.regione.toscana.it/leggi-e-banche-dati/Oli/Corso-qualita-normaz-UNIFI/BIBLIOGRAFIA/DOCUM-N-95-2007bibliogr-qual-governo.pdf*.
24. In accordance with Article 120 of the Constitution as implemented by Law 131/2003 (Article 8).
25. This is for instance what happens in matters related to the preservation of the landscape (Legislative Decree 42/2004) and the environment (Legislative Decree 152/2006).
26. Autorità Garante della Concorrenza e del Mercato (2005), Relazione Annuale sull'Attività Svolta, Rome, p. 8.
27. See *www.consiglio.regione.toscana.it/leggi-e-banche-dati/Oli/default.asp*.
28. See *www.parlamentiregionali.it*.
29. See *www.normeinrete.it/*.
30. See for instance G. Di Danieli (2005), "I rapporti tra regioni e Unione europea. Il nuovo potere estero delle regioni", in Osservatorio Legislativo Regionale (a cura di), Nuovi Statuti Regionali: Lo Stato dell'Arte, at *www.consiglio.regione.toscana.it/leggi-e-banche-dati/Oli/Pubblicazioni/NUOVI%20STATUTI%20REGIONALI/Indice.htm*.

31. For a more detailed analysis of the matter, see the chapter on ensuring regulatory quality at the national level above.
32. Art. 120 of the Constitution, as reformed in 2001, confers thereby "substituting powers" to the State.
33. See Title II of the Testo Unico per le Relazioni Internazionali della Regione Toscana of 26 November 2007.
34. On this point, see Chapter 2.
35. Article 5 of Law 131/2003.
36. In its opinion on Better Law Making 2005-06, CONST-IV-010. CDR 397-2006 fin.
37. Regole e Suggerimenti per la Redazione dei Testi Normativi. Manuale per le Regioni, December 2007.
38. *www.consiglio.regione.toscana.it/leggi-e-banche-dati/indici-di-qualita/default.asp*.
39. For Calabria, see Article 4 of the new statute and Regional Laws 5/2001; 26/2001; 19/2002; 11/2003; and 23/2003. For Campania, see Article 55 of the internal regulation of the Regional Council. In the Marche region, a number of specific laws require consultation, such as Regional Law 46/1992. In Veneto, the Giunta and the Council must consult in accordance with Articles 22, 35 and 36 of the statute, Article 21 of the Council's Regulation and Article 3 of Regional Law 25/1974.
40. See *www.consultazioni.terzoveneto.it/*.
41. See *www.terzoveneto.it*.
42. Article 19 of Regional Law 69/2007 on Norme sulla promozione della partecipazione alla elaborazione delle politiche regionali e locali.
43. See l.r. Basilicata 19/2001, and l.r. Lombardy 1/2005, and l.r. Piedmont 13/2005, respectively. In Lombardy, the trial phase was carried out in 2006 on two cases: intellectual property rights and disabled persons.
44. See the decision by the Giunta 2/2006.
45. Exceptions here are the regions Lazio, Sicily, Aosta Valley and probably Liguria.
46. *www.consorziomipa.it/qualita_1_scheda_lucca.html*.
47. *www.regione.veneto.it/Temi+Istituzionali/Finanza/Politiche+fiscali+e+SAPER.htm*.
48. L.r. Lombardia 7/2006 of 9 March 2006 on Riordino e semplificazione della normativa regionale mediante testi unici. Overall, the simplification activity in Lombardy has resulted in the repeal of some 650 regional laws out of the 1 900+ adopted since the 1970s.
49. Regions presenting a legal basis for the conference of services are Basilicata, Calabria, Friuli-Venezia Giulia, Marche, Sicily, Tuscany, Umbira, Valle d'Aosta, and the autonomous provinces of Bolzano and Trento. See A. Soldani, "Semplificazione normativa e amministrativa", in La qualità della regolazione delle regioni italiane. Risultati di un'indagine, Formez e Dipartimento della Funzione Pubblica, p. 33, at *http://regolazione.formez.it/node/176*.
50. A study by Formez presented at the ForumPA 2008 shows that 11 of the 12 regions considered do not forsee to introduce the online conferenza. See F. Ferrara, Nuove politiche di semplificazione: I fabbisogni delle regioni, 14 May 2008, at *http://semplificazione.formez.it/files/indagine_regionale_forumpa.ppt, slide 23*.
51. Article 14, Para. 3 of the Codice dell'Amministrazione Digitale of 2006 (Legislative Decree 159/2006) created.
52. On the basis of the funding allocated by the 2007 Budgetary Law (para. 893)
53. Further to the regional "simplification package 2007" (further to Regional Laws 1/2007 and 8/2007).
54. See *www.sportelloimpresa.it*. One-stop shops for productive activities were introduced under Legislative Decree 112/1998, while Legislative Decree 143/1998 introduced one-stop shops for the internationalisation of enterprises.
55. See the Eurosportello, a specialised branch of the Chamber of Commerce of Naples, at *www.eurosportello.napoli.it/web/guest/home*, and the Intertrade project, a specialised branch for international activities of the Chamber of Commerce of Salerno, at *www.sa.camcom.it/indicesezione.asp?IDSezione=27*.
56. "Sperimentazione della Misurazione degli oneri amministrativo (MOA)".

57. Documento di Programmazione Economica e Finanziaria (DPEF) of 2008. See *http://semplificazione.formez.it/node/377*.

58. The new statute of Lombardy, which has not yet entered into force, also includes a provision establishing a Joint Committee on Control and Evaluation tasked with proposing the introduction of evaluation clauses.

59. As per Article 117, Para 2 l) of the Constitution.

60. It is worth noting that Italy is one of the few countries where an ombudsman has not been established at the national level.

61. Laws 127/1997 and 191/1998.

62. Such a function will be extended upon the entry into force of the new regional statute, which establishes the office of a Difensore regionale (Article 61) and of a Commissione garante dello Statuto (Articles 59-60).

63. See *www.capire.org*.

64. See *www.consiglio.regione.lombardia.it/web/crl/Servizi/Analisi*.

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Chapter 7

Competition and Regulatory Reform in Commercial Distribution

This chapter analyses the liberalisation of commercial distribution in recent years, and presents the costs of barriers to entry. The regulatory framework is discussed from a multi-level perspective, including the 1998 reform and the rising role of regions, with implications in terms of land planning regulations and their interactions with planning regulations for the supply of retail services. The chapter offers a cross regional comparison of regional regulations after the 2001 constitutional reform, with a focus on store size thresholds, authorisation of medium-sized and large stores, opening hours and promotions and sales. The increasing role of regional regulations through the devolution process makes it difficult to assess the competition implications. The chapter also discusses the specific cases of pharmacies, news agents and petrol stations. Finally, the chapter analyses the scope for co-ordination mechanisms, including the State, the regions and the municipalities.

Scope and relevance of regulation of commercial distribution

Commercial distribution, and especially retailing, has been and still is one of the most heavily regulated sectors of the Italian economy. As this is a domestic sector, policy analysts have tended to think that efficiency in retailing was less crucial than the efficiency of manufacturing industries that compete in the global market or of other services that indirectly condition the performance of the whole economy. Commercial distribution is prone to intervention by pressure groups and specific vested interests in retailing or in suppliers' industries. This may result in regulations that alter the functioning of the market to the advantage of incumbents, although they are proposed as instruments to protect the public interest. Costs have been very high both in terms of immediate loss of consumer welfare and in negative dynamic effects that do not only involve retailing and wholesaling, but also extend to the competitiveness of manufacturing industries producing consumer goods and, eventually, to the whole economy.

The slow path towards liberalisation of commercial distribution in Italy

Regulation of commercial distribution was introduced in the early 1970's when the diffusion of large stores managed by large multiple retailers became a threat to small traditional shopkeepers. Though consumers would have benefited from their diffusion through lower prices and the opportunity to concentrate purchases, without some form of restraint, a large number of small independent retailers, especially in the food sector, would have lost their jobs. Thus, regulations were established with the aim of balancing the interest of the consumer with the social cost of widespread bankruptcies among small shops. These were the conditions that led to the enactment of Law 426/1971, which, with various amendments, was to last until 1998. It provided a general regulatory framework that each municipality, and to a lesser extent each region, could use more or less restrictively setting the degree of entry barriers which made the modernisation of commercial distribution acceptable to local conditions. That is, barriers to entry have been the results of the interplay of lobbies with conflicting interests at a local level.

A reform of Law 426/1971 had been called for from many sides for many years, but was strongly opposed. Entry barriers had been so successful that it became more difficult to remove them over time. Regulations had sheltered commercial distribution from market forces so effectively that it was difficult to find a consensus on a liberalisation that could have had a considerable impact on the sector. It is worth noting that these arguments did find some popular favour. In 1995 two referendums about retailing where held. The first was on the abolition of the regime of authorisation of stores; the second on restrictions of opening hours. Both were lost by proponents, showing that the support to small retailing was fairly strong and that the advantages of liberalisation were not obvious to a large part of society.

In 1998, after almost thirty years and much debate, a reform of the regulations of commercial distribution was eventually carried out with the approval of Legislative Decree 114/1998. The new statute introduced a number of radical changes, reviewed below, but left in

place a number of elements safeguarding incumbents from the effects of liberalisation. In essence, this was done by maintaining a regime of authorisation of stores above a certain size and entrusting regions, which for the first time became the main public authority responsible for regulating this field, to fill the frame established by the new statute. Regions could use their new powers to adapt regulations to local conditions, and they did it in ways that sometimes went against the reform. Barriers to entry, direct and indirect, were reintroduced, sometimes establishing quantitative thresholds on the amount of sales space available to new stores. This led the Competition Authority (*Autorità Garante della Concorrenza e del Mercato*, AGCM) to intervene on many occasions, and the issues it dealt with are a good guide to the kind of anticompetitive regulations introduced by some of the regions (AGCM, 1999).

In the two years that followed the approval of Legislative Decree 114/1998, many regulations were produced at regional level. This was a foretaste of what followed just a year later, in 2001, after the approval of the reform of the Italian Constitution that was meant to open the way to a federalist transformation of the institutional framework of the country. With this move regulation of commercial distribution, among many other issues, became the sole responsibility of regions, which were no longer bound by State legislation unless their statutes impinged upon matters on which the competence of the State prevails. The implication was that Legislative Decree 114/1998 ceased to be binding and was to remain relevant only as long as regions did not intervene by enacting their own regulations. Almost from the outset, it became apparent that the issue of competition was playing a central role in Regional legislation regarding commercial distribution. The pressure from below, from local vested interests, was strong and the new wave of regulations in many cases went against the 1998 liberalisation reform. This trend sooner or later had to raise the issue of the sole competence of the State on matters concerning competition.

This happened in 2006, and then again in 2007, when the government intervened through Decrees 223/2006 and 7/2007, later converted into Laws 248/2006 and 40/2007. Law 248/2006 establishes general rules to promote competition in retailing (Art. 3) and liberalises the sale of over-the-counter pharmaceutical products (Art. 5), while Law 40/2007 only marginally touches commercial distribution. An extension of the liberalisation of the sale of pharmaceutical products, originally proposed, was not approved. These two statutes are the latest important measures intended to reform regulations of commercial distribution and are currently the reference for further attempts to promote competition in the sector.

The statutes that regulated retailing from the enactment of Law 426/1971 until now have an important feature that needs to be made explicit, namely the exclusion from general provisions of sectors thought to need specific regulations due to their particularities and the crucial impact on society of the services they provide: health (pharmacies), information (newspaper and magazine distribution) and transport (petrol stations). They have been and still are regulated by specific provisions (see section on The regulation of retail sectors). Overall, liberalisation in all these sectors has been limited and slower than for the rest of retailing.

Immediate and dynamic costs of regulations

The cost of entry barriers in commercial distribution has been and still is very high. However, the complexity of the dynamic implications of entry barriers has made a comprehensive quantitative assessment of their cost to consumers difficult. The immediate cost, easily measurable in terms of price differentials across traditional and modern store formats, is only part of the total loss of welfare due to inefficiencies arising along the value

chain, involving commercial firms as well as their suppliers and, through them, the entire economy. To assess this overall loss goes beyond the scope of this report, but before starting to review the regulations that slowed down the diffusion of large stores and the consolidation of retailing in Italy, it is useful to remind briefly the nature of these costs. They refer to immediate and indirect consequences of entry barriers as they ration the services of new store types to consumers; reduce efficiency in retailing; slow down the reallocation of economic activities within the value chain; and reduce the bargaining pressure of retail firms on their suppliers.

The *rationing* of the services of large and cheaper stores means that consumers who would be willing to purchase from them cannot do so and have to continue buying from traditional and more expensive ones. The negative welfare implication of a reduction of modern store types can therefore be measured on the basis of price differentials between traditional and new modern and larger stores. Three studies have attempted to evaluate the cost of the delayed modernisation of Italian retailing to consumers (Table 7.1).[1] They refer only to grocery retailing. Nomisma (1998) estimated how much would have been saved if Italian grocery retailing had a structure equal to the average of the main European economies. On this basis, considering only price differentials across store formats, the cost to consumers was estimated as 0.4% of GDP. Pellegrini (2000a) tried a different and more comprehensive estimate, using as a benchmark margin differentials across store formats in Italy and France. Depending on different sets of assumptions, the cost to Italian consumers was estimated in a range between 1.0 and 1.5% of GDP. These two studies account for the situation under the regulatory regime of Law 426/1971. Ravazzoni (2004) updated the estimate of Nomisma with reference to 2003, therefore after the first few years of application of the reform of 1998. It also included the effect of the lower diffusion of private labels in Italy, as a consequence of the lower market share of large multiples (§ 11). He reached an estimate of 0.6% of GDP. It is worth noting that though the reform liberalised entry, the gap in the diffusion of modern store formats between Italy and the main European economies did not change much. The process of retail modernisation continued, and was only just maintained by the liberalisation, which did not allow to close the existing gap with the main European economies.

Table 7.1. **Estimated cost of barriers to entry in retailing in Italy**

Retail sector considered		Benchmark	Basis of computation	Involved cost as % of GNP
Nomisma (1998)	Grocery retailing	Main European countries	Price differentials across store types	0.4%
Pellegrini (2000)	Grocery retailing	France	Retail margins in Italy and France	In a range from 1.0% to 1.5%
Ravazzoni (2004)	Grocery retailing	Main European countries	Price differentials across store types	0.6%

The second type of effect, *efficiency gains* lost due to delayed consolidation of the retail industry in Italy, is more complex to account for since it has dynamic implications. The price advantage to consumers of modern retailing depends on the efficiency of large multiples, which is influenced by the structure of the industry. Regulations impinge upon it on at least two accounts, as they may reduce the economies of scale firms can achieve and induce negative externalities on the way operations are run. Retail firms can exploit substantial economies of scale in most central functions that serve their networks of stores. Though it would be very difficult to estimate the costs implied by the lack of economies of scale to Italian retailers, comparing the size of the main retail groups in Italy and in other comparable countries shows that the existing gap is substantial and that these costs must have been considerable (Table 7.2). Negative externalities of planning regulations on operations are particularly relevant when constraints are imposed on

locations, leading firms to accept suboptimal locations. This is a common implication of restrictions imposed by retail planning whose aim is to reduce the impact of new stores on incumbents. To estimate the cost implied by these negative externalities would be very difficult, and nobody has tried to do it.

Table 7.2. **Market share of the first 5 grocery retailers in Italy, France, Germany, Spain and the UK, 2007**

Rank	1	2	3	4	5	Total
Germany	Edeka	Rewe	Aldi	Markant	Metro	
	25.7	18.2	17.4	13.8	7.6	82.7
France	Carrefour	Leclerc	Casino	Intermarché	Auchan	
	26.1	15.9	13.3	12.8	12.5	80.6
UK	Tesco	Asda	Sainsburys	Morrison	Coop	
	29.2	15.6	14.8	10.5	6.2	76.3
Spain	Carrefour	Merdcadona	Eroski	Auchan	ECI Hipercor	
	22.5	15.3	9.6	7.6	7.6	62.6
Italy	Coop	Carrefour	Conad	Auchan	Selex	
	14.6	9.5	8.5	8.1	7.5	48.3

The *structure of the value chain*, that is, the way activities within the value chain are allocated between manufacturers and retailers, is not given, but varies depending on the relative efficiency of the two agents. The two most important activities involved are physical distribution and branding. As retail companies develop large networks of stores, it becomes more efficient for suppliers to move from direct delivery to stores, to delivery to retail warehouses. Retailers take charge of redistributing merchandise to their network of stores, and a considerable part of physical distribution is reallocated to them. It is an efficiency gain that is first reflected in lower upstream prices and then, if retailing is competitive, in lower consumer prices. A second and often overlooked reallocation of activities in favour of retailers entails branding and the diffusion of private labels. These are a low cost way to convey to consumers information and guarantees on products since they cover a large number of goods using single brands, those of retailers, that require lower marketing costs (mostly advertising) than equivalent products branded by manufacturers. For standard products that do not carry much innovation, retailer brands offer consumers price differentials with respect to leading brands of, typically, about 20%. The welfare implications of private labels are enhanced by the scale of operations: their development is an almost fixed cost and decreases per unit sold as retail firms become larger through consolidation of the sector. In Ravazzoni (2004), the cost of the lower diffusion of private labels in Italy was estimated at 0.2% of GDP (see also Table 7.3).

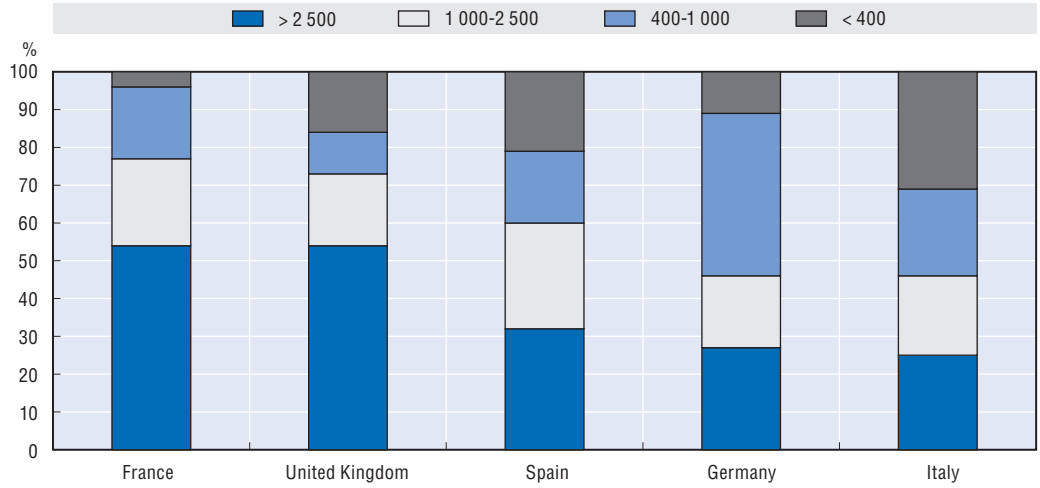
Table 7.3. **Grocery retailing: Market share of private labels in Italy, France, Germany, Spain and the UK, 2007**

Country	Market share of private labels in super and hypermarkets*
UK	40
Germany	30
Spain	26
France	25
Italy	12

*Discount is not included.

Source: IRI.

Figure 7.1. **Grocery retailing: Market shares by store dimension 2007**



Source: ACNielsen.

Large retailers exert a strong *bargaining pressure on suppliers* to obtain discounts with respect to listed prices. These discounts are justified by the reallocation of the activities in the value chain, as physical distribution and part of branding move downstream, and by the reduction of transaction costs that benefits suppliers in terms of smaller sales forces and lower inventory costs. A further component of the efficiency gain arising from retail pressure on manufacturers relates to reductions of rents gained by those who have some degree of monopolistic power, that is, by manufacturers of powerful brands.[2] Retailers have ways to put their suppliers under strain and make them forego at least some of the rents they may obtain from monopolistic power. More generally, they exert pressure on upstream prices that pushes their suppliers to try to increase their efficiency and to innovate so to be able to strengthen their bargaining position.[3] And since suppliers have their own suppliers too, this pressure is diffused in all upstream stages of the supply chain, namely a large part of the whole economy. This chain of effects is often overlooked, but it accounts for the most important dynamic contribution that a competitive retail system can provide to the overall efficiency of the economy (Pellegrini, 2006). This chain of effects is complex, though, and there is no published evaluation of them within the context of the Italian economy.

Regulation of commercial distribution in Italy

Law 426/1971 and its imprinting on regulation of commercial distribution

Law 426/1971 contains comprehensive provisions devised to control most features of competition in retailing, and it is a useful framework to describe the evolution of regulations. Though amended many times, the law has been in place until 1998 and has become a deeply ingrained framework, the one that those involved with commercial distribution in politics and in local administrations have been using for almost 30 years. It is therefore essential to understand the evolution of regulations to this day. Law 426/1971 affected competition conditioning entry in retailing: by firm size; by store size; by type of goods sold; by trading time; and by location. These entry barriers are summarised in the first column of Table 7.4. The reference retailer addressed by the law was the independently run, one-store company with an established position in its local market.

Table 7.4. **Law 426/1971 and Legislative Decree 114/1998**

Regulations and their implications as barriers to entry	Law 426/1971	Legislative Decree 114/1998 (the Bersani reform)
Trade registry Barriers to entry by firm size	To be able to operate, all retailers had to register at the *Registro degli esercenti commerciali*, (REC), a professional list. Registration required to pass an exam to prove to have adequate professional qualifications.	The trade registry (REC) is abolished.
Authorisation to operate Barriers to entry by store size	Beside registering at the local Chamber of Commerce, as any other company, retail firms had to obtain a specific authorisation by the mayor of the relevant municipality. Retailers operating stores of more than 400 m^2 located in municipalities with up to 10 000 inhabitants, or stores of more than 1 500 m^2 in municipalities with more than 10 000 inhabitants, had also to obtain a *nihil obstat* from the relevant regional authority. The regional authorisation of large stores and shopping centres was intended to avoid that municipalities would authorise them too easily, attracted by the fiscal and employment advantages of having them located in their territory.	Small stores – up to 150 or 250 m^2 respectively in municipalities with up to or more than 10 000 inhabitants – do not need authorisations to open, provided that they occupy a building or part of a building with a commercial destination. Medium-sized stores – up to 1 500 or 2 500 m^2 respectively in municipalities with up to or more than 10 000 inhabitants – have by authorised only by the relevant municipality. Large stores – exceeding the limits of medium-sized ones – also need a regional authorisation. This is granted by *conferenze dei servizi,* committees those members represent the relevant Region, province and municipality and also trade associations and consumer associations.
Product lists Barriers to entry by type of goods sold	The authorisation granted by the relevant municipality must refer to one or more *tabelle merceologiche*, product lists that detail what kind of merchandise can be sold in any given store. The last version of these lists, the one simplified by the Ministry Decree 375 in 1988, defines 15 types of assortments. Product list VIII allowed to sell (with some exceptions) all kind of goods and was used to open supermarkets and hypermarkets.	Previous "product lists" are abolished, maintaining only a distinction between food and non food stores. Authorisations of medium-sized and large stores must refer to one or both of these specialisations.
Trading hours Barriers to entry by trading time	Until 1987, trading was possible for a maximum of 44 hours a week. Thereafter, regions had to define guidelines, to which municipalities had to conform in setting opening and closing hours. Sunday trading was not generally allowed, though an exception was made for newsagents, booksellers, recorded music shops, antiques and art dealers, and furniture shops. All stores had to close for half a day during the week; the day was decided by the relevant municipality and was differentiated by store type. Stores had to open not later than 9 a.m. and close not later than 8 p.m. (9 p.m. in summer time).	Stores can open for 13 hours a day, from 7 am to 22 pm. Sunday trading is possible in December and during an additional 8 Sundays a year. Municipalities or part of municipalities with a high inflow of tourists are exempted from limits on trading hours.
Retail planning Barriers to entry by location	Municipalities had to prepare a Retail Development Plan, a separate document with respect to the master plan. The aim of these plans was to estimate the demand of retail services for each product list in the homogeneous sub-areas in which the municipality was divided. This was the basis to determine the amount of sales areas that could have been authorised in each sub-area for each product list. If demand was considered already satisfied in one or more sub areas for one or more product lists, the only way to enter the market was through the acquisition of an existing store.	Retail Development Plans are abolished: provisions with respect to localisation of retail activities should be included in master plans, as for any other activity.

The main provision of the law was the introduction of a new planning instrument specific to retailing, the Retail Development Plans. Municipalities were required to formulate a plan for the "rational" development of the retailing network over their territory. These plans had to be prepared in addition to standard town planning instruments (master plans). The procedure can be summarised as follows:

- Municipalities had to determine the amount of sales area needed to serve actual and expected demand for each typology of assortment identified by the law ("product lists", see Table 7.4).
- On the basis of estimated demand, municipalities had to prepare their Retail Development Plans: the municipality was divided into a number of homogeneous areas and detailed indication had to be given about space available for each typology of assortment within each area.

- New stores had to fit into the Retail Development Plans: they could be opened only if, in the sub-area where they were to be located, there was store space available for the typology of assortment they had applied for.

The effects of Law 426/1971 will not be discussed in detail. It is well known that it slowed the development of modern retailing in Italy, an issue on which a vast literature was produced spanning over 30 years. The first general report on competition, produced by the AGCM in 1993 (AGCM, 1993), in response to a specific instruction included in the then new Competition Act, focused on the regulatory structure affecting commercial distribution. The AGCM asked for new rules allowing for a freer entry of new stores: in essence, it asked for the abolition of Law 426/1971. The report was an important step in the discussions that led to the so-called Bersani Reform in 1998 (Legislative Decree 114/1998), which introduced the second regulatory regime of commercial distribution in Italy.

The reform of 1998 and the rising role of regions

The reform, known by the name of the then Minister of Industry and Commerce, Pier Luigi Bersani, was meant to liberalise the sector, an aim that to a large extent was achieved. Most of the entry barriers introduced by Law 426/1971 were removed and the new decree became a general and common framework to be filled with more detailed regulations by regions (Table 7.4, Column 2). The trade registry (REC) was abolished, and so was the need for authorisation to open small stores (up to 150 or 250 m^2 respectively in municipalities of up to or more than 10 000 inhabitants). In essence, small stores could be freely opened. Medium-sized stores (defined as stores up to 1 500 or 2 500 m^2, respectively in municipalities of up to or more than 10 000 inhabitants) still had to obtain an authorisation, but only from the relevant municipality. Large stores (or shopping centres), *i.e.* those exceeding the thresholds of medium-sized stores, had also to obtain, as before, a regional authorisation. The latter was to be granted or denied by the *conferenze dei servizi*, committees whose members represent the relevant region, province and municipality as well as the main retail associations of consumers (for the first time institutionally involved in the authorisation of large stores). Entry barriers defined in terms of the kind of goods stores could sell were much relaxed, abolishing the previous "product lists" and leaving only the obligation to state if the merchandise sold were food or non-food goods. As for trading hours, they were extended: retailers could open for 13 hours a day, from 7 am to 22 pm; Sunday trading was possible in December and during an additional 8 Sundays a year; municipalities (or areas within municipalities) with high tourist inflow were exempt from limits on trading hours. Finally, but this is a central issue of the reform, Retail Development Plans were abolished: provisions with respect to localisation of retail activities would have to be included in master plans, as for any other urban activity.

Before Legislative Decree 114/1998 retailers had to comply with two separate sets of regulations to open a store: land planning regulations and planning regulations involving the supply of retail services, both in terms of quantity (sales area available) and quality (store types). The first involved the building or part of building that was to be occupied by the store, which had to be designated for retail by the master plan. The second concerned the demand for retail services that municipalities would be expected to satisfy, which translated into surface area for the relevant "product list" in their Retail Development Plans. Complying with the first set of regulations did not automatically imply to satisfy the second and *vice versa*. The aim of the reform was to remove the second requirement. Zoning, the basic principle of town planning, establishing restrictions related to the

economic activity to which land is put to use, was to become the only guiding principle to control entry, in the hope of removing or at least reducing the rationing of space available to modern retail formats. With the abolition of Retail Development Plans, zoning and town planning could return to their proper function: the control of externalities on neighbouring land uses and the optimisation of the planning of public facilities. For small stores this was easily achieved by abolishing authorisations to trade and "product lists". For medium-sized stores, with a limited influence that remains confined within a municipality, a requirement for specific authorisation was left in place, though the master plan should have been sufficient to control possible externalities. For large stores, whose influences go beyond single municipalities and require some form of large area planning, regional authorisation requirements remained in place. Overall, even though a regime of authorisations was in part confirmed, the aim of Legislative Decree 114/1998 was clear: authorisations had to involve land planning considerations and not the supply of retail services as such. One exception was made to this principle (Article 6, Paragraph 1, letter b), so that in granting authorisations for large stores attention had to be paid to the equilibrium among different store types. This apparently small concession to businesses eager to open large stores reintroduced a principle of supply planning, if not in quantitative terms, then in giving credit to qualitative restraints. This concession may appear of secondary importance, but it was used extensively by regions to reintroduce supply planning in retailing.

The discussion that led to the Bersani reform took place at a time when Italy was moving towards a federalist institutional framework. Legislative Decree 114/1998 was influenced by this, and on many important matters it left regions to complete the regulatory frame defined by the reform. Regions were asked to modify their land planning laws to account for commercial distribution that until then was regulated by a specific and separate planning instrument. However, the use of zoning to control externalities and its use to set quantitative limits to the expansion of, in this case, large stores is subtle. Many regions applied zoning to reintroduce quantitative and qualitative limits to the number and the type of stores to be allowed to enter the market. This was done in two main ways, through general planning documents stating how the region expected large retail establishments to develop and be located, and by setting the required standards to allow for their localisation. Municipalities, on their side, had to update their planning instruments to accommodate for retailing and could, at a lower scale, resort to this same approach. At least in some cases, regulations abolished by the reform were reset in the new institutional structure.

A review of the regions' regulatory activity in the short period between the enactment of Legislative Decree 114/1998 and the change in the Constitution in 2001, was made irrelevant by the constitutional amendment providing regions with the sole competence to regulate commercial distribution. For some regions, conforming to Legislative Decree 114/1998 has been a long and difficult process. Lack of competences in the field of commercial distribution and pressure from local lobbies slowed down legislation and had a negative influence on liberalisation. Many regions tried to use land planning regulations to reinstate barriers, sometimes quantitative, more often qualitative, to new large stores (Pellegrini, 2000b). Overall, an analysis of the legislative activity of the regions shows that they tended to pay relatively less attention to the competitive implications of their intended draft regulations. As a result, the Competition Authority had to intervene on many occasions expressing critical views (AGCM, 1999).

Below cost sales

Legislative Decree 114/1998 also stated that limits to below cost sales had to be imposed. It did not identify them, but established that measures had to be enacted by a specific statute (Art. 15, Paragraphs 7-9). This was eventually carried out in 2001 by DPR 218/2001. The essence of the regulations can be summarised as follows.

- Retailers with a dominant position within their province (defined as a market share above 50%) are forbidden to sell below cost.
- All other retailers are allowed to sell below cost three times a year for no more than 10 days each time; at least 20 days must elapse between two below cost sales; no more than 50 products can be offered below cost each time.
- Below cost sales are allowed without limitation in the case of merchandise with particular characteristics (produce and, in general, food products near the end of their shelf life; products typically sold on the occasion of festivities; obsolete products; products with some minor defect or used in fairs and exhibitions).

Unlike in France (Commission Canivet, 2004; Colla, 2006), limitations on below cost sales did not have a strong impact on retail pricing and on the bargaining process with manufacturers (Bellini, 2005). This is probably due to the way controls were devised, *i.e.* holding municipalities accountable. To establish if a sale is below cost requires the availability of invoices and other contractual agreements between manufacturers and retailers. These are difficult to obtain at a local level, since they centralised at the headquarters of the firm, and complex to analyse. Besides, since the law does not forbid high discounts if these are made in co-operation with manufacturers (which reduces the upstream price for the duration of the promotion), controlling below cost sales would require a continuous monitoring of promotional activities that, in the grocery sectors, are typically launched every two weeks. This task goes beyond the resources and competencies of 8 000 municipalities. Retailers' behaviour also helped to reduce the incentive to perform active controls, since they formally complied with the new dispositions. Below cost sales have become a much advertised form of promotion following the rules established by the law. If retailers also practice below cost sales on other occasions, it is difficult to tell as they become part of their intense promotional activity which, again, municipalities are not structured to monitor.

Regional regulations after the constitutional reform of 2001: A cross regional comparison

After the constitutional reform of 2001, Legislative Decree 114/1998 remained the rule of reference, but this was only the case until regions decided to depart from it through regional laws. It has been used as a guideline, in part due to the legislation enacted before the constitutional reform and in part as a benchmark to measure innovation introduced after 2001. Some regions moved further. Others did not. However, the State remained responsible for matters dealing with competition and consumer protection. The separation of competencies between the State and regions has raised issues on the vertical structure of regulations (see section on State, regions, municipalities: The vertical structure of regulations). This section presents the commercial distribution of regulations across the six regions that participated to the OECD study.

The complexity of existing laws, decrees and other regulatory instruments is such that to make comparison possible, various provisions were analysed in terms of issues of

particular relevance for their competitive implications. The AGCM study (2007) was used as a starting point to define the most relevant issues for the analysis. The Authority compared the regions' attitude in terms of town planning requirements for new stores; quantitative constraints for new stores; the complexity of authorisation procedures; measures that suspend authorisations; opening hours; procedures used to define touristic municipalities where opening hours are unrestricted; promotions and sales; rules applied to allow wholesale and retail in the same premises. In comparing the statutes of Italian regions with respect to these issues, the Authority identified three clusters (Table 7.5). The first cluster includes regions where regulations define a competitive environment. The second concerns regions where regulations mitigate competition. The third includes regions where regulations hamper competition. On this basis, an empirical analysis was carried out to correlate the economic performance (inflation, occupation, investment) of these three clusters with the degree of liberalisation of their regulations. Results confirmed a positive correlation between liberalisation and economic performance, and the study has been a first test of the impact of regulations on competition at regional level.[4] The issues used in this section to compare regions have been slightly redefined and are the following.

Table 7.5. **Regional regulation of commercial distribution: Restrictions to competition**

Low	Medium	High
Campania	Abruzzo	Friuli Venezia Giulia
Emilia Romagna	Basilicata	Lazio
Lombardy	Calabria	Liguria
Marche	Tuscany	Apulia
Molise	Veneto	Sicily
Piedmont		Trentino Alto Adige
Aosta Valley		Umbria

Source: AGCM, 2007.

Store size thresholds: they define different authorisation regimes and different town planning requirements and influence market entry in various ways. Lower thresholds for small stores restrict the area of liberalisation where authorisation is not required. Lower thresholds for medium-sized stores reduce the scope for the simplified authorisation regime requiring only the assent of municipalities, widening that of the more complex and costly procedures which involve Regions and provinces. Moreover, the introduction of more detailed dimensional thresholds for medium-sized and large stores may involve more complex and costly town planning procedures.

Authorisation of medium-sized and large stores: procedures and rules of authorisations raise the issue of entry barriers. These may depend on quantitative limits for new stores and/or qualitative requirements that make authorisations more difficult and more expensive to obtain. Qualitative requirements can be devised in such a way that, even though there are no explicit limitations on the number of new stores, entry becomes very difficult or impossible.

Opening hours: to be able to trade during particular hours of the day or on Sundays and bank holidays is an important competitive lever, especially for some distribution formats and certain types of shopping centres. Large stores selling durable goods purchased by consumers after a long search, take advantage of Sunday trading (even Law 426/1971 allowed it in several cases). One of the most important service components of convenience

stores is their long trading hours. Large shopping centres offering a mix of retailing and entertainment, and factory outlet centres, have a strong interest in Sunday trading. Retailers operating in touristic destinations can take advantage of both longer trading hours and Sunday trading.

Promotions and sales: they are an essential feature of retail competition, and constraints on the different types of promotional initiatives can greatly reduce competition. Apart from below cost sales, which are regulated at national level and monitored by municipalities (Paragraphs 20-21), regions have produced regulations involving most other forms of promotions and sales.

Store size thresholds

Among the regions considered in this section, only one, Sicily, defined new thresholds for small stores, differing from those of Legislative Decree 114/1998. In small municipalities (up to 10 000 inhabitants), stores are defined as small, and therefore free to open without authorisation, if they have less than 100 m^2. An intermediate threshold is introduced for municipalities of more than 10 000 inhabitants and less than 100 000 (up to 150 m^2) and the upper threshold, applicable only to large towns (more than 100 000 inhabitants), is reduced to 200 m^2. The area of liberalisation of entry is therefore reduced with respect to the Bersani reform.

Three regions have redefined medium-sized stores. Sicily, which again used three classes of municipalities, reduced the upper limit that requires only an authorisation from the relevant (large) municipality to 1 500 m^2 (it used to be 2 500 m^2 in Legislative Decree 114/1998). The lower limit (small municipalities) is now 600 m^2 instead of 1 500 m^2. Therefore, the region widened the range of store sizes that have to obtain a regional authorisation, reducing the scope for autonomous decisions by municipalities. Piedmont confirmed the thresholds of Legislative Decree 114/1998, but introduced a wider range of store sizes (15 different definitions for food and non-food stores for the usual two classes of municipalities by population) with the aim to allow for a more detailed planning of retail locations in master plans and for the computation of related standards (*e.g.* parking slots). Veneto confirmed store sizes thresholds of Legislative Decree 114/1998 but introduced a new one of up to 1 000 m^2 that discriminates against different planning procedures (§ 32).

Four regions have modified the definition of large stores. Piedmont introduced a detailed classification of large stores similar to the one used for medium-sized ones. Veneto set an upper limit of 15 000 m^2 (it becomes 25 000 m^2 if existing units are closed in order to open the new store). Sicily introduced two thresholds, up to and above 5 000 m^2, to be used to differentiate authorisation requirements. The same was done in Tuscany, which defines a range of store sizes for town planning purposes.

Apart from Sicily, the other regions did not modify store sizes defined by the Bersani reform, and all of them (in fact, all regions in Italy) have maintained the distinction among small, medium-sized and large stores that at least serves as a common reference to move in the maze of regulations produced after the constitutional reform of 2001. Often, a wider range of dimensional definitions were thought useful for the sake of retail planning, but these did not alter the common framework that subjects the three basic dimensional classes of stores to as many different regulatory regimes: liberalisation of small stores; municipal authorisation of medium-sized; regional authorisation of large ones. Among the regions considered here, only Veneto introduced an upper limit to large stores.

Authorisation of medium-sized stores

Procedures and rules of authorisation define the conditions to be met to be allowed to enter the market. In the case of medium-sized stores they have to be applied by municipalities and can involve quantitative and/or qualitative constraints. Lombardy and Molise introduced quantitative limitations in the form of upper dimensional limits for new stores in small municipalities, in municipalities located in the mountain area (Lombardy), and in historic town centres (Molise). But, while Lombardy leaves municipalities to decide whether to set these limits or not, Molise sets a binding limit of 400 m^2. Veneto established a different and stricter rule: new stores exceeding 1 000 m^2 can be authorised only if the total sales area of medium and large stores operating in the municipality does not exceed that of small ones. This rule may have a particularly restrictive effect in small municipalities whose consumers are tributary to larger ones with a wider choice of purchasing alternatives.

Qualitative restrictions on medium-sized stores come from regulations that refer to town planning. In principle, they are justified to limit negative externalities and to allow for a better planning, both in terms of equilibrium among different urban functions and of efficient provisions and use of infrastructures. Lombardy and Piedmont use this approach and require new medium-sized stores above a certain threshold to present impact analyses to detail their effects on the existing transport network, the environment and also on the system of incumbent stores. The first two requirements fit an economic approach, but the latter, which is a common feature of regulation in all regions, particularly for the authorisation of large stores, reintroduces a measure of supply planning (see below). This is evident in the case of Veneto, which, having imposed quantitative limits, also requires municipalities to take into account the support of small retailers when establishing rules to be followed in authorising new stores.

Authorisation of large stores

Piedmont and Lombardy adopted a similar approach based on extensive evaluations of the impact of new stores on the existing commercial network, the transport infrastructure and the environment, and of its coherence with planning guidelines at both local and regional levels. Quantitative limits are not set. They are present in the other four regions. Veneto, Tuscany and Sicily set these limits for macro areas of the region through specific planning documents, while Molise allows new large food stores only if they substitute existing stores for at least 80% of the proposed sales area, and new non food stores only if they do not exceed 5 000 m^2.

To satisfy qualitative requirements, all regions require more or less complex impact analyses of new large stores. Those of Piedmont and Lombardy are particularly comprehensive, while other regions define them in a simplified way, and Molise concentrates the scope of the impact study on the competitive implications of new stores on the existing commercial network. Impact studies have therefore become a standard requirement. They involve not only the evaluation of externalities on the environment, on transport and on other planning objectives, but also the evaluation of the economic impact of new stores on incumbent retailers, notably small retailers and retail districts of city centres. If the latter are negative (loss of jobs due to closure of existing stores uncompensated by the proposed new stores), new stores are not denied authorisation but the negative impact is taken into account. In Lombardy, for example, externalities, and among them loss of employment, are measured and translate into a score card used to

determine the compensation which has to be paid to be granted the authorisation for the proposed new retail establishment. In continuity with the tradition of Law 426/1971, these kinds of evaluations are a milder form of retail supply planning, now often redefined in terms of guaranteeing the equilibrium among different store formats, of sheltering SMEs and of promoting retailing in city centres. In regions like Lombardy, where modern retailing is now dominant, this kind of measure tends to advantage large incumbents. However, the notion that new (large) stores can make existing ones close is still considered wasteful. Many seem to believe that new retail facilities make sense only if unsatisfied demand exists, disregarding the positive effect of substituting existing stores with new and more efficient ones.

Opening hours

In defining their rules on opening hours most regions did not significantly modify those of Legislative Decree 114/1998. The most notable exception is Lombardy which recently approved a law (LR 30/2007) that introduces further liberalisation. The compulsory half-day closure every week is now optional, Sunday/holiday trading is possible for a much larger number of days; small stores and stores in city centres are exempted from limitations of when to trade and so are touristic municipalities. The only region that reduced opening hours with respect to Legislative Decree 114/1998 is Sicily: from 13 to 12 hours a day.

Wider differences across regions can be found when considering the issue of liberalisation of trading hours in touristic areas. While Lombardy and Molise define such areas in a simple way, Piedmont, Veneto, Tuscany and Sicily submit the status of touristic relevance to the satisfaction of a number of very detailed parameters. In the past, the qualification of touristic relevance could easily be obtained and this was often used as a loophole to be able to open freely and compete more effectively with nearby stores located in municipalities without such qualification. Small municipalities with large shopping centres were a case in point, raising arguments and conflicts between municipal administrations. The rules set by four of the six regions are therefore intended to identify municipalities objectively where tourism is an important component of the local economy. The fact remains that different regulations across regions and municipalities may lead consumers to cross borders, attracted by more liberal trading hours. If more regions were to follow Lombardy in terms of liberalisation, regulatory competition may eventually lead to a generalised loosening of constraints on opening hours.

Promotions and sales

Three different types of promotions and sales are regulated by regional statutes: clearance sales, mid/end-of-season sales and promotional sales. The regulation of clearance sales and other types of promotional activities result from mid/end-of-year sales. In the absence of regulations, competitive retailers tend to anticipate promotional activities and that may eventually lead some of them to offer sales at the beginning or during the season or on the busy shopping days before Christmas. This behaviour is strongly opposed by independent retailers, and regulations to prevent this have always been common. But once competitive retailers are regulated, they try to use clearance sales or other forms of promotion to obtain the same results and that leads also to a regulatory response.

The six regions considered have in place similar regulations of mid/end-of-year sales. Piedmont introduced the obligation of communicating to municipalities the beginning of sales, enclosing a statement on the discount percentage applied and a copy of the

materials used to communicate the sales to consumers. It is difficult for municipalities to monitor what retailers, (sometimes several hundreds), send to their offices, and thus appreciate the aim of this obligation, namely to prevent false discounts and misleading communication. Strict rules on seasonal sales influence clearance sales. In the case of clearance sales, the six regions apply similar regulations. These establish longer opening hours during sales, and shorter opening hours when sales have completed, to allow for the relocation or renovation of the stores. Regulations are always subject to communication to the municipality.

A competitive retailer unable to use seasonal or clearance sales has yet another alternative, namely a less emphatic promotional campaign involving markdowns on a number of goods. However, this form of promotion is also regulated in all the regions considered except in Molise, and with the exception of grocery retailing. Regulations are similar, but not identical, and they ban promotional sales during high season. The various cases and detailed specifications in promotional initiatives involve costs that slightly differ across regional borders, and relate to the administrative activity for both firms and the public administration. A chain operating at national level has to face a maze of different rules which have administrative implications as well as involve other functions such as physical distribution. Promotions imply that a wide range of sales need to be provided for by adequate merchandise stocks.

Regional legislation and the devolution process

Beginning with the Bersani reform, and then even more after 2001, the production of regional regulations has been increasing at a pace that has made it difficult to assess its implications on competition. Especially after 2001, free from the limits imposed by a common national framework, statutes have greatly increased and large retail companies operating at national level now confront 20 regulatory bodies – in fact, 21 because of the two autonomous provinces of Trento and Bolzano. Each region has followed its own path in developing these bodies, and the outcome is a sort of path dependency that is difficult to justify only in terms of being better adapted to local conditions.

Some regions, such as Lombardy, Piedmont and Tuscany, took advantage of their new powers and produced comprehensive and detailed measures that go beyond the Bersani reform and introduce several innovations in retail planning. Lombardy and Piedmont, in particular, have developed an approach to retail planning that is interesting. Though both laws differ, they have in common the central role assigned to impact studies to assess the negative externalities of large retail establishments. This means, in particular in the case of Lombardy, that authorisations do not simply involve acceptance or rejection, but they can be granted subject to compensation payment offsetting their negative effects. This approach to retail planning holds no obvious negative implications on competition and, in the context of retail planning in Italy, represents a step forward, away from quantitative constraints, quotas and other strict instruments used to restrict entry.

Though comparisons across regions point to a more or less open attitude to liberalisation policies, statutes are sometimes misleading. For instance, the presence of quantitative constraints, in terms of selling area available for new stores, is only a proxy to restriction. Sometimes quantitative constraints were binding; in others they offered considerable scope for new entries. Overall, from the initial application of the Bersani reform, the number of regions that introduced quantitative limits on the amount of space

provided to new large stores have decreased, and most have moved to planning restrictions. This is by no means a guarantee of a more liberal attitude as regions can set binding and less transparent constraints for retail firms.

A common aspect in regional legislation that rests in the tradition set by Law 426/1971, is the explicit aim to protect small stores and guarantee a variety of distribution means. This is often justified to prevent retail desertification, even though Italy counts 780 000 stores. Most regions made it a priority both for themselves, when establishing the rules to be followed to authorise large stores, and for municipalities with respect to medium-sized stores. In Veneto, new medium-sized stores exceeding 1 000 m^2 are authorised only if the sum of the sales area of medium and large stores operating in the municipality do not exceed that of small ones. It was also established that in setting their rules to authorise new stores, municipalities respect the following objectives (LR 15/2004, Art. 14): the modernisation of the retail network; the competitiveness of the retail sector; the safeguard of the environment and mobility; the safeguard of a sufficiently dense network of neighbourhood stores; the equilibrium of distributive forms; the safeguard of small and medium-sized retail firms. These conflicting aims appear in many other regional regulations.

One would expect regulations to become more liberal with a net reduction of small independent stores and competition occurring among large stores operated by large companies which need no protection. This is not the case. The correlation between a more or less liberal attitude in regional regulation and the extent of modernisation of the distribution system is difficult to make (Table 7.6). Regions where regulations define a competitive environment include Campania, which has the lowest index of presence of medium-sized and large food stores, and Lombardy and Marche where the index is well above the national average. The same applies to the regions where regulations mitigate competition and to those where competition is considerably hampered by them. In this

Table 7.6. **Liberalisation and modernisation of the distributive systems of Italian Regions**

Regions	Liberalisation according to AGCM (2007)	Medium-sized and large stores in food retailing in 2007: m^2 per 1 000 inhabitants, Italy = 100*
Campania	High	47
Emilia Romagna	High	111
Lombardy	High	120
Marche	High	133
Molise	High	91
Piedmont	High	111
Aosta Valley	High	110
Abruzzo	Medium	123
Basilicata	Medium	70
Calabria	Medium	70
Tuscany	Medium	93
Veneto	Medium	150
Friuli Venezia Giulia	Low	144
Lazio	Low	75
Liguria	Low	86
Apulia	Low	76
Sicily	Low	74
Trentino Alto Adige	Low	154
Umbria	Low	155

* Data provided by the Ministry for Economic Development.

latter case, Friuli, Umbria and Trentino, where the value of the index of modernisation is at its highest in Italy, coexist with four regions where the index has very low values: one region is in the centre of the country, another in the north, and two in the south. The negative effect on consumer welfare is most severe when barriers to entry apply to the distribution system and where the presence of modern stores is still limited.

Another aspect in regional measures is the introduction of micro regulations devised to control all possible instances that may arise with respect to a given matter. For example in promotions and sales, the control of seasonal sales also leads to controls on clearance sales and on other types of promotional activities. Piedmont even requests firms to submit a document that states the discounts applied and the communication material used to publicise the sale. Another example is the complex set of parameters that many regions have established to identify touristic municipalities, where opening hours are unrestricted, with the aim of closing loopholes to what is considered an improper competitive use of opening hours. Yet another example in Piedmont is the long list of store dimensions, identified with respect to the goods they sell and the types of locations they may have in the different parts of a city. This trend shows a tendency to regulate even minor instances of competition in response to the pressure of local interests on regions to intervene on matters they consider important.

These micro regulations add to the regulatory burden. They increase the compliance costs of firms, handicap those operating in more than one region and reduce the scope for economies of scale and efficiency. No attempt seems to have been made to account for the compliance costs imposed on firms and to the administrative costs imposed on municipalities. Municipalities must often manage various measures and control their application. They are often unprepared and have little resources to carry out the tasks assigned to them: most Italian municipalities are small and overcharged with duties on all possible matters. The case of below cost sales is a good example of the implications of such arrangements: regulations rest on paper as they cannot actually be applied. While the outcome might be desirable, the situation increases uncertainty and the resources of the municipal authorities get wasted.

The issue of economies of scale of local markets tends to imply regional economic activity basins, which may not coincide with institutional borders across regions. This may also become acute for some of the smaller regions. These also face a lack of human resources and capacity to deal with the regulatory powers they are entrusted with. This could lead them to either "copy" what is done by other regions or to resort to simplified regulations. Significant differences exist between a region like Lombardy, with 9 million inhabitants, which is larger than the population of many EU states; and the two smallest, Molise and the Aosta Valley, with a respective population of 321 000 and 120 000 inhabitants. The fragmentation of the regulatory framework at a very local level may also be at odds with the general trend in the industry, which is consolidating at a national and even multinational level.

Regulation of specific retail sectors

There are long traditions associated with the commercialisation of certain essential or critical products – *e.g.* pharmaceutical and health products, newspapers and magazines, energy sources – that these be subject to specific rules intended to safeguard and control the quality and access of supply. Law 426/1971 did not apply to these sectors, and the

tradition of separate regulations has remained. With respect to pharmacies there is a concurrent competence of the State and regions as both have responsibilities for matters concerning public health. Newsagents and petrol stations are now regulated by the regions as part of their competence on commercial distribution.

Pharmacies

Until Law 248/2006 (§ 64-66) was enacted, pharmacies could only be owned and managed by pharmacists, and the pharmacies also had a monopoly on all types of pharmaceutical products sold (OECD, 2008). The number of pharmacies that could be established in an area was set through strict supply planning procedures. While prices for pharmaceutical products that could be reimbursed by the National Health Service were fixed by law, pharmacies were free to set their own prices on other non-reimbursable products. In the latter case, retail prices were printed on packages and served as maximum prices with a discount possibility of up to 20% maximum (Law 149/2005, Art. 1). Law 248/2006 (Art. 5) made it possible for retail outlets other than pharmacies to sell OTC products and also eliminated the 20% discount limit off printed prices. Retail prices of OTC products have recently been liberalised (*Legge finanziaria 2007*; Art. 1, Paragraph 801, Law 296/2006). The regulation of pharmacies and the effects of its partial liberalisation in the last few years is analysed in Chapter 4 (Competition and Regulatory Reform in Professional services). The following paragraphs briefly summarise the current situation on the liberalisation of OTC drugs.

Major retail groups operating in the grocery sector, and in particular Coop, the largest, have been asking to be allowed to sell OTC drugs for many years. Federfarma, the pharmacists' association, successfully opposed the request, arguing that the sale of OTC drugs needs the assistance of a pharmacist. Eventually, the issue was settled as part of the liberalisation measures enacted by Law 248/2006. It established that OTC drugs, but no other pharmaceutical product requiring a prescription, could be sold freely, but only with the assistance of a professional pharmacist. The limitation to OTC drugs, together with this last obligation, reduced the impact of liberalisation and only two types of stores were able to take advantage of it: large hypermarkets and *parafarmacie*, *i.e.*, stores selling health products whose commercialisation is unrestricted.

OTC drugs are convenience products and can easily fit into the unspecialised assortments of grocery retailers which consumers visit frequently. However, grocery stores had to hire pharmacists to be able to sell OTC products, and only large hypermarkets could hope to cover their costs with the sale of such a limited assortment. As of April 2008, only 230 had done it (Table 7.7) and with the existing restrictions, their number is unlikely to

Table 7.7. **OTC corners opened in hypermarkets in Italy as of April 2008**

Region	Per 1 000 inhabitants	No.	Region	Per 1 000 inhabitants	No.	Region	Per 1 000 inhabitants	No.
Lombardy	156	58	Friuli	132	9	Trentino	470	2
Emilia Romagna	133	30	Liguria	225	7	Umbria	413	2
Veneto	156	29	Marche	210	7	Basilicata	–	0
Piedmont	192	22	Campania	950	6	Calabria	–	0
Apulia	251	16	Tuscany	583	6	Molise	–	0
Sicily	382	13	Sardinia	272	6	Aosta Valley	–	0
Lazio	426	12	Abruzzo	252	5	Total	248	230

Source: ACNielsen.

increase much. The convenience that could have been offered to consumers is therefore lost and the price advantage from discounts on OTC drugs have a limited impact. In addition, large grocery chains have not been able to build up volumes and increase their bargaining power with respect to suppliers. In fact, the savings to consumers may well be apparent as OTC corners in hypermarkets have been introduced more as a way to increase service and the appeal of stores than because of their profitability. Though the information available is limited to informal assessment of retail managers, it appears that at least part of the OTC corners are losing money and savings to consumers on OTC drugs may be compensated by higher prices on other products they buy in large grocery chains.

The liberalisation was an opportunity for *parafarmacies*, since most of them are operated by professional pharmacists. (No specific authorisations are required for *parafarmacies*, as well as for other smaller outlet.) Special authorisations are not required for stores selling health products and whose commercialisation is not restricted, and requirements of ownership by a pharmacist do not apply on these stores. The sale of OTC drugs did not increase their costs and was an opportunity to strengthen their position *vis a vis* fully fledged pharmacies. These types of stores more than doubled in number after the liberalisation and there are now about 2 000.

Out of the EUR 2 138 million OTC sales in 2007, IMS Health-IRI Information Resources estimates that corners in hypermarkets accounted for 1.6%, *parafarmacies* for 1.4% and the remaining 97% by pharmacies.[5] Since OTC sales account for about 8% of the total market of pharmaceutical products, pharmacies have lost about 0.25% of their market to other channels. A recent analysis by Altroconsumo (2008) summarised in Table 7.8, also shows that hypermarkets have significantly reduced prices but this has marginally affected the pricing of pharmacies.[6] Though it may be too early to assess the effects of liberalisation, they seem to be limited. In fact, in a first draft of DL 7/2007 (Paragraphs 65-66), the liberalisation was to be extended to all pharmaceutical products that are not reimbursable by the National Health Service (with or without a prescription), but the measure was not approved. The existing regulatory structure plainly discriminates stores that, although they offer the same guarantees as pharmacies, they can only sell OTC drugs. It provides marginal advantages to consumers and discrimination remains across different competitors.

Table 7.8. **Discounts on OTC products after the price liberalisation**

	Prices reduced from 20 to 30%	Prices reduced from 10 to 20%	Prices reduced up to 10%	Prices increased
Pharmacies	1%	15%	72%	12%
Para-pharmacies	15%	62%	23%	0%
Hypermarkets	82%	18%	0%	0%

Source: Altroconsumo, 2008.

Newsagents

Before the constitutional reform of 2001, the State regulated the sales of newspapers and magazines. Specific provisions were enacted end of World War II to guarantee an even treatment of the different papers (those of small publishers and those of political parties). They required newsagents to obtain a specific authorisation from municipalities on the basis of a plan defining the number of such stores/stands to be allowed to operate on their territory. Newsagents had to stock all titles supplied to them on the basis of a sale or return agreement and provide them enough space. In 1999, after much debate about the need to

expand the sales of newspapers and magazines, Law 108/1999 introduced a period of experimentation: sales were to be extended to outlets other than newsagents for a limited period of time. The experimentation was meant to verify if the new outlets would generate new sales or take them away from newsagents'. The Law also established that newsagents would fall under the general measures of Legislative Decree 114/1998 and consequently that regions would have to enact their own regulations as to how municipalities should draw plans for their localisation. At the end of the period of experimentation a new law was to be drafted to regulate the sales of newspapers and magazines (Art. 3). This was done in 2001, just before the reform of the Constitution, when Legislative Decree 170/2001 was enacted.

Legislative Decree 170/2001 is now the main reference for the sale of newspapers and magazines. The experimentation of their commercialisation by stores other than newsagents had shown that they had been able to generate new sales, with limited negative effects on incumbents (Università di Parma, 2000). The purpose of the Legislative Decree was therefore to include them in the regulation concerning the sector. It established two types of outlets, exclusive and those allowed to sell also newspapers and magazines. The latter are identified as tobacconists, large service stations, bars, bookshops, supermarkets (exceeding 700 m^2), and other specialised stores but only if they sell magazines with the same specialisation. Both are subject to authorisation by the relevant municipality. Regions were asked to produce provisions as to how municipalities had to draw their plans to locate specialised and unspecialised outlets.[7]

Though regions have been affirming their competence in regulating the sale of newspapers and magazines, the statutes they enacted contains measures which do not diverge much from those of Legislative Decree 170/2001. All six regions have in place a regime of authorisation based on plans drawn by municipalities for both specialised newsagents and other store types. Plans to determine the number of authorisations to be granted have to be prepared following strict supply planning principles (population, readership, touristic inflow, and other similar parameters), which include minimum distances between outlets meant to guarantee incumbents. Definitions of "other" stores allowed to sell newspapers and magazines are also almost identical to those of Legislative Decree 170/200. Marginal differences can be found mainly on matters which define the boundaries of specialised and unspecialised stores, *e.g.* Lombardy puts a limit (30%) on the amount of sales area which the specialised stores can use to sell products other than newspapers and magazines (DCR 7-549/2002, Art 1).

Overall, provisions in this area are a good example of regulations that are meant to define the boundaries of markets for different types of stores to satisfy requests from the economic agents involved. These provisions locate the sales of newspapers and magazines outside the market. The market is then confined to strict and intricate supply planning which contradicts the main objective of the principle on which regulations are justified, namely the diffusion of information.

Petrol stations

The proliferation of small service stations which accompanied the post war motorisation of Italy has been and still is an issue to be addressed by successive measures. The aim of most of these measures was to allow for a smooth reduction of service stations. This was carried out by providing funds to compensate closures and constrain new operators to enter the market by buying existing concessions. The statute considered the

starting point of present regulations in the sale of fuels is Legislative Decree 32/1998, whose aim (Art. 1) was to accelerate the restructuring of the network of service stations through a liberalisation of the sector. The most innovative measures involved the introduction of authorisations in place of concessions and the elimination of the norm requiring to return two existing concessions to be allowed to obtain a new one. Besides, authorisations had to be granted by municipalities on the basis of valuations which intended to move away from the supply planning criteria to the town planning requirements.

Legislative Decree 32/1998 was followed by other measures (Legislative Decree 346/1999, Law 57/2001), modifying some of the original provisions, and then by a "national plan for the modernisation of the distribution of fuels" (*Decreto del Ministero della Attività Produttive* 31/10/2001) which assigned to regions the regulation of the sector to achieve the aims set by the national plan. Regions behaved as in respect to the Bersani reform of 1998. Regulations reinforced entry barriers and limits to conduct which have slowed down progress towards liberalisation (AGCM 2001; Razzini 2004). After 20 years of attempts to modernise the network of petrol stations the results are those shown in Table 7.9. In terms of sales, the productivity of Italian petrol stations is half of those of the other main European economies and less than a third of them provide self service. Besides, if in Italy fuels sold by large retail outlets accounts for a market share of 1% in volume, while in France it is more than 50%[8] it is not because Italian retailers are unwilling to do it, but because regulations make it very difficult.[9]

Table 7.9. **Petrol stations in Italy and in the other main European countries, end 2005**

	Petrol stations	Cars (,000)	Cars per petrol station	Average sales per petrol station (m^3)	Petrol stations with self-service	Percentage of petrol stations with self-service	Percentage of petrol stations selling non oil products
Italy	22 400	31 600	1 411	1 620	1 670	28	13
Germany	15 187	46 570	3 066	2 960	15 000	99	na
France	13 504	30 400	2 251	3 105	13 000	96	na
Spain	8 368	20 910	2 421	3 405	2 100*	24*	na
UK	9 764	30 270*	2 939*	3 870	9 492	97	84

* End 2004.

Source: Unione Petrolifera, Databook 2008.

The European Commission brought Italy before the Court of Justice as restrictions on the establishment of service stations were considered contrary to Article 43 of the EC Treaty. The restrictions called into question by the Commission comprise: opening of new stations subject to the closure of existing ones; minimum distances between stations; requirements in terms of minimum areas and the supply of supplementary commercial activities; constraints on opening hours. Eventually, to comply with the EC ruling, the Italian government intervened with DL 112/2008, converted into Law 133/2008 (Article 83-bis, Paragraphs 17-21). Since the law was enacted in August 2008, it is too early to see how regions will modify their regulations to make them consistent with this new liberal framework.

State, regions, municipalities: The vertical structure of regulations

Under Law 426/1971 the vertical structure of regulation of commercial distribution involved the State and municipalities, with a relatively secondary role played by regions in

the authorisation of large stores. The central instruments of retail planning were Retail Development Plans. With the reform of 1998 the situation changed: the State defined a broad regulatory framework, leaving regions to fill in the details. It was a natural choice since most of what they were asked to do concerned town and country planning regulations needed to account for commercial distribution after the cancellation of Retail Development Plans. During the short period of validity of Legislative Decree 114/1998, regions had to dialogue with the Ministry responsible for commerce (at the time the *Ministero dell'Industria, Commercio e Artigianato*) as they had to act within the binding constraints of the reform. Besides, as it was the first time they were dealing with matters concerning commercial distribution and they had to build up new competencies, they found helpful to move with some degree of co-operation with the Ministry. Though it was apparent that regions were following different paths, Legislative Decree 114/1998 offered a common reference. After 2001 and the reform of the Constitution, vertical co-ordination was loosened and each Region was to proceed in its own way.

The role of central co-ordination is not only set by the vertical structure of competences assigned to the State and regions. The State maintains some degree of leverage and, even if it cannot formally enact statutes on matters transferred to regions, it can at least resort to "moral suasion". Vertical co-ordination will only occur if there is strong political will in the centre. This was less the case in the new political context created after the 2001 constitutional reform, under a federalist approach. In this context, matters concerning retailing were left to regions. At the national level, the monitoring function was preserved, with the *Osservatorio Nazionale del Commercio*, a body in charge of collecting data on retailing and wholesaling and of promoting discussion on matters concerning the sector. Regions were granted significant leeway in drafting their own regulations. The *Conferenza Stato-Regioni* remained the sole institutional body in charge or co-ordination. Though it certainly played and continues to play an important role, it is only a consultative body and its activity, as far as the role of the State is concerned, is influenced by the political context. In fact, it is also through this body that the government can exert its "moral suasion" on regions.

Under the XV Legislature, liberalisation policies became one of the main political goals of the government, and the issue of competition became central in dealing with regional legislation. With respect to commercial distribution, the government, with the same minister who had sponsored the 1998 reform, Pier Luigi Bersani, decided to intervene by decree with measures intended to reassert the competence of the State on matters affecting competition. This was done with DL 223/2006 (converted into Law 248/2006), and then with DL 7/2007 (converted into Law 40/2007). The first has been particularly important as it introduced a set of general rules to be followed by regions and liberalised the sale of OTC drugs. The second, though touching a wide set of matters, did not intervene on issues specific to commercial distribution, but several general measures intended to facilitate market entry of new firms also are relevant for the sector (Art. 9).

Law 248/2006 banned the following restrictions on commercial distribution (Art. 3):

- To subject entry to qualification standards or membership of professional bodies.
- To impose minimum distances between similar commercial activities (stores, but also other services, and in particular eating and drinking places where they have been often imposed).

- To impose limitations on assortment composition other than those regarding the selling of food and non food items (used in the authorisation procedures of Legislative Decree 114/1998 and in regional regulations).
- To impose limits to entry in terms of predefined market shares or volume of sales at a sub-regional level.
- To prohibit promotions and sales other than those established by legislation of the EU.
- To condition promotional activities, other than end-of-year/season sales, to authorisation and to time or quantitative limits.
- To prohibit the immediate consumption of food products in the premises of small food stores.

In essence, some of the principles of Legislative Decree 114/1998 were reasserted and became binding again in the context of regional legislation.

Laws 248/2006 and 40/2007 raised forcefully the issues of competition and of how to establish the boundary between state and regional powers. This echoes economic or political debates experienced in federal countries, for example in the United States. However, the new context has introduced uncertainties since it became apparent that this boundary was not easy to determine, a point emphasised by most of the six regions interviewed for this report. Both laws, and especially Law 248/2006, establish general rules defining restrictions that could not be imposed on commercial distribution. However they did not provide comprehensive guidelines on how to deal with the numerous aspects of regulation of commercial distribution which can have anticompetitive implications and leave an unclear situation.

Conclusions

The main issues

Progress in reducing restrictive regulations on commercial distribution has been slow in Italy. The turning point of the Bersani reform has been important. Vertical co-operation is still needed to reach a liberalisation of the sector, because, after the reform of the constitution in 2001 several regions reintroduced restrictions reminiscent of the tradition established by Law 426/1971. The reaffirmation of the competence of the State on matters concerning competition through Laws 248/2006 and 40/2007 has been an important step to stop this drift to the past, but the problem remains. The proliferation of regional statutes creates inefficiencies; the process through which measures are enacted lacks transparency and statutes are not subject to evaluation to determine their costs to firms, consumers and the public administrations involved; commercial distribution is over-regulated; and restrictions on market entry, both general and sectoral, are still rife.

Proliferation of regulations and co-ordination between the State and regions

The new context has led to a proliferation of regional statutes and regulations dealing with commercial distribution. Regions produced measures that often differ more in the way they are written than in the principles and rules they assert. Only in a limited number of cases has regional legislation introduced regulatory innovation.

The representatives of the different components of commercial distribution, both large chains and small retailers, interviewed for this report expressed a critical view of the present vertical set up of regulatory powers. Co-ordination between the State and regions

should be enhanced. Co-ordination among regions, regional associations and their national counterparts is also deemed to be necessary to agree on a common (national) policy with respect to the various issues of interest. Co-ordination could limit how regional associations lobby on the basis of their relative power and of the interests of the (variable) composition of the firms they represent. And co-ordination would avoid inconsistencies of the policies expressed at regional level that makes it sometimes impossible to express a common view.

The proliferation of regulations represents a cost to firms, especially those operating on a multi-regional or national level. The divergence of regional regulations also reduces the scope for concentration of the sector. While even retail groups based on associations among firms – co-operatives, buying groups and voluntary chains – are making an effort to concentrate their operations, the regulatory framework they have to comply with is moving in the opposite direction. Store formats developed nationally may need to be adapted locally as they fall in different store size thresholds; physical distribution is made more complex due to different rules on promotions and sales; labour schedules have to be arranged to fit different limits on opening hours. Besides, regions, provinces and especially municipalities have to perform a multitude of administrative procedures which generate costs. The case for co-ordination to reduce the divergence of regulations is therefore very strong.

Transparency and RIA

The Bersani reform of 1998 was approved after a long and intense debate which involved the representations of the different components of the retail industry, consumers and the public opinion. Progress towards the reform was constantly traced by newspapers and other media and the views expressed by all parties concerned were made public. After the constitutional reform of 2001, the legislative process took place in different conditions. All regions have in place consultation procedures which involve local authorities, representatives of the industry, consumers and labour unions, and transparency is formally satisfied. However, media rarely reported on the proposed measures, discussion involved a limited number of people and regulation of commercial distribution became a technical matter, confined to experts and parties directly involved by it.

If it is true that in principle local regulations are better suited to take into account local specificities, it is also true that they are subject to stronger pressures by local interests. *Concertazione*, formal or informal, is a deeply ingrained practice in Italy. But *concertazione* that is not subject to a check by public opinion tends to play to the advantage of vested interests with stronger and better organised representation. This raises a problem of defining ways of subjecting regulations to adequate and formal screenings in the public interest. RIA is the proper instrument to do this, but regions have never used RIA to assess the impact of measures involving retailing and wholesaling.

Over regulation

Regulations are not just proliferating as they differ across regions, and also because their number within each region is increasing. Every time a specific matter is regulated it creates the need for other regulations to account for micro issues that have been overlooked, to protect small interest groups which consider themselves penalised, to cater for new situations created by the same regulations, to close loopholes. The result is even more pervasive regulation of entry and conduct in the market. Measures on sales and

promotions, on the parameters municipalities have to satisfy to be considered of touristic interest and in this way be exempt from limits on opening hours, on planning standards to be satisfied by store types are examples of over regulation considered in the previous sections. Instruments to counteract this trend are now needed and, again, RIA could be usefully employed.

Restrictions on market entry.

Even if quantitative thresholds are not set and measures stay within the limits of zoning and town planning, it is very difficult, if not impossible, to prevent their use to impose entry barriers to large retail establishments. Rules that aim at a proper control of different and competing land uses and to optimise public facilities, become entry barriers. However, it is possible to identify a number of cases where measures set in retail planning cannot be justified as they take the place of the consumer. One of the most common measures is the planning aim at achieving equilibrium among retail formats, and, in essence, between large and small stores. Ostensibly to avoid "desertification", such measures tend to protect outlets that would not be sustained by consumer demand. Similar measures affect retail sectors regulated by specific provisions, *i.e.* pharmacies, newsagents and petrol stations. Therefore, supply planning, formally banned, resurfaces in many measures and, as it restricts competition, it could lead the State to intervene.

Supply planning is not alone in restricting competition, since there is a long tradition of other measures impeding conduct which has the same effect, as those regulating opening hours, imposing professional standards and limiting aggressive forms of sales and promotions. Some of these regulations involve other policy areas, such as labour, which may need to be taken into account. The State should use its competence on competition and consumer protection to define guidelines to set limits to regional regulations on these matters. As already seen, regions themselves see such guidelines favourably which could make their legislative process more certain.

Policy options

To reduce the negative impact of regulations in commercial distribution, three options are possible. The first involves a better vertical structure of regulations, reinforcing and making less elusive the competence of the State on matters concerning competition. The second relates to the application of RIA. The third is the use of financial incentives provided by the state to regions that act to achieve specific policy objectives.

Sectoral guidelines on competition

The two Bersani decrees of 2006 and 2007 have been the most relevant measures to foster competition, in commercial distribution as well as in other sectors and matters, enacted in recent years. They contained specific provisions but did not provide comprehensive guidelines to establish the boundary between regional competences and state competences on competition and consumer protection. These are now needed as the Italian institutional framework is even more decisively moving towards federalism. Guidelines should be specific to issues or sectors, taking a middle ground to avoid having definitions of rules being too abstract and too general to be applied without ambiguity. They should be developed in co-operation with the regions to allow for a debate and a better understanding of their implications and purpose. Limits set centrally would be a way to reassert State competences, and also to help regions to better withstand pressures from local lobbies.

As far as commercial distribution is concerned these guidelines should address the different forms of entry barriers considered in the section on regulation of commercial distribution.

- Authorisation of medium-sized stores should be abolished. There is no reason to subject stores to authorisation whose impact (on town planning provisions, transport, and the environment) is only local. Municipalities should be left to decide how much space to allot to retailing in their master plans, and leave retailers to occupy this space with their stores. They may still restrict entry by not providing enough space for new stores, but this will expose them to competition from neighbouring municipalities which may try to attract investment. Such a measure would imply removing the distinction between small and medium-sized stores, as all of them would be free to trade in buildings, or land allocated to retailing.
- As it happens everywhere in Europe, authorisations would remain in place only for large stores and shopping centres, requiring some form of large area planning. The dimensional threshold defining the notion of large stores could be agreed at a national level, giving firms a simpler regulatory framework to comply with.
- Measures affecting the structure of the distribution network in terms of size or type of stores should be banned. It should be the results of consumer choice and not of retail planning.
- Trading hours should be freed, or, since they involve mainly their citizens, left to municipalities to decide whether to apply the principle of subsidiarity. This would expose retailers located in more restrictive municipalities to lose sales, leaving to them, and particularly small retailers which have locally more political clout, to decide whether to ask for more liberal rules or pay a price for having their work hours reduced.

General guidelines on competition in commercial distribution should also deal with regulations affecting specific lines of business.

- *Newspapers and magazines*. Special provisions for newsagents should be removed, leaving all retailers to decide whether to stock newspapers and magazines or not. To do this, the rule requiring newsagents to stock and display all newspapers and magazines sent to them on a sale or return agreement also should be removed. Originally established to guarantee the freedom of information, this rule has lost its function as it is difficult to believe that in the present situation the sale of newspapers and magazines could be discriminated on an ideological basis. Newsagents, freed from the constraints to which they are subject today, could find new products to sell, such as confectionaries, souvenirs or other convenience goods, to compensate for the loss of sales of traditional products in favour of new outlets.
- *Pharmacies*. The present rules applying to the sale of pharmaceutical products were meant as a first step towards further liberalisation. The alternative is either to allow stores with a pharmacist to sell at least the so-called C drugs category (pharmaceutical products needing a prescription but non-reimbursable), or to remove the obligation of having a pharmacist in the store even where only OTC products are sold, thus allowing a larger number of retailers to sell OTC drugs at a cost comparable with that of other fast moving consumer goods.
- *Petrol stations*. Law 133/2008 removed most of the restrictions on the establishment of service stations and regions now have to modify their regulations accordingly. The new law requires (Paragraph 21) that regional regulations should be rewritten to take into account only matters pertaining to the protection of the environment, public safety and town and country planning objectives. On the basis of past experience, the State should

carefully screen the new regional provisions to avoid the use of such matters to reinstate barriers to new entrants.

Adoption of RIA

Guidelines on competition would not necessarily limit overregulation. Other measures are needed to prevent the proliferation of regulations and lack of transparency. RIA is a well established instrument to determine the cost of regulation to firms, consumers and the public administration. RIA could not only improve the quality and efficiency of regulations but could also help prevent badly designed regulation, discouraging the adoption of provisions on matters of marginal economic relevance. Since RIA is meant to avoid excessive regulatory costs, it could be made compulsory by the State as an application of its competence on protecting consumers and the general interest of citizens and firms. Together with guidelines on competition, the adoption of RIA may also help regions to better withstand the pressure of local lobbies.

Incentives

Even, and particularly in a federalist institutional framework, the central government can influence regions by offering incentives to those that help achieve its political objectives. It is therefore possible to imagine resource transfers tied to the adoption of specific measures. With respect to commercial distribution this could involve the adoption of liberalisation measures; the achievement of certain modernisation standards of the retail network; the use of given standards or definitions, and/or the acceptance of optional guidelines to achieve regional co-ordination in adopting statutes.

Notes

1. On the costs of the delayed modernisation of Italian retailing also see OECD (2000), Boylaud and Nicoletti (2001); ISAE (2002); AGCM (2007); Schivardi and Viviano (2008).
2. On this issue Galbraith (1952), Stigler (1954), and also Von Ungern-Sternberg (1996), Connor *et al.* (1996), Dobson and Waterson (1997), Clarke *et al.* (2002).
3. A recent report by the UK Competition Commission (2007) offers interesting insights on this issue. See also Smarzynska Javorcik *et al.* (2006) on the impact of Wal-Mart on its suppliers in Mexico.
4. Schivardi and Viviano (2008) came to the same conclusions using a different method of analysis.
5. *Il Sole 24 Ore*, 4/3/2008, p. 35.
6. At least one association of pharmacists in Teramo colluded to limit discounts, which led to investigations by AGCM. AGCM, I684, *Federfarma Teramo*, May 24, 2007, Section: "Intese, abusi, concentrazioni."
7. For a detailed analysis of all matters concerning the sale of newspapers and magazines, see AGCM (2004).
8. AGCM, *Normativa sulla distribuzione di carburanti*, Segnalazione AS379, Bollettino No. 1/2007.
9. AGCM, *Regolamentazione di accesso all'attività di distribuzione dei carburanti in rete e messa a disposizione di operatori terzi non verticalmente integrati di capacità di stoccaggio e di prodotto*, Communication AS436, Bulletin 46/2007.

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Chapter 8

Local Transport

This chapter discusses the core challenges for the regulation of local transport in Italy, including the general structure, the role of subsidies and the impact of EU regulations. A number of comparisons with other European countries are performed. The chapter presents the drivers for regulatory reform in local public transports, as well as the limits to the reforms. The regulatory framework of a set of selected Italian regions is presented in further detail, in terms of its interaction with the national level, the policies for minimum services, planning for services and investment, as well as implications from a competition perspective. The chapter also covers strategies to regulate service quality, as well as the role for consultation and regulatory impact analysis on policy development in this sector. Finally, the issues of the co-ordination within integrated transport systems are considered. A brief introduction to the Italian 2006 taxi reform is also presented.

Introduction

High-quality regulation allows public targets to be met without unjustified costs for enterprises and citizens. A quality regulation perspective needs to take into account the increased fragmentation of responsibilities between regulators at the European, national, regional and local levels. This fragmentation may create problems of overlapping regulations, lack of co-ordination and inadequacy with respect to market changes. Local public transport is an example of such interaction between regulators across levels of government. In the case of Italy, all three above-mentioned levels have competences in this area.

At European level, regulations impose the criteria of public services' financing and the liberalisation of services which can have an impact on cross-border trade (see section on the impact of EU regulation). At the national level, the transformation of the division of power between the State and the regions has not invalidated the principles defined by national legislation on the reform of local public transport, which remain the reference criteria for regional legislation as they reflect the State's exclusive legislative role for the supervision of competition. However, this interaction is not clearly defined, as evidenced by the number of regional laws invalidated by the Italian Constitutional Court and the uncertainty over the regime applicable to local public transport (whether the general rules govern local public services or sectoral services). These difficulties exist even at the sub-national level due to the dual regional and local nature of planning. This is particularly true of investments and services (see section on planning for services and investment), which involve the need for co-ordination at vertical and horizontal levels, for instance between different regions (see section on integrated transport systems). Finally, problems of regulator accountability can arise if planning is not adopted, competitive tenders are not organised or the definition of minimum service is not updated.

Moreover, transparent procedures of regulation sometimes are not adopted at all levels of regulation. Such procedures should include mechanisms of consultation based on objective criteria, and techniques of quality regulation, such as impact assessments and formal and substantial drafting, and *ex post* analysis to evaluate consistent adequacy of regulations (see section on ensuring transparency and consistency in the regulatory framework). The limits imposed by the sharing of competencies and regulatory processes have implications on the quality of regulations and result in increased disputes, thus hindering market mechanisms. For instance, the State's complaints against some regions which fixed time limits for initiating competitive bidding later than the deadline defined at national level (Italian Constitutional Court, judgement 80/2006) and the Veneto appeal against the taxi reform of 2006 (Italian Constitutional Court, judgement 452/2007) are meaningful. All these complaints are connected to an unclear sharing of competencies between the State and the regions.[1]

Finally, information is rarely shared across different levels of government, considering that regions are not always fully aware of the measures adopted at a local level (see section on the interaction with the national level), the organisation of competitive tenders for local

public transport and the number of taxi licences issued being prime examples. The deficit of information also weighs on the relationship between operators and the public administration, considering the frequent lack of adequate instruments to monitor the fulfilment of qualitative and quantitative goals (see section on ensuring transparency and consistency in the regulatory framework).

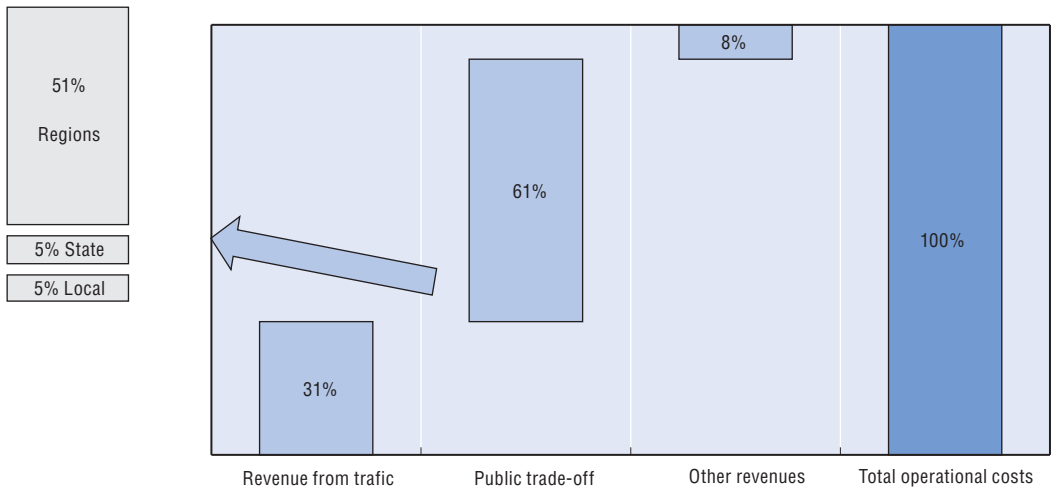
This chapter analyses the instruments adopted to obtain high-quality regulation, the co-ordination between the different levels of regulation, the concrete functioning of instruments to introduce competition and to guarantee the aims of public service. In particular, this chapter investigates how national and local authorities are addressing the reform process, notably in terms of monitoring, establishing criteria for bidding, organising local public services and collecting data. Issues may include the definition of a "minimum service" at the local level, and the size of area for bidding. The public means of transport presented in this chapter covers local railways, buses, tramways, the metro and transport by sea when relevant. In addition to the above, the issue of taxis, which is indirectly linked local public transport, is summed up in the section on integrated transport systems and co-ordination of horizontal services.

General structure of the regulatory framework for local transport

General economic structure, the role of subsidies

Local public transport is characterised by the presence of monopolistic operators through non-tendered concessions which are subsidised and for the most part publicly-owned. The objectives maximised by such operators are not necessarily only related to profit motives, but may also involve maximising transfer payments and ensuring certain levels of employment. With very few exceptions, financial performance has deteriorated over the recent period, and during the first half of the 1990s the amount of subsidies from public authorities covered as much as up to 71% of the operating costs of local public transport firms.[2] As shown in Figure 8.1, fares covered only 31% of the operating costs in 2005, while the remaining 61% was made up by public subsidies (51% from the region aiming to cover minimum service costs; 5% from the State through labour contracts; and 5% from local authorities for services other than minimum services).

Figure 8.1. **Coverage of local public transport operators' operating costs**

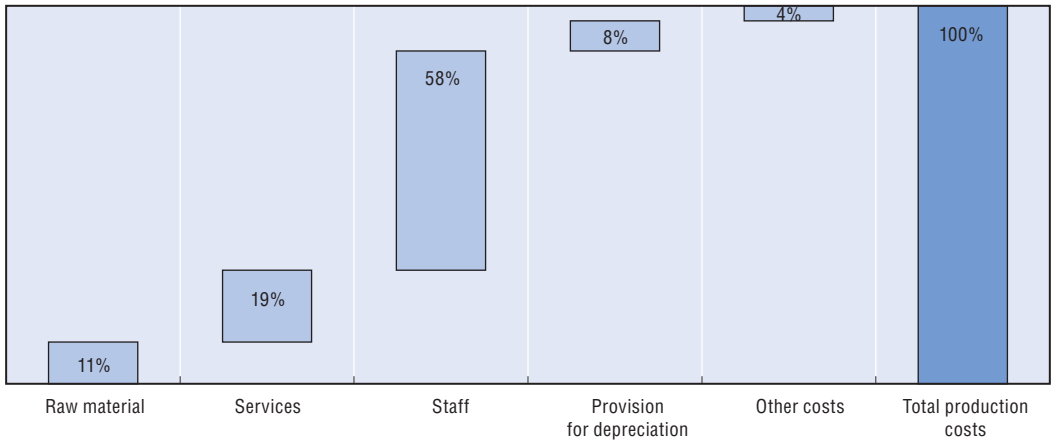


Source: Asstra.

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This financial situation, which offers insufficient incentives towards efficiency is due, with few exceptions, to traditional monopoly protection, to the high share of labour costs in total production costs (on average 60% as shown in Figure 8.2) and to an increase in production costs, such as insurance and gas-oil prices, of 120% and 54% respectively over 1996-2007.[3] These increases have not been compensated by a proportional increase in fares and public compensations (public financing increasing slower than inflation, respectively 16.5% and 30.5% over 1996-2007).[4]

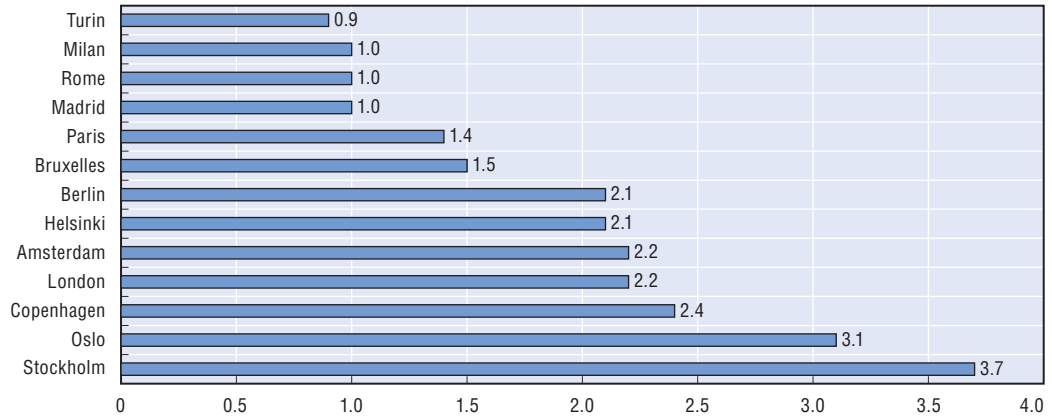
Figure 8.2. **Structure of costs**



Source: Asstra.

Fares are lower than the European average (see Figure 8.3) and have not been raised to keep up with inflation trends.[5] However, the criteria for updating fares are generally based on costs sustained by operators, and represent a form of *ex post* cost-plus regulation,[6] which offers less incentives towards efficiency, than a pure price cap. This method is recommended at national level by Legislative Decree 422/1997[7] and is required by several operators.[8] Moreover, all operators suffer from fare evasion, which since 2005 has caused a loss of 6.5% of traffic revenues and an average total loss of EUR 140 billion annually.[9]

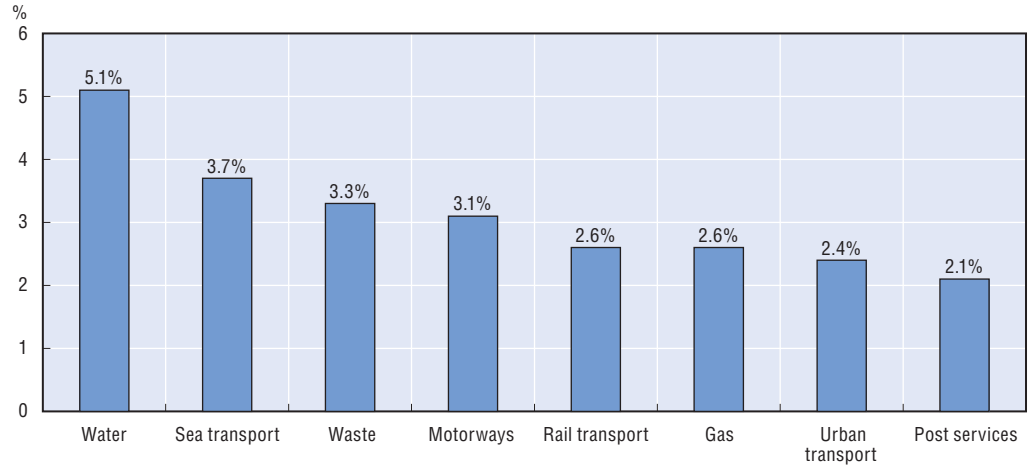
Figure 8.3. **Urban tariffs in large European cities**



Note: Price per 10 km or 6 miles or minimum 10 stops in euros. Data are for 2006.
Source: UBS, Prezzi e salari.

Figure 8.4. **Medium nominal increase in cost of main public utilities**

1996-2003, average annual variation



Source: Earchimede, data from the Ministry of Economics and Finance and Istat.

The local transport sector is still characterised by publicly-owned operators which operate under contracts directly awarded by the same local authorities that are their shareholders.[10] National regulation, which only requires a transformation in joint-stock companies, which are private only in a formal sense, has contributed to delaying substantial privatisation: in Lombardy the two railway operators are publicly-owned companies (Trenitalia S.p.A. and LeNord S.r.l.); the company entrusted with metro services is public (ATM S.p.A.); and 11 bus service operators out of 102 are either publicly-owned or their shareholders are both private and public. In Veneto the two railway operators are publicly-owned companies, and shareholders are both private and public in the only firm operating in terms of local transport; 13 total or partial publicly-owned companies are in the bus sector and 26 are private. In Piedmont the two railway operators are publicly-owned companies, as well as the firm in charge of metro services. The number of firms acting in local public services that are owned by public authorities requires that bidding should not be organised by local authorities which are simultaneously contractor-regulator and owners of the operators. This is one of the points which has been stressed by policy analysts and policy makers in favour of a national independent regulator for transport without interfering with the existing division of powers between the State and regions as set out by the Italian Constitution. Moreover, instituting a national authority for transport could help set up uniform standards of efficiency and quality across the country, beyond regional regulations. It would also help to provide adequate information which would enable a yardstick for competition at local level.[11]

Another critical point arises from the national regulation of local public services which imposes the separation between asset ownership for local authorities or publicly-owned companies which must remain public, and their management by publicly-owned companies with directly awarded contracts or by companies winning corresponding bids.[12] This regulation allows a double monopoly on infrastructures and services to be maintained. It does not provide sufficient incentives for expanding networks geographically. It also does not establish a clear division of responsibility between owner and manager: a problem of co-ordination could emerge, for instance, in order to incentivise the extension and maintenance of infrastructures.[13]

Finally, most of the 1 260 local public transport companies[14] are below optimal size to allow for full exploitation of economies of scale and density. Of the local public transport operators, 45% have less than five employees, mostly acting in the route services through 1-5 buses.[15] For instance, 79 local operators offer bus services in Piedmont, 39 in Veneto, 50 in Tuscany, 102 in Lombardy. This extreme fragmentation calls for merging firms acting in adjacent territories, in the case of small and medium cities, and for disaggregating services to be provided in larger cities.[16]

The subsequent inefficiencies of the sector do not only have a direct impact on citizens' well-being: they also block any policy aimed at limiting private traffic. They therefore make it impossible to solve problems of congestion and air pollution which primarily affect major cities. This maintains a vicious circle in which private traffic increases because no valid alternatives are provided by public transport, thus further increasing congestion and causing public transport to move more slowly. This in turn increases the number of public transport vehicles needed to sufficiently maintain regular service on lines, and the number of staff needed to serve more passengers. It also partly explains the lack of investment in tramways and metropolitan trains because public resources must be used for day-to-day management.[17]

Comparisons with other European countries

Italy is not the only country with a partial liberalisation of local public transport (LPT). In Europe, the UK is the only country with a completely free and open local transport market and where reform started in 1984. Local public transport in cities is organised on a competitive basis in few cases (Spain, Sweden, Denmark, and Finland). In the rest of Europe, the liberalisation process is still in its early days.[18]

Structural and performance indicators are available to compare public transport in Italy with other EU member states.[19] Italy has the lowest rate of local railway transport among the countries examined (35%). The other markets tend to show a more balanced road/rail ratio: their average is 49% (Table 8.1). The supply of kilometres (bus) per inhabitant in Italy is slightly lower than the average of the other countries (30.8 km against 33.6 km), significantly below the UK (41.3 km) and Sweden (56.0 km). The commercial speed of Italian buses does not exceed 20.2 km/h, which tends to be lower than in other countries, and is close to German and Belgian standards.

Table 8.1. **Road/rail ratio**

Passengers per km (in %)

	Italy	UK	Germany	France	Sweden	Holland	Belgium	Average without Italy
Road	65	52	53	55	50	55	42	49
Rail	35	48	47	45	50	45	58	51

Source: EARCHIMEDE, 2005.

The analysis shows that LPT in Italy is highly fragmented. The cumulated share of the top five companies on the road market barely exceeds one fourth of the market, which differs from the other countries. In France, for instance, the same share reaches 82%, in Belgium and Sweden 77% and 72% of the domestic market (see Table 8.2). While the higher fragmentation of the market is not *per se* an element to avoid, it may not necessarily allow to take advantage of economies of scale while smaller operators are still in a monopolistic situation on local markets.

Table 8.2. **Market share of the top five bus companies**

In %

Italy	UK	Germany	France	Sweden	Holland	Belgium	Average without Italy
27	66	37	82	72	49	77	64

Source: EARCHIMEDE, 2005.

The privatisation process in Italy is only partly advanced. In other countries, the presence of private operators is significant. Besides the extreme case of the UK, which shows an almost full privatisation (95%), the market is mainly private in Sweden (76%) and France (64%), and balanced in Germany (48%). In relative terms, the Dutch and Belgian markets are the only ones to have more public operators than in Italy. Despite the strong presence of public operators, public investment in renewing the bus fleet remains 26% below the average of the other countries, resulting in a relatively older fleet in Italy.

In terms of performance, the study focused on the road transport sector. Significant scope for improvement remains in terms of business profitability in Italy. Italy records the second highest production value per kilometre after Germany, but this is mainly due to the high contribution by the public (2.2 EUR/km/year), which is 57% higher than the average. The gross operative profit on production value does not exceed 6.5%, a figure nearly half that of France, the UK and Sweden. The operational income on production value is negative (–1.1%) in Italy, against an average of 3.5%.

Table 8.3 summarises the main performance indicators for the period considered. The Italian local bus industry is characterised by the second-highest operational cost (behind Germany), the highest unit labour cost and the second lowest labour productivity (behind Belgium). In addition, Italy shows the highest level of public subsidies, even if traffic revenues per km are not the lowest in Europe. One of the main factors leading to low traffic revenues refers to the low tariffs applied. This contributes to a revenue/cost ratio lower than elsewhere.

Table 8.3. **Performance indicators of the local bus industry**

Average values, 2002-04

	IT	UK	GER	FR	SWE	NL	BEL	ϕ
Public subsidies per km (EUR)	2.2	0.6	1.5	1.9	0.9	1.5	2.0	1.4
Traffic revenues per km (EUR)	1.08	1.49	2.39	1.14	1.07	0.98	1.00	1.34
Operating costs per km (EUR)	3.5	1.8	4.0	2.9	1.9	2.4	3.0	2.7
Labour costs per km (EUR)	2.3	0.8	2.1	1.6	1.1	1.7	2.0	1.6
Average product (vehicle-km) per employee	17 060	20 592	17 761	20 506	23 423	18 275	10 018	19 763
Standard ticket fare (EUR)	0.84	1.53	1.89	1.26	1.95	1.60	1.40	1.60
Monthly pass in capitals (EUR)	30.00	41.33	51.19	45.80	44.02	47.02	32.54	43.68
Revenue/cost ratio (%)	30.7	84.2	60.5	39.2	55.4	40.0	33.1	52.1

ϕ = Average, excluding Italy.

Source: EARCHIMEDE, 2005.

Drivers and limits of regulatory reform in local public transports

Attempts have been made to address national and regional regulation problems, with as yet unsatisfactory results. Significant changes started to take place in the relationship between the State and regions in terms of regulating local public transport. Mechanisms

for the sharing of powers between central and local governments were reshaped by Law 59, which introduced instruments for revising monopolistic systems through "rules for competition in the periodic awarding of service contracts" and "replacing the concessionary regime with the authorised regime",[20] while regions and local authorities were charged with the functions and duties of administering rail, maritime and air services of local scope as a result of Legislative Decree 422/1997.[21]

Specifically, the reform introduced the following criteria:

- Shifting the planning competencies and the management of subsidies from the national to the regional level.
- The competitive tendering mechanism for the allotment of services.
- The contractual definition of relations between managers and public authorities whose budgets must be definite and able to meet the requirement of the 35% ratio of revenues to operating costs, not including infrastructures costs.
- A fare mechanism based, if possible, on price-cap methods.[22]
- The elimination of unnecessary requirements to guarantee that the provision of minimum services refers to "activities qualitatively and quantitatively sufficient to meet citizens' demand for mobility, the costs of which are met by the budget of the regions".[23]
- The compulsory transformation of operators into joint-stock companies.
- The drafting of a thrice-yearly plan for minimum services, defined by the region in agreement with local authorities after consulting with trade union associations and consumer organisations,[24] which are added to the Regional Transport Plan, the Catchment Plans adopted by the provinces, which define the traffic catchment areas for the transport network, the Urban Traffic Plans and the Mobility Plans, which define the necessary infrastructures and investments.[25]
- The realisation of an integrated transport system.[26]

These reforms have not yet been fully implemented. Plans are not always adopted or updated (section on planning for services and investment) financial stability is difficult to achieve (see section on the impact of EU regulation), as is the realisation of an integrated transport system (see section on integrated transport systems and co-ordination of horizontal services).

The major difficulties concern the introduction of competition "for" the market. The delay in the introduction of this reform is largely due to the uncertainty over the applicable regulation. The liberalisation process initiated at regional level was interrupted in 2001, when national legislators changed the general rules governing local public services, allowing contracts to be awarded without bidding procedures to companies that are entirely publicly-owned, a common case at the local level (Art. 35, Law 448/2001). This action introduced uncertainty over the regime applicable to local public transport at the national level, whether the general rules governing local public services or the sectoral ones apply. This uncertainty was only resolved in 2004 through further legislation (Law 308/2004), which clarified how the special rules defined by Legislative Decree 422 applied to local public transport. This clarification was also supported by a judgement of the Constitutional Court in 2006 (No. 80). However, the transitional period has been continually extended and the latest recorded extension was 31 December 2008. The original deadline for introducing competition "for" the market (31 December 2003) was initially shifted to 31 December 2005 (Law 27/2004), then to 31 December 2006 (Law 266/2005), and

31 December 2007 (Law 17/2007). The latter national regulation allows regions to introduce a further extension of directly awarded contracts to 31 December 2009: *i)* if the publicly-owned companies relinquish (through a competitive procedure) 20% of their capital or 20% of their services to companies in which the public authorities have no shareholding interest; *ii)* in the case of mergers of transport operators, which involves companies operating in the same region or in contiguous traffic catchment basins (Art. 18, Para. 3*ter*, Law 17/2007).

As a result of the inadequacy of national regulation, tendering procedures have been implemented in few cases. Until now, only 20% of local public transport is the result of a tendering procedure.[27] During the period of uncertainty over the regime applicable to local public transport, a number of municipalities continued to award contracts directly to local public companies through in-house providing mechanisms. Other local public transport is still managed through non-tendered concessions as a result of the continued extension of the transitional period. Currently, the lack of sanctions in cases where contracts are awarded directly even after the transitional period, is an important element of uncertainty and of differentiation between the regions.[28] The transitional period for direct contracts would once again have been extended until 1 January 2009 (for road transport) and 1 January 2011 (rail transport) if the proposal of the working party (*Tavolo tecnico*) of the Presidency of the Council of Ministries had been accepted. The procedure of putting out to tender would have been significantly conditioned by the new regulation which requires regions not only to reorganise the optimal size of catchment areas and areas for bidding, but also to implement the social clause, which requires the incoming firm to employ all workers employed in the outgoing firm.[29]

Moreover, competitive bidding would not be the only means of selection and the local authorities could choose to award contracts directly to a publicly-owned company or to a firm where shareholders are both public and private, the private firm being chosen through competitive bidding (a so-called double object competition). The same procedures would have been followed if the general reform of local public services had entered into force (the so-called Lanzillotta draft law). According to the Lanzillotta draft law, the Italian Antitrust Authority would have had to provide consent for every contract awarded directly. Neither of these proposals was adopted. However, the possibility to award contracts directly instead of through a competitive bidding system was removed from the second draft law and inserted in Law 133/2008, with substantial modification of the role of the Italian Antitrust Authority, which is limited to providing advice.[30] Although this general rule concerns local public services, it is expressly qualified as applicable to local public transport instead of regulation by sector. Consequently, the new regulation overturns the previous general rule based on competition "for" the market and opens the possibility to derogate this mechanism without cogent and effective limits (when competition is prevented by specific "economic, social, environmental and geomorphologic" characteristics of the market).[31]

Legislative Decree 422/1997 has also regulated the transport financing system, recently modified in 2008. Until 1996, regional local public transport financing came from a National Fund for Transport (*Fondo nazionale trasporti*) instituted in 1981 and based on standardised costs of firms. This system was then suppressed in 1996 (Art. 3, Law 549/1995) because, in the absence of a definition of optimal cost levels, standardised costs were based on medium costs calculated through historical costs. This in fact amounted to a reward for inefficiency. The National Fund was then substituted by a Regional Common Fund (*Fondo comune regionale*), based on regional financing and on a share of the inland duty on gasoline. According to Legislative Decree 422/1997, each region must create a Fund for Transport to

finance minimum services, with their own and national resources (Art. 20, Para. 1); other local public transport can be instituted and financed by municipalities and provinces. Subsequent to this reform, more than half of the financing of local public transport came from regional resources to a minimum service (53.9%). The remaining funds are transferred from the state to regions (20.4%) or directly to *Ferrovie dello Stato S.p.A.* (26.3%, according to Art. 8 and 9, Legislative Decree 422).

However, the sector is still characterised by operators who do not attain economic and financial stability and are demanding new central financing. The 2008 financial law changed the financing system: ordinary statute regions have no more national economic transfers, but a share of the inland duty on gas-oil for haulage (Art. 1, Para. 298, Law 244/2007) and an additional share of the inland duty on gas-oil for haulage delivered in the regional area. Economic resources for Ferrovie dello Stato S.p.A. services are still provided by the State and a new Fund to Promote and Sustain Local Transport Development has been created (*Fondo per la promozione e il sostegno dello sviluppo del trasporto locale*, Article 1, Paragraph 304).[32] As of 2011, these economic resources will be shared on the basis of "*premialità*" criteria (*i.e.* funds are awarded on the basis of how well the participants have attained certain targets), aiming to incentivise efficiency, efficacy and the quality of services, public mobility and environmental protection.[33] This constitutes an important step in the application of Art. 119 of the Italian Constitution, requiring regions and local authorities to finance public functions through autonomous resources, and a rise in the financing sector of EUR 400 million in 2008 compared with 2007 (EUR 273 million "for running costs", EUR 125 million for new investments and EUR 2 million for the National Observatory on Local Public Transport).

Impact of EU regulation: Public service financing and awarding of contracts in EU law

Public transport has traditionally been characterised by extensive public involvement in the form of financing and management. Consequently, the European Community intervention in this area has focused on modernising and standardising relations between operators and public authorities and on defining liberalisation instruments.

The search for a criterion to distinguish between justifiable financial assistance regarding public service obligations and assistance considered as a State aid has been a key aspect of EU regulation. Traditionally, European regulation required that all accounts of activities with public service obligations be kept separate from the accounts of any other activities belonging to a particular enterprise. The compensation from public authorities must only reflect the costs directly related to the public service obligation. Further, the compensation method must be predetermined. Case law has established criteria whereby compensation for public service obligations does not constitute State aid when granted in compliance with a series of provisions principally aimed at evaluating the impact of competition but which fail to satisfy the requirements of predictability and legal certainty. These provisions were set out by the EU Court of Justice (2003 Judgment, *Altmark Trans GmbH*):

- The recipient undertaking is actually required to discharge public service obligations and those obligations have to be clearly defined.
- Second, the parameters on the basis of which the compensation is calculated have been established beforehand in an objective and transparent manner.
- The compensation does not exceed what is necessary to cover all or part of the costs incurred in discharging public service obligations, taking into account the relevant receipts and a reasonable profit for discharging those obligations.

- Where the provider of public service obligation is not chosen in a public procurement procedure, the level of compensation has been determined on the basis of an analysis of the costs which a typical undertaking would have incurred in discharging those obligations. This is under the assumption that this undertaking is well-run and adequately provided with means of transport so as to be able to meet the necessary public service requirements, and takes into account the relevant receipts and a reasonable profit for discharging the obligations. In some cases, contributions can be considered as State aid since they do not meet the above criteria. Community law considers public service compensation to be exempt from prior notification when it relates to air or maritime links to islands whose traffic does not exceed 300 000 passengers/year[34] and public service compensation for public transport or for complying with tariff obligations paid in accordance with Regulation 1 370/2007.

European rules on transport liberalisation have not traditionally been applicable to local public transport because of its limited influence on cross-border trade. However, a number of countries have opened local and long-distance transport to competition "for" the market and community institutions have consequently realised that the provisions laid out above are no longer valid. Regulation 1 370 of 23 October 2007[35] acknowledges this, but does not fully draw the implications of the change. In fact, competition "for" the market is not considered a general method to award services, because competitive bidding is compulsory only in cases of "gross cost contracts" which are entirely financed by public authorities who assume all the entrepreneurial risk (services concessions contracts). For "net cost contracts", the European rules permit local authorities to provide transport services directly themselves or to award contracts directly "to a legally distinct entity over which the competent authority (…) exercises control similar to that exercised over its own departments", "unless prohibited by national law".[36] This is the case of the Italian Legislative Decree 422, requiring a competitive-aware procedure. This regulation allows member states to decide if competitive bidding procedures are to be used for regional and long-distance rail transport services when contracts involve small amounts (EUR 1 million) or short distances (300 000 kms per year). Additionally, it permits existing contracts to run their normal course and allows the rights of workers in individual companies to be respected through a "social clause". This clause implies that where the conclusion of a public service contract may entail a change of public service operator, it should be possible for the competent authorities to ask the chosen public service operator to apply the provisions of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the member states relating to the safeguarding of employees' rights in the event of transfer of undertakings, businesses or parts of undertakings or businesses. This directive does not preclude member states from safeguarding transfer conditions of employees' rights other than those covered by Directive 2001/23/EC and thereby, if appropriate, taking into account social standards established by national laws, regulations or administrative provisions or collective agreements or agreements concluded between social partners (Preface, Section 16, Regulation 1 370).

Despite the flexibility of European regulation, it is important to stress that these regulations should be considered as minimum liberalisation standards and not goals.[37] The above-mentioned limits of national and European regulation has almost certainly contributed to discourage bolder regional decisions, as expressly mentioned by Tuscany in the context of this study. However, these regulations should not be used as a justification for postponing regional decisions related to liberalisation and modernisation.

Regulatory framework for local transport in a set of Italian regions within a national context

Interaction with the national level

All 15 ordinary statute Italian regions have adopted regulation consistent with the criteria of Legislative Decree 422/1997. This is also the case for the regions with a special statute: Aosta Valley and Friuli Venezia Giulia. Sardinia only did so in 2005, and Sicily and the autonomous provinces of Trento and Bolzano are still pending. The situation regarding the application of Legislative Decree 422/1997 is more fragmented; for example, the Transport Plan was adopted in 16 regions with varying contents, while it is not provided for in Lombardy and Aosta Valley.[38]

With the reform of Title V of the second part of the Constitution, regional competence in the field of local public transport was transformed from "concurring" into "residual exclusive",[39] with the central government retaining its powers in the field of safety, while a concurrent competence of the State and regions was introduced regarding the regulation of "major transport and navigation networks".[40] This change in the division of powers has not invalidated the principles defined by Legislative Decree 422, which remain the reference criteria for regional legislation as they reflect the State's exclusive legislative competence regarding the supervision of competition.[41] On this basis, the Constitutional Court ruled as invalid those parts of the regional laws of Liguria, Veneto and Calabria in which they set a time limit for initiating competitive bidding procedures for awarding service contracts which was later than the deadline defined at national level by National Regulation 422.[42]

The Italian Constitutional Court decisions have contributed to clarifying the share of competencies between the regions and the State. However, elements of uncertainty remain between regions and local authorities. For example, Veneto considers critical that local authorities have the competence to draw up minimum service contracts, but the financial resources concerned are determined by the region.

However, the new delegation of specific competencies to regions has not been accompanied by adequate instruments for monitoring policy developments, thus creating an important gap of information. At the national level there is no information about the number and nature of local operators, delimitation of minimum services, quality of services, competitive biddings, planning procedures and no database on regional regulation exists.[43] This lack of information influences the quality of the National Transports Plan[44] and does not permit the monitoring of the use of public financing.[45] This situation could be reversed with the entry into force of the National Observatory on Politics of Local Public Transport (*Osservatorio nazionale sulle politiche del trasporto pubblico locale*) of the Ministry of Infrastructures and Transports, where the Ministry, regions, municipalities and provinces (Art. 1, Para 300, Law 244/2007) are all represented. The Observatory, which is aimed at verifying the evolution of this sector and reporting on this to the Parliament, must organise a public database and an electronic system linked with those at the regional level.

Another critical point between the State and regions is due to the initial uncertainty over the regime applicable to local public transport, which contributed to the use of directly awarded contracts instead of competitive bidding, for instance in the municipalities of Rome, Alessandria, and Asti.[46]

Finally, all regional law imposes the so-called social clause through a reference to national regulation Art. 26 of Royal Decree 148/1931.[47] This regulation, which requires the

incoming firm to employ all the workers of the ongoing operator and to confirm the original economic rights, works together to increase labour costs which represent 60% of total production costs. It also acts as an important barrier to entry and represents one of the obstacles to the proper functioning of tendering procedures. It also has negative consequences limiting the efficiency of operators and generating costs for public administrations.[48] In fact, regions are completely free to decide these matters, because both national and European regulation (Directive 2001/23/EC) enable but do not impose the social clause. While the general interest requirement of protecting employment cannot easily be met without distorting the market, other options could have been considered, such as the use of workers who are not necessary to local public transport in order to increase the quality of the service,[49] or a transparent financing of social support schemes protecting workers from the risk of unemployment.[50]

Minimum services

The minimum services awarded by local authorities through public service contracts must be guaranteed for all citizens and financed by the regional budget. For these reasons, the identification by regions of activities to be considered as minimum services is crucial. A too broad delimitation could overburden operators' budgets with implications in the end for regional budgets. However, a too narrow delimitation could also compromise the universality of services. However, the regions with an ordinary statute have confirmed the current definition of minimum services without any further analysis to identity those activities that are not necessary to consumers or which could be assured in a more efficient way.[51] According to regional regulation, activities considered as minimum services are determined by region and local authorities through a Service Conference (*Conferenza di servizi minimi*) in Tuscany,[52] and in Veneto,[53] and through a Programme Agreement (*Accordo di programma*)[54] in Molise.[55] Two Service Conferences were convened in Veneto in 1998 and 2002, but no data are available on the implementation of the mentioned regulation in other regions.

Moreover, minimum services must be regulated by a regional thrice-yearly plan. A Plan for Minimum Services was adopted in Molise (according to Art. 12, Regional Law 19/2000), but not in Veneto, nor in Tuscany and no data are available concerning other regions.

As specified above, the European regulation implies that the method for compensating public service should be determined in advance and "in such a way that no compensation payment may exceed the amount required to cover the net financial effect on costs incurred and revenues generated in discharging the public service obligations, taking account of revenue relating thereto kept by the public service operator and a reasonable profit".[56] However, these rules are not fully applied at regional level in Italy. According to regional regulations, in Tuscany, Veneto, Piedmont and Lombardy, accounts concerning minimum services must be separated from those of other activities. However, in Veneto, the *Giunta* decides the amount to be financed in terms of euro/km on the basis of the cost/km determined by public regulation.[57] Ninety five per cent of the funds are paid in advance through monthly instalments and the final 5% upon receipt of the annual statement of services completed. In Piedmont, minimum services financing is shared between municipalities and provinces on the basis of services planned and every three years the goal accomplishments are checked.[58]

Finally, according to Art. 19 of Legislative Decree 422, regional economic transfers must stay within a 35% ratio of revenues from services to operating cost less the costs of

infrastructure. This principle is generally confirmed by regional regulation,[59] but is not always enforced.

Planning for services and investment

Regional and local planning concerning investment and services are used as instruments to achieve an appropriate level of supply of services, in line with demand for mobility and with political aims concerning the development of the sector. Although services and investment planning have common objectives, they are implemented independently and are not always co-ordinated. At the national level it is difficult to plan investments because of the lack of information about plans adopted at the regional and local levels, their content and the effective need for infrastructures. The problem of information increased over 1944-2001 and 2006-08 when national regulatory powers concerning services were separated from the infrastructure powers, pertaining respectively to the Ministry of Transport and the Ministry of Infrastructure. The financial law of 2008 established a unique ministry for services and infrastructures.[60]

Regional and local plans are not always adopted or up to date. For instance, the Regional Transport Plan for Tuscany (*Piano regionale della mobilità e della logistica*) was adopted in 2004.[61] However, the Provincial Catchments Plan, which defines the traffic catchment areas for the transport network, has not been adopted nor is it regulated by the regional law. In Veneto, the Regional Transport Plan[62] was adopted by the *Giunta* in 2005, but has not yet been approved by the Regional Council. Otherwise, Catchment Plans[63] have only been adopted for Belluno, Padua, Rovigo, Treviso, Venice, Verona and Vicenza. So far, three plans for the acquisition of buses and one for investment in technology have been approved according to Art. 18 of Regional Law 25/1998. Investment plans financed by the region are carried out through Programme Agreements (*Accordi di programma*) concluded between the regions, provinces and municipalities.[64] In Piedmont, the first Regional Plan for Transport was adopted in 1979, the second in 1997 and the third in 2004, but none were approved by the Regional Council. The new plan covers 2007-09. In Lombardy, no Regional Transport Plan was adopted after that of 1982 and the region has never marked the boundaries of traffic catchment areas.

Competitive aspects

A major obstacle to the proper functioning of tendering procedures is due to the potential conflict of interests that may arise in the frequent cases where municipalities issuing calls for tender and selecting the winning bidders are also shareholders in one of the participating firms. In fact, the compulsory transformation of operators into joint-stock companies imposed by Legislative Decree 422/1997 only created a formal separation between the public entity's role as owner and that of a regulator. Moreover, for competitive bidding to be successful it is crucial to correctly define the traffic areas. Specifically, adopting automatically the territorial boundaries of the contracting municipalities or provinces should be avoided; these areas should be defined case by case and should be large enough to achieve economies of scale. Combining of lots could also lead to set up larger operators, but could cut down the number of operators able to participate in the bidding. In any case, the number of bidders could be higher than those of lots. A limitation in the number of participants to the tender could also result in combining different transport services, especially when qualification for railways services is requested.[65] Moreover, the social clause mentioned earlier is to be noted as among obstacles to the proper functioning of tendering procedures (see section on the interaction with the

national level). In the railway sector, the fact that bidders are frequently required to have rolling stock available when it is not made available to them by the administration is an important obstacle to the participation of new entrants with regard to the tendering procedures.[66] Therefore, the calls for tender must not impose the availability of rolling stock as a qualification to compete and must allow the winning bidder sufficient time to purchase or lease the necessary equipment, which is mostly owned by Trenitalia S.p.A., the publicly-owned firm incumbent in national transport services.[67]

All these factors have contributed to the limited participation in biddings, as shown in Table 8.4, and to the frequent adjudication in favour of the incumbent (Table 8.4 and 8.5).[68]

Table 8.4. **Competitive bidding procedure at regional level (2005)**

Regions	Tenders	Participation of former monopolistic companies (%)
Friuli V. Giulia	04	100
Aosta Valley	06	100
Piedmont	01	100
Liguria	04	75
Lombardy	36	78
Emilia Romagna	08	100
Tuscany	14	100
Marche	05	100
Umbria	03	100
Lazio	05	100
Apulia	07	100
Basilicata	02	50
Total	95	

Source: Italian Antitrust Authority, Decision I657, Point 50.

Table 8.5. **Competitive bidding procedures in municipalities' chief town**

Values (in %)

Number of bidders		
Less than three	Three	More than three
69.6	15.2	15.2
Number of foreign bidders		
No one	One	At least two
86.1	11.1	2.8
Reduction		
Less than 1%	1%-5%	At least 5%
65.4	30.8	3.8
Selecting procedure		
Competitive bidding	Direct awarding contract	In house providing
46.4	25.8	27.8
Adjudication to former companies		
Yes	Yes, with other operators in temporary association (*raggruppamento temporaneo di imprese*) or consortium	Total
58.	19.5	100.0

Source: Bank of Italy, February-March 2007.

In Tuscany, bidding is only one of the forms indicated by regional law to choose service providers. Tuscany was the first Italian region to experiment with competitive bidding for ten extra-urban services in 1998. Nevertheless, the bidding which was characterised by a 30-40% reduction and only one incumbent participated, was contested by some incumbents and cancelled by the Regional Administrative Court (*Tribunale amministrativo regionale*). Veneto Regional Law 25/1998 imposed competition "for" the minimum services or competition to choose private shareholders, but allowed for the postponement of biddings until 2003 in the case of the transformation of operators into joint-stock or co-operative companies (Art. 22). The transitional period was then continually extended following the opportunity made possible by the national legislation: first to December 2006, then to December 2007 and finally to December 2008.[69] As a consequence, all local public transport activities were awarded without bidding procedures to the previous "concession" holder. Until now, the only tender procedure used for the attribution of railway services, excluding infrastructures, was "Lotto 2", which covers 76% of the total annual railways (11 714 478 km). Only one bid was presented by a temporary group of companies (*raggruppamento temporaneo di imprese*) between Italian public-owned companies. This system enables firms to present a joint offer when they do not individually have the requisite application criteria.[70] Molise regional law imposed a competitive bidding to choose service operators and private shareholders in 2004, but this method has not yet been applied: "concessions" for route transport have been extended and bridge contracts (*contratto ponte*) have been approved in other transport sectors. The criteria for competitive bidding established in the regional law[71] can create obstacles for newcomers: the demand for experience in local public transport in the preceding three years (at least 400 000 km), availability of technical equipment and a preceding three-year transport activities' invoice of not less than 35% of the auction's value. Although Piedmont regional law[72] provided only for competitive bidding to select local public services operators, only 2% of the services were allotted by tender. Ninety six per cent of the existing contracts of services were extended. In Lombardy too, competition "for" the market is the only way to select a transport operator.[73] Of the provincial capitals, 15 have organised competitive bidding for local public transport (except railways), while the other 30 maintain a concession regime. Competition "for" the market of railways was experienced for only 6% of these services; the fact that the only tender concluded has been won by a *raggruppamento temporaneo di imprese* between the three main operators is considered by this region as an argument against a further utilisation of the competition for the market.

Improving service quality through quality regulation

Local public transport always faces a risk, in case of a too low service quality. If local transport moves too slowly compared with the rest of the traffic, it risks losing clients, with implications in terms of productivity and financial outcomes. In fact, in the last five years the medium speed of local transport has fallen from 16.2 km/h in 2002 to 14.1 km/h in 2007, whereas the speed of private transport increased from 23.3 to 25.3 km/h.[74] The use of local public transport has fallen from 13.6% (in 2002) to 11.5% (2007).

The national regulations also aim at increasing the quality of local public services, with several instruments used for that purpose. New national regulations established a closer relationship between Public Services Contracts and the Public Services Charters.[75] The Contracts set the quality and quantity standards which are then adopted and specified by the Charters. The two combined result into commitments to consumers. Consumers

and operators' associations must be consulted before adopting the Public Services Charter, as well as in the periodical revisions of standards, and municipalities must monitor the respect of Contracts and Charters with the participation of consumers' associations.[76] According to the only data available, in Veneto, Tuscany and Molise all transport operators adopted a Public Services Charter (in Piedmont this was the case for the main operator of the Turin area (GTT S.p.A).[77] as well as for Trenitalia S.p.A. However, it is not clear whether these commitments for quality proceed in applying traditional regulation or the new rules. However, the new regulation mentioned above is too recent to be assessed in terms of its impact.

No data are available on the use of incentives to stimulate quality standards and their impact. In Veneto, for instance, the allocation of 1% of funds for route and lagoon transport depends on the attainment of a 35% ratio between revenues and costs or on an improvement in this ratio compared with the previous year; and the allocation of 2% of the funds is related to the respect of quality standards.

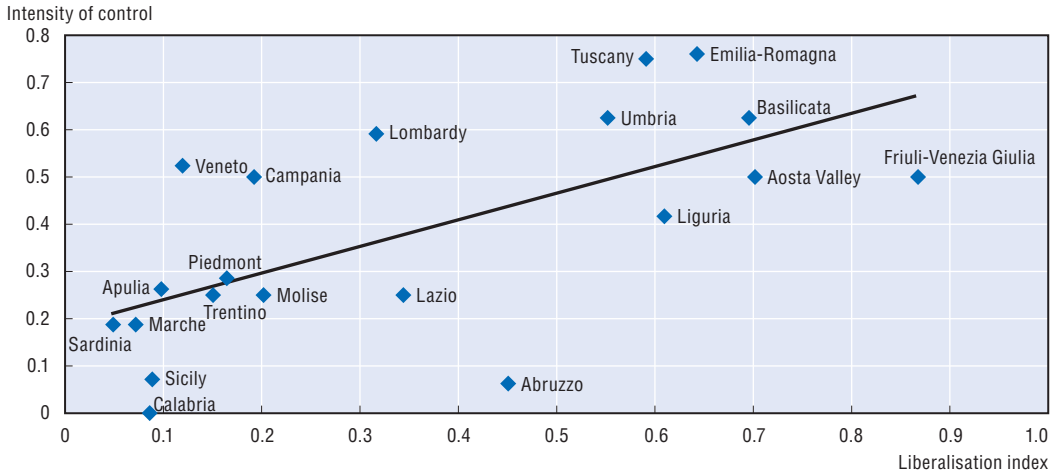
The crucial element is the monitoring of commuters' satisfaction and the quality of services, which are not even imposed by the new national rules. In general, some form of inspection is organised in three-fourths of the municipalities. However, monitoring service quality and users' satisfaction are often carried out by the operators; one-tenth of municipalities had not established any type of sanction in case of lack of performance.[78] According to a Bank of Italy analysis, accountability for efficiency and quality of services increase with liberalisation, although the evidence is rarely publicly available. In Tuscany a Regional Observatory of Local Public Transport (*Osservatorio sul trasporto pubblico locale*) was instituted to monitor and spread yearly data on the quality of services, demand for transport, company efficiency, safety, environmental impact, competitive biddings.[79] In addition, a Contact Centre was set up to receive complaints for inefficiencies in services. In Piedmont, the Regional Observatory for Mobility (*Osservatorio regionale della mobilità*) monitors the quality of services and collects data on supply and demand, which must be presented annually to the regional *Giunta* and *Consiglio* and to associations of unions, operators and consumers (Art. 13, Regional Law 1/2000). No monitoring quality system had been organised in Molise and no data are available in other regions (except for an experimental quality monitoring carried out in the Venice basin, introduced by Decision of the *Giunta* 3 859/2004).

No data are available on the perception of quality in each region. However, quality has generally been falling over 2005-07 (Figure 8.6): the worst judgments relate to tramways and buses (less than 6 on a scale of 1 to 10); railway services are considered sufficient, while the perception of metro quality is positive (7.23 in 2007).[80]

Ensuring transparency and consistency in the regulatory framework through consultation and impact assessment

In general, regions declared that they use consultation methods in the production of local transport regulation. In Tuscany local authorities, unions and consumer associations are consulted for the identification of minimum services and in the regional planning procedure through the Minimum Services Conference (*Conferenza dei servizi minimi*).[81] In Veneto, the stakeholders are consulted when the Regional Transport Plan is adopted[82] and must be heard by the Permanent Observatory for Mobility (*Osservatorio permanente della mobilità*), which aims to monitor the evolution of the sector with the principal objective of helping the regional and local planning tasks.[83] Moreover, local authorities are usually

Figure 8.5. **Liberalisation and monitoring of efficiency and quality of services in provincial capitals**

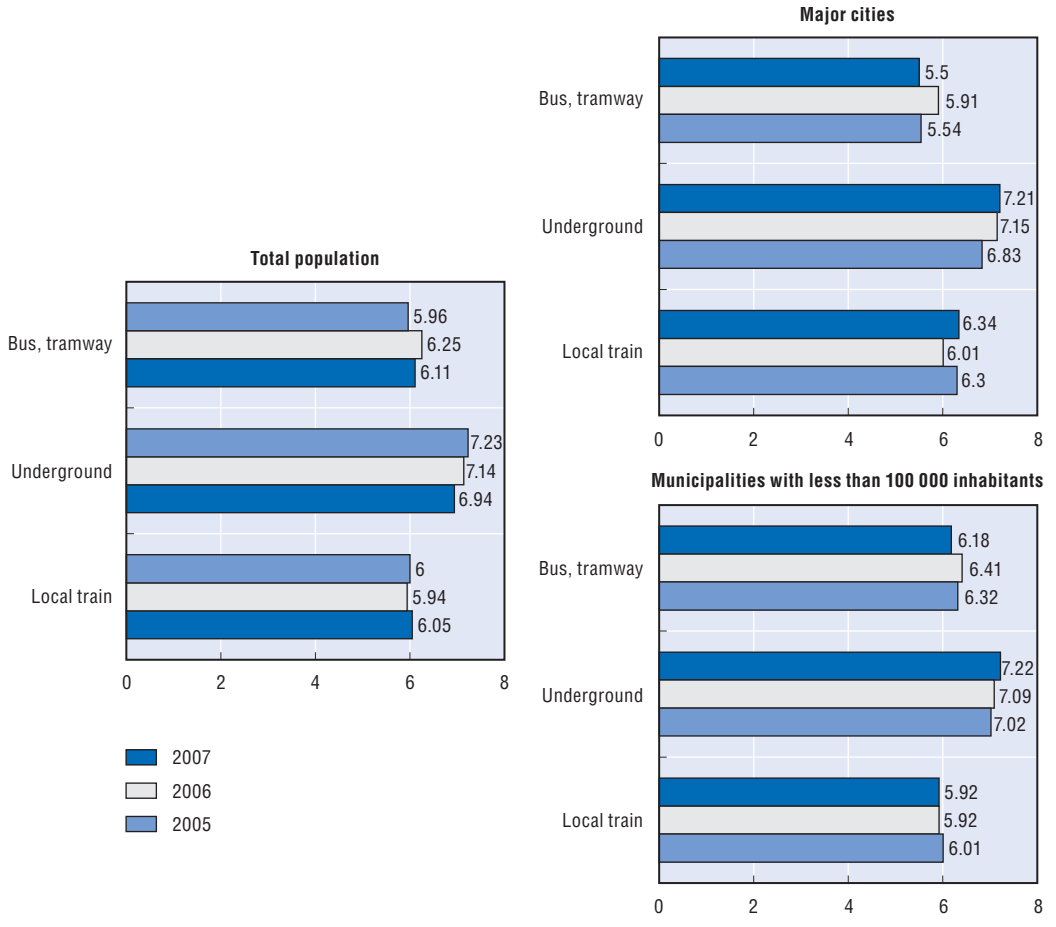


Note: Controls of running and information duty equal to value 1 if frequency is at least annual and concems at the same time efficiency and quality of services. Customer satisfaction equals to value 1 when inspections are carried out and made public at least annually and controls are not carried out by operators.

Source: Bank of Italy, March-April 2007.

Figure 8.6. **Customer satisfaction**

Average of scores from 1-10



Source: Isfort, Observatory Audimob.

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heard during the investment plans procedure, but not users. In Molise, consumers and transport operators participated in the Regional Transport Plan[84] and Regional Minimum Plan procedures, but not in those aimed at the adoption of the Provincial Catchment Plans[85] and the regional Investment Plan for rolling stock. In Piedmont, regional transport planning procedure provided for the consultation of unions, transport operators and consumer associations,[86] as well as for provincial transport planning procedure (Art. 5, Para. 7); unions and consumers associations, as well as local authorities are all consulted with regard to the tariff system defined by the *Giunta* (Art. 12, Para. 1). In Lombardy, unions and economic organisations representing a range of social and cultural categories at the regional level are consulted with regard to the Regional Transport and Mobility Plan, which directs infrastructures and services transports.[87] Associations representing economic and social interest in the sector are consulted during the planning procedure to adopt a Provincial Catchment Plan for Mobility and Transport (*Piani provinciali di bacino della mobilità e dei trasporti*),[88] and the thrice-yearly Plans for Minimum Services (*Programmi triennali dei servizi minimi*) are adopted by provinces after consulting unions and consumers.[89] No consultation of operators and consumers is provided for Urban Traffic Plans (*Piani urbani del traffico*).[90] The thrice-yearly Plan for Railway Services (*Programma triennale dei servizi ferroviari*) was adopted following consultation with the Council for Mobility and Transport (*Consulta della mobilità e dei trasporti*), which represents local public authorities, operators, trade unions and consumer associations mostly at the regional level.[91]

For the regulation of transport, drafting and impact assessments are used in Veneto, but not in Tuscany, (although this region introduced impact assessment in 2001 on an experimental basis and on a permanent basis as of 2006). In Piedmont and Lombardy drafting is used, but not impact assessment procedures. No data are available on the use of *ex post* analysis to evaluate consistent adequacy of regulation.

Integrated transport systems and co-ordination of horizontal services

The increase of transport externalities in terms of pollution and traffic congestion requires disincentives for private transport. One solution is to internalise the costs associated with private transport, for instance, through a payment mechanism for users. Another option is to improve the quality and accessibility of public transport. This can be done through the introduction of an integrated transport system, jointly considered in the following as informative integration, physical integration and tariff integration. According to a study on 69 Italian local public transport operators over 1991-2002, the introduction of an integrated tariff system increased demand on average by 2% in the short term and 12% in the long term. The example of Rome is of interest: the introduction of a new integrated fare system (Metrebus) had the effect of raising public transport use by more of 6% in two years. The impact of the integrated transport scheme is enhanced, when specific features are involved to make it more attractive for potential users: the provision for a single integrated ticket, in addition to a seasonal ticket, together with zonal pricing in urban areas. All these could increase demand by 7% in the short-run and 34% in the long-run. Another feature is the extension on the area of validity of the integrated ticket for urban and intercity services which results in a 5% increase in the number of passengers in the short-run and 25% increase in the long-run.[92] However, the introduction of integrated systems was generally delayed in Italy compared with other European countries: with the exception of Lombardy and the Bozen province in the 70s, the majority of operators only started operating such integrated systems in the 90s.

The 1997 reform introduced the goal of a transport system to be characterised by physical and tariff integration, which had to be taken into account by regions in planning procedures, in marking boundaries of minimum services, and by local authorities in the granting of services.

At present, Molise and Veneto do not have an integrated transport system. In Veneto, the tender scheduled for route, railways and lagoon transport for Padua, Treviso and Venice will aim to fill this gap.[93] In Tuscany, regional planning had been an incentive for transport integration, through an integrated system of railways and integrated rail and transport services in order to provide links with integrated parking, railway stations, urban centres and with other infrastructural and technological utilities, such as button-operated traffic lights at pedestrian crossings. The region considers that all these projects have stimulated the use of public rather than private transport. Moreover, there are incentives to use low environmental impact rolling stock. In 1996 Piedmont introduced a tariff zone for the Turin area and some integration of railways, and over 1995-97 route tariffs were applied in the provinces of Alessandria, Cuneo and Novara. In addition, the Regional Transport Plan 2007-09 provided for a transport system which was as integrated as possible within different services: regional tariffs per km of minimum services; uniform tariffs for extra-urban transports; integrated tickets for urban areas. Finally, some infrastructural interventions helped to improve an integrated system, such as the MOVIlinea project, aimed at modernising and securing local public transport stops and the MOVIcentro project, with infrastructures to support integrated transport system. Lombardy does not really have an integrated transport system, although planning for local public services must take railway services planning into account. Moreover, the extra-urban lines are managed through agreements between provinces.

The rationalisation of local public transport is crucial not only to integrate services at regional level, but also to co-ordinate neighbouring regions' services. In fact, catchment areas need not correspond precisely to regional administrative zones. However, no regional regulations provided for a compulsory co-ordination, and *de facto* co-ordination between different regions' transport plans is rare. There are no examples in Tuscany or in Veneto. Co-ordination between plans are being experimented in Piedmont, for instance through the 2007 agreement with Liguria to improve railways and route transport connection. In Lombardy, agreements (*Protocolli di intesa*) exist with Piedmont and Emilia-Romagna for joint planning of inter-regional railways transports.

Italian taxi reform of 2006

Taxi services illustrate another important aspect of local transport, which is subject to extensive regulations.[94] In Italy, taxi regulation is imposed at national (Law 21/1992) and local levels (municipal rules approved by regions). The change in the division of powers between the State and regions due to the 2001 constitutional reform has not infirmed the principles defined by national legislation, as they reflect the State's exclusive legislative role regarding the supervision of competition. On this basis, in 2006 a new law, called the Bersani Law,[95] introduced a reform of the taxi service, which the Constitutional Court considered coherent with national exclusive competences on competition, rejecting Veneto's appeal.[96]

In sum, the reform allows municipalities to:

- Provide temporary or seasonal licences in order to cope with special circumstances.
- Issue new licences to be awarded through tenders to qualified people.
- Establish a committee to monitor the services' regularity and efficiency aimed to adapt offer to demand.

- Organise additional shifts for taxis in order to increase the overall number of available cars at peak times and regulate the price of taxi services for specific routes so as to avoid the misuse of market power with respect to inexperienced customers.

The Bersani law intended to create instruments to increment the offer and quality of the services, but have not completed the liberalisation of the sectors. In fact, both the limits on licence numbers and the requirement that each individual can hold only one taxi licence are maintained. In addition, Law 21/1992 requires taxis to be organised solely as artisans or co-operatives, as anything else is considered an unjustified barrier to entry by the Italian Antitrust Authority.[97]

The reform created strong protest by taxi drivers, which led the government to modify the content of the 2006 reform. Municipalities also created obstacles to its enforcement. Reactions were mostly due to the fact that licences, which are in theory issued for free according to Law 21/1992, are now traded at a very high price on the second market. A preliminary assessment, notwithstanding the lack of a systematic analysis on this topic, would tend to put the value of a licence at EUR 200 000 in Milan in 2003 and EUR 300 000 in Florence in 2006.[98] Consequently licences are considered a sort of pension insurance for the drivers, which they can sell at retirement. Any increase in the total number of licences is considered a reduction of the capital value of this implicit pension. The Bersani Law took this critical point into account, and provided that at least 80% of the income from any tender should be used to compensate the holders of existing licences issued by the same municipalities. This has not eliminated opposition, so much so that temporary licences or exceptional tenders were not organised in Milan. Another correction to the loss of income could be derived from competitive prices, because demand is very sensitive to price change. However, the use of this instrument is impeded by regulation and by operators: on the one hand only Rome established maximum – and not fixed tariffs – for specific routes, on the other hand this flexibility was scarcely used.[99] In any event, to fully address this issue, correct information on taxi drivers' income would be required. However, this information cannot be collected as this professional category is exempted from the obligation to issue receipts for tax purposes.

In general, supply and demand adjustment is very limited. The average number of taxis per 10 000 inhabitants is 20.8 in major cities (with a resident population exceeding 500 000),[100] 12.2 in medium cities (250 000 to 500 000 inhabitants) and 3.4 in small ones (population below 250 000). Licences have mostly been issued in the last twenty years.[101] Only four municipalities have created committees to monitor this activity. With the exception of Pavia, consumers are generally less represented than operators in these committees:[102] for instance, the monitoring committee for Rome is composed of nine representatives of taxi drivers and three for consumers. Local regulation does not mention the monitoring of the quality and quantity of supply, nor the characteristics and satisfaction for demand. Most recent decisions on issuing licences had to be adopted without considering the supply and demand.[103]

Reforms adopted at the local level after the Bersani Law primarily concerned the diversification of services. In Rome, additional shifts were organised; the possibility to use driver substitution was increased and a price for airports was set. According to a Bank of Italy analysis, these instruments could have increased services by 2 500 taxis at peak times. The municipality issued 1 400 new licences for free in 2007 and another increment of 500 is planned for June 2009. Milan introduced new shifts, driver substitution and fixed tariffs on specific routes. However, in the larger cities these reforms have usually been

accompanied by a rise in recorded tariffs: 12.6% in Milan in 2007 and 18% in Rome in 2008. Additional practices are also reported to increase the costs for consumers.[104]

The use of new possibilities introduced by the reform remains generally limited.[105] In addition, a monitoring of the impact of the reform is challenging as regions are not aware of data held at municipal level. This was the case in Lombardy regarding, for instance, temporary licences, the number of taxis per inhabitant or waiting times. Neither can municipalities evaluate the adequacy of their decisions which were taken due to the lack of permanent instruments for market analysis and follow up.[106]

Conclusions

This chapter analysed the local transport sector in Italy from a quality regulation perspective, assessing the impact of liberalisation policies. The analysis reveals a piecemeal approach in which nationally held principles, such as competition, face difficulties to be implemented at local level. This may relate to the specific features of the sector, the lack of capacity in some of the regional administrations which may face challenges to organise full bidding. The situation is also made complex by the interplay of national and local regulations, for example the social clause, which limits in effect many of the efficiency enhancing properties of competitive bidding. In general, it is desirable that there be clarification in the share of competencies and their fulfilment between the State, regions, provinces and municipalities. Furthermore, national regulations may also suffer from incoherence, as several policy objectives may be pursued at the same time as part of a public service. *The need for competition for the market may be balanced with other considerations*.

The analysis reveals that current trends for local transport were not entirely favourable in recent years, due to challenges in improving quality standards. While this situation may change in the future due to rapidly increasing prices for private transport due to the increase in petrol prices over the long term, this would require more integrated policy approaches towards local public transport. The analysis reveals that there is scope for further integration in local transport schemes at local level, as well as for better co-ordination between municipalities, across regions. The instruments for monitoring are also limited at national level, as it is often difficult to collect data from municipalities. General agreements between the national and local levels have not been reached on this issue in the recent period. While the use of consultation was widespread, impact assessment remains experimental and is often not widely used to support planning and transport decisions.

Policy options

The institution of an independent national authority for transport

The institution of a national regulatory authority, which would be independent from national but also local governments could help streamline the regulatory framework in the light of the positive experience of the telecommunication and energy sectors for which such agencies were instituted in 1990. This reform has been solicited repeatedly from different parties in the policy debate[107] and was referenced as part of existing draft laws concerning independent authorities in 2007. In fact, a national independent regulator would increase the regulation of efficiency and quality through a constant monitoring of market trends. It would offer the possibility to oversee decision making on the basis of an adequate stock of information and would also permit to overcome disparities in regulation between regions. Moreover, this reform would have the advantage of eliminating the risk

of conflicts of interest generated by the fact that at the local level, authorities are often contractors and owners of service operators.

To modernise the method of setting local public transport revenues and financing

The deterioration in the financial performance of local public transport operators has called for increased public subsidies. However, these public subsidies have been insufficient to resolve the financial difficulties, thus resulting in a lowering of the quality of services. A key element is related to traditional monopoly protection which may reduce incentives to efficiency. However, numerous other factors are involved in this situation. First, fares are fixed without consideration of the quality and quantity of services provided. They are also lower than the European average. A reform introducing a price-cap method for minimum services and other transport activities could stimulate efficiency and guarantee revenues for companies. Second, the area of minimum services, which is financed by public authorities and must be guaranteed to all citizens could be determined and updated through a periodical analysis of the need of the market to respond to changing conditions. Third, public financing could be limited to cover public services obligations, as imposed by European regulation. This could apply in particular to the amount required to cover the net financial effect on costs incurred and revenues generated in discharging public service obligation.

To strengthen co-ordinated decision making between infrastructures and services

It is important to assure a direct relation between the selection of infrastructural projects to be financed and the need of transport services concerning the extension and maintenance of infrastructures if the quality is to be improved. This issue could be resolved through close co-ordination between investment and service plans at the national and regional levels and by strengthening accountability if plans are not adopted or updated. At the same time, the decisions concerning infrastructures need to be co-ordinated with the needs of service operators, in a context where asset ownership is distinct from management of services, as is the case for all Italian local public services.

Avoiding any interpretation of European or national regulation which could obstruct transport liberalisation or modernisation at local level

The interaction between regulators acting at different levels of government characterises the local transport sector. This should not result in regional decisions impeding on policies towards liberalisation as was the case in some regions through the postponement of the competition deadline for the market fixed at national level. This should also not be an excuse against modernisation, for instance, through the systematic use of the social clause which is allowed but not imposed at national and European levels. Multi-level regulation could be used as an incentive to increase the quality of regulation, for instance through a continuous exchange of information on quality regulation tools and by promoting progress across regions.

To strengthen the exchange of information between different levels of government

The lack of effective instruments to share information between the State, regions and local authorities is a threat for the quality of the regulatory framework, which requires co-ordination and policy coherence across levels of government. This critical situation could be addressed through the recently instituted National Observatory on Politics of Local Public Transport, under the condition that all different levels of government be represented in it. For this purpose, it is important that the public database and a computer-based system

collecting data on market trends carried out by the National Observatory be effectively linked with those implemented at the regional level, such as the Regional Observatory of Local Public Transport of Tuscany and the Regional Observatory for Mobility of Piedmont.

Competition "in" the market and competition "for" the market

Competition "in" the market could be introduced for profitable local public transport services lines. In other cases, competition "for" the market could be organised so as to enable several operators to take part. However, on the one hand local authorities do not usually look for profitable lines which can be liberalised. On the other hand, the continual transformation of national regulation and the lack of explicit constraints at European level have contributed to a general postponement of the introduction of competition "for" the market at regional level. The limited requirement for a "formal" privatisation by national regulation has supported the local authorities' decisions to maintain public control over local public transport companies. In this context, one of the major obstacles to successful competitive bidding is due to the potential conflict of interest created by a situation where the local regulator is also the owner/operator. In this context, the organisation of competitive bidding should be entrusted to an independent authority.

Another obstacle to the proper functioning of tenders depends on the regions' generalised use of the social clause mentioned above. Other options could be envisaged to protect employment without distorting the market, such as the use of workers to increase quality of the service, or social support schemes protecting workers from the unemployment risk. In general the number of bidders should be higher than those of lots; to this end, it is crucial to correctly define bidding areas, therefore avoiding the automatic adoption of the territorial boundaries of the local authorities and attentively combine different transport services. This is important as the qualification for some services, such as railways, involves only a small number of operators.

To strengthen the use of regulatory quality instruments and improve the services' accessibility

Quality regulation instruments can be used to increase service quality for users, through further guarantees and consumer or service charters. This would come through strict links between the Service Contract which are established between operators and local authorities and the Service Charter, which converts the Service Contract's standards into a commitment with consumers. It is also crucial to progressively adapt quality standards to the demand. Local authorities should organise a systematic monitoring of quality services and users' satisfaction, ensuring that sanctions can be applied when standards are breached and that results are regularly shared with the population at wide.

Another instrument to improve the quality of local public transport is related to accessibility of services. This can be increased, for instance, through the realisation of an integrated transport system from a physical point of view, and also considering information and fares, and through a co-ordinated offer from neighbouring regions when the catchment area does not correspond to a single administrative zone.

To encourage the use of instruments towards higher quality regulations

Even if frequently used, consultations in planning procedures are not always mandatory at the regional and local levels. The full potential of this tool could expand transparency and contribute to efforts to understand the effects of regulation in specific

groups. Moreover, as constantly stressed in OECD reports, impact assessment is one of the foundations for evidenced-based decision-making. Another important tool is drafting, which helps to provide clear and accessible regulation. The use of these instruments is under way at the regional level, but does not seem to be fully operational, with significant gaps in implementation. Because the State is no longer in a position to implement nationwide policies in local transport, the introduction of impact assessment and drafting at regional level has become crucial for the diffusion of high-quality regulation.

Further liberalise taxi services

Recent national reform of taxis has given municipalities the instruments to improve the offer of services and their quality. However, this has not substantially modified the sector's challenges in terms of waiting times, especially during peak periods. As repeatedly stressed by the Italian Antirust Authority, this problem could be solved only by further liberalisation. To this end, it is crucial to couple the awarding of new licences, allowed by the recent reform, to a removal of the existent limits on licence numbers and the requirement that each individual can hold only one taxi licence. The loss of licences' value related to this further liberalisation could be compensated for by allowing operators to sell licences which have been awarded for free or by a distribution between operators of revenues from a competitive bidding for the purchase of new licences.

Notes

1. Other litigious concerns include the delay in payment of public financial compensations to operators and the amount of financing for minimum services in regional transport planning. However, no systematic data are available on these topics.
2. C. Cambini, M. Piacenza, D. Vannoni, *Restructuring Public Transit System: Evidence on Cost Properties and Optimal Network Configuration from Medium and Large-Sized Companies*, Hermes working paper 4 (2006).
3. Asstra, *La luce della lanterna. Viaggio nella mobilità collettiva*, 5 June 2008, Rome, p. 68.
4. Asstra, *La luce della lanterna. Viaggio nella mobilità collettiva*, 5 June 2008, Rome, p. 23.
5. Data Asstra 1996-2006. See also C. Dell'Aringa, *Costo del lavoro e tariffe nel trasporto pubblico locale*, Hermes (2006). For instance, in Piedmont fares were updated in 2002 and in 2007.
6. Ministry of Infrastructure and Transport.
7. According to Legislative Decree 422/1997, fares must be established "when it is possible, in keeping with what is established by Law 481/1995". For local public transport, the Regional Plan for Transport establishes the method to determine prices in relation to the policy for fares and the three-year Plan for Services; then the Public Services Contract sets the fares.
8. For instance, Iribus Iveco, Alstom and companies associated in Federtrasporti and Asstra.
9. Asstra-Hermes (2007), *L'evasione tariffaria nel trasporto pubblico locale*.
10. This situation has been qualified as "new local public capitalism" (F. Giavazzi, *La rendita dei comuni*, in *Corriere della Sera*, 1 September 2008).
11. Italian Antitrust Authority, AS453, Considerazioni e proposte per una regolazione proconcorrenziale dei mercati a sostegno della crescita economica, 11 June 2008, in *www.agcm.it*
12. Art. 113 and Art. 113*bis*, Legislative Decree 267/2000.
13. A. Heimler (2005), "Public or private provision of infrastructures services? If private, fixed term concessions or full privatisation?", 32nd Annual Conference on International Antitrust Law & Policy, Fordham University, New York, NY, 22-23 September.
14. According to the Ministry of Infrastructures and Transports (*Conto nazionale dei trasporti e delle infrastructure*, 2006-07), in the railway sector, 39 companies are acting at the national level and 44 at the regional level; in the bus sector, 1 200 companies (30 billion passengers/km); in metro

transport, 6 companies in the cities of Milan, Genoa, Rome, Naples, Catania and Turin (5.1 billion passengers/km).

15. Only 11% of the companies have more than one hundred employees (Asstra, *La luce della lanterna. Viaggio nella mobilità collettiva*, 2008, p. 10).

16. C. Bentivogli, R. Cullino, D.M. Del Colle, *Regolamentazione ed efficienza del trasporto pubblico locale: divari regionali*, Bank of Italy, study congress *I servizi pubblico locali: liberalizzazione, regolazione e sviluppo industriale* (2008).

17. A. Boitani, W. Tocci, *Mobilità sostenibile e liberalizzazione del trasporto locale*, can be consulted at *www.governareper.it* (2005).

18. Western European countries have launched their reforms in different periods: Spain, Sweden, Belgium, Denmark, Finland and France between 1987 and 1993; Germany and Italy introduced liberalisations measures in 1996 and 1997, respectively; and Austria and the Netherlands towards the end of the decade.

19. EARCHIMEDE Consulting, *La resa dei conti. Rapporto sul trasporto pubblico locale: Situazione attuale e prospettive evolutive*, Roma, 23 marzo 2005. Report commissioned by ASSTRA and ANAV

20. Art. 4, Para. 4, Letter b) and Art. 20, Para. 5, Lett. g) quater, Law 59/1997 (as amended by Law 191/1998).

21. As a result of Legislative Decree 422/1997, adopted to implement norms for attributing functions and duties to local authorities and amended by Legislative Decree 400/1999.

22. Art. 18, Para 2, Letter g), Legislative Decree 422/1997.

23. Art. 16, Legislative Decree 422/1997.

24. Art. 14, Legislative Decree 422/1997.

25. Legislative Decree 422/1997 completed the decentralisation process based on the constitutional system that prevailed prior to the reform of 2001, under which ordinary regions had the power to issue legislative norms in the field of "tramways and bus lines of regional interest (...) navigation and lake ports" (Art. 117), while Art. 118 of the Constitution delegated State administrative functions to the regions for railways under concession or managed by government trustees and secondary state railway lines that the state administration no longer considered to be useful for the integration of the primary national network.

26. The transport system integration must be taken into account by regions in planning procedures and in marking the boundaries of minimum services (Art. 14, Para. 2 and 3, Legislative Decree 422/1997) and by local authorities in the granting of services (Art. 18, Para. 1, Legislative Decree 422/1997).

27. Italian Antitrust Authority, I657, *Servizi aggiuntivi di trasporto pubblico nel comune di Roma*, 30 October 2007, Point 33, *www.agcm.it*.

28. Ministry of Infrastructure and Transport.

29. Moreover, according to the mentioned working party (*Tavolo tecnico*), regions would have been obliged to redefine the minimum services (*servizi minimi garantiti*) and local authorities would have to establish references for standard costs, as well as for minimum price per passenger/kilometre at the regional level. At the national level, "essential minimum services" would have been defined, *i.e.* services necessary to guarantee citizens' mobility in order to guarantee other essential rights, such as the right to health.

30. Art. 23*bis*, Law 133, 6 August 2008. Moreover, the regulation of customers' rights was removed from the second draft law and inserted in Law 244/2007 (see Section 4).

31. The Italian Antitrust Authority has stressed the risk of inefficacy of its advice over the reports which the local authority must draw up to justify cases of directly awarding contracts (Italian Antitrust Authority, AS457, *Disciplina dei servizi pubblici locali di rilevanza economica*, 24 July 2008, *www.agcm.it*).

32. A Fund for Investments in Local Public Transport (*Fondo per gli investimento nel TPL*) and a Fund for Endurable Mobility (*Fondo per la mobilità sostenibile*) were created in 2007.

33. Issfor-Asstra, *Così è se vi pare. V rapporto sulla mobilità urbana in Italia*, 7-9 May 2008, Genova, p. 168 ss.

34. Art. 2 and Art. 3, EC Commission Decision n. 842/2005 on state aid for services of general economic interest.

35. Regulation of the European Parliament and of the Council on public passenger transport services by rail and by road and repealing Council Regulations (EEC) 1 191/69 and 1 107/70.

36. "Unless prohibited by national law, any competent local authority (…) may decide to provide public passenger transport services itself or to award public service contracts directly to a legally distinct entity over which the competent local authority (…) exercises control similar to that exercised over its own departments" (Art. 5, Para. 2, Regulation 1 370/2007).

37. A. Pezzoli, "Regolamento Tpl, l'Europa non fa passi avanti ma non spinge indietro", in *Il Sole 24 Ore, Trasporti*, February 2008.

38. C. Bentivogli, R. Cullino, D.M. Del Colle, "Regolamentazione ed efficienza del trasporto pubblico locale: divari regionali", Bank of Italy, study congress *I servizi pubblico locali: liberalizzazione, regolazione e sviluppo industriale* (2008).

39. "The regions have legislative powers in all subject matters that are not expressly covered by State legislation" (Art. 117, Para. 4, Italian Constitution).

40. Art. 117, Para. 3, Italian Constitution.

41. Art. 117, Para. 2, lett. e) Italian Constitution. In the same way, the regions must comply with the provisions at the national level concerning the "basic level of benefits relating to civil and social entitlements" that are the exclusive competence of the state [Art. 117, Para. 2, lett. m), Constitution].

42. Italian Constitutional Court, Judgement 80/2006.

43. Even the Committees for the Monitoring of Railways Services (*Comitati di monitoraggio dei servizi ferroviari*), created in accordance to Programme Agreements (*Accordi di programma*) between the Ministry of Transports and ordinary statute regions (Art. 8-9, Legislative Decree 422/1997), were until now limited to quantifying the financial needs of the sector.

44. Which is an expression of a general programme of government for transport, *i.e.* concerning the infrastructural investments to be carried out and that is progressively specified by the Regional Transport Plans, the Provincial Catchment Plans, the Urban Traffic Plans and the Mobility Plans (in application of "a waterfall" planning method).

45. Ministry of Infrastructures and Transports.

46. C. Cambini, F. Galleano, *Le gare per l'affidamento del servizio di trasporto pubblico locale in Italia*, II° Rapporto, May 2005, *www.hermesricerche.it*

47. Art. 18, Tuscany Regional Law 42/1998; Art. 31, Veneto Regional Law 25/1998; Art. 21, Molise Regional Law 19/1984; Art. 11, Para. 4, Piedmont Regional Law 1/2000; Art. 20, Para. 6 and Art. 22*ter*, Para. 3, Lombardy Regional Law 22/1998.

48. Italian Antitrust Authority, AS449, Affidamento ad un gestore unico del servizio di TPL nella regione Friuli Venezia Giulia, 21 February 2008, *www.agcm.it*.

49. Italian Antitrust Authority, AS453, *Considerazioni e proposte per una regolazione proconcorrenziale dei mercati a sostegno della crescita economia*, 11 June 2008, *www.agcm.it*

50. Ocse, Italy. *Ensuring Regulatory Quality across Levels of Government* (2007).

51. Ministry of Economics and Finance. The confirmation of the previous definition and this progressive increasing is often connected to the need to maintain existing economic contributions from the state (Ministry of Infrastructures and Transports).

52. Art. 5, Regional Law 42/1998.

53. Art. 20, Regional Law 25/1998;Regional *Giunta* Decision 325/2001 and 713/2008. The Giunta is the regional executive.

54. These contractual tools are aimed at overcoming bureaucratic inertia and veto powers and speed up the decision process when multiple public and private actors are involved.

55. Art. 11, Regional Law 19/2000.

56. Art. 4, Para. 1, lett. b), Regulation 1 370/2007

57. Decisions 2 665/1995 and 3 948/2007.

58. Art. 15, Para. 3 and 4, Regional Law 1/2000.

59. See Art. 14, Piedmont Regional Law 1/2000, and Art. 27, Veneto Regional Law 25/1998.

60. Art. 1, Para. 376, Law 244/2007.

61. According to Art. 6, Regional Law 42/1998, the Regional Transport Plan is aimed at identifying, among other things: services to be offered at the regional level and to the allotment of economic resources; criteria for the awarding of services; incentives to transform public companies into co-operatives or joint-stock companies.

62. Art. 13, Regional Law 25/1998.

63. Art. 15, Regional Law 25/1998.

64. The main criteria for sharing out regional funds among local authorities are: km annually delivered in the framework of the public service contract and substitution of vehicles older than 15 years.

65. Italian Antitrust Authority, AS125, *Trasporto pubblico locale*, 27 February 1998; AS870, *Affidamento servizio trasporto pubblico regionale e locale nella Regione Friuli Venezia Giulia*, 21 February 2008, *www.agcm.it*.

66. The Veneto experience is meaningful, as it was the first example of a European call for tender for regional and local railways services. Two foreign firms and other Italians competitors were interested in those services, but only Trenitalia S.p.A. with other companies (organised in a *raggruppamento temporaneo di imprese*) was able to present an offer. Foreign firms consider it impossible to deal with the 24 mounts imposed by the region to equip with rolling stocks (C. Cambini and B. Buzzo Margari, *Le gare nelle ferrovie locali*, Hermes, 2005).

67. Italian Antitrust Authority, AS262, *Reperimento del materiale rotabile ferroviario necessario per l'espletamento delle gare per l'aggiudicazione dei servizi ferroviari di competenza regionale*, 28 July 2003; Italian Antitrust Authority, AS453, *Considerazioni e proposte per una regolazione proconcorrenziale dei mercati a sostegno della crescita economica*, 11 June 2008, *www.agcm.it*

68. Results of biddings realised in local public transport are analysed by G. Mangia, *Le alleanze organizzative tra gli operatori del trasporto pubblico locale*, Franco Angeli (2005); C. Cambini, A. Boitani, *Le gare per i servizi di trasporto locale in Europa e in Italia: molto rumore per nulla?*, and C. Cambini, F. Galleano, *Le gare per l'affidamento del servizio di trasporto pubblico locale in Italia*, II° Rapporto, May 2005, *www.hermesricerche.it*.

69. In accordance with National Laws 266/2005 (*Giunta* Decision 1 402/2006); 51/2006 (*Giunta* Decision 2 361/2006); and 17/2007 (*Giunta* Decision 553/2007.

70. According to Art. 37 of Legislative Decree 163/2006.

71. Art. 13 of Regional Law 19/2000.

72. Art. 11, Law 1/2000.

73. Art. 20, Regional Law 22/1998.

74. Issfor-Asstra, Così è se vi pare. V rapporto sulla mobilità urbana in Italia, 9-7 May 2008, Genoa, p. 5 ss.

75. Art. 2, Para. 461, Law 244/2007/.

76. The Services Charter defines the means of access to relevant information and to the alternative dispute resolution and judicial review.

77. The GTT S.p.A. is a holding operating in the Turin urban and suburban networks (1 metro, 8 tram lines and 100 bus lines, operating 100 km of tramline network and 1 000 km of bus network); out-of-town bus network (73 bus lines operating 3 600 km); and rail network (2 lines in concession covering 82 km and 1 line managed on behalf of the Italian railway company, Trenitalia, covering 24 km).

78. C. Bentivogli, R. Cullino, D.M. Del Colle, *Regolamentazione ed efficienza del trasporto pubblico locale: divari regionali*, Bank of Italy, study congress *I servizi pubblico locali: liberalizzazione, regolazione e sviluppo industriale* (2008).

79. Art. 21, Regional Law 42/1998.

80. Asstra-Isfort, Così è se vi pare. V rapporto sulla mobilità urbana in Italia, 7-9 May 2008, Genoa, p. 5 ss.

81. Art. 5-6, Regional Law 42/1998.

82. Art. 12, Regional Law 25/1998.

83. Art. 45, Regional Law 25/1998.

84. According to Art. 8, Para. 2, Law 19/2000.

85. Art. 10, Regional Law 19/2000.

86. Art. 4, Para. 7, Regional Law 1/2000.

87. Art. 9, Regional Law 22/1998.

88. Art. 12, Regional Law 22/1998.

89. Art. 18, Regional Law 22/1998.

90. Art. 13, Regional Law 22/1998.

91. Art. 18, Regional Law 22/1998.

92. G. Abrate, M. Piacenza, D. Vannini, "The Impact of Integrated Tariff System on public Transport Demand: Evidence from Italy", *Working papers Hermes*, No. 4/2007, in *www.hermesricerche.it/elements/WP_07_04_APV.pdf*.

93. Moreover, numerous examples of integrated services are experienced by private operators concerning, for instance, integrated offers of urban and extra-urban route services.

94. As illustrated by the OECD 2007 round table on taxi services in the working party on competition and regulation of the competition committee (DAF/COMP(2007)42).

95. Art. 6, law no. 248/2006.

96. Judgment 452/2007.

97. AS053, *Servizio di trasporto di persone mediante taxi*, 29 July 1995; AS277, *Distorsioni della concorrenza nel mercato del servizio taxi*, 26 February 2004; AS453, *Considerazioni e proposte per una regolazione proconcorrenziale dei mercati a sostegno della crescita economica*, 11 June 2008, *www.agcm.it*.

98. M. Bordigon, *Tutti matti: governi locali e riforme*, *www.lavoce.info* (2004); T. Boeri, *Un taxi chiamato desiderio*, *www.lavoce.info* (2006).

99. Even tariffs for the so-called taxibus or shared taxis are scarcely utilised (*Agenzia per il controllo e la qualità dei servizi pubblici locali del Comune di Roma, Relazione annuale sullo stato dei servizi pubblici locali e sull'attività svolta* (2006), p. 100, *www.agenzia.roma.it/home.cfm?nomepagina=relazione*.

100. 4 855 licences have been attributed in Milan.

101. C. Bentivogli, *Il servizio di taxi e di noleggio con conducente dopo la riforma Bersani: un'indagine sulle principali città italiane*, Bank of Italy, study congress *I servizi pubblico locali: liberalizzazione, regolazione e sviluppo industriale* (2008), p. 10.

102. These Committees coexist with the Consultative Commissions for Service and the Regulation's Application (*Commissioni consultive relative all'esercizio del servizio ed all'applicazione dei regolamenti*) instituted by Law 21/1992, without any co-ordination or differentiation of competencies [C. Bentivogli, *Il servizio di taxi e di noleggio con conducente dopo la riforma Bersani: un'indagine sulle principali città italiane*, Bank of Italy, study congress *I servizi pubblico locali: liberalizzazione, regolazione e sviluppo industriale* (2008), p. 8].

103. Strong opposition is expressed in general to the monitoring of offer, such as checks through GPS which was experimented in Milan, or a register of services and tariffs (used in New York city).

104. According to an Altroconsumo analysis of ten Italian cities over 27 November-15 December 2006, 44% of the cars called through "radio taxi network" arrive more than 5 minutes before the specified time (in Rome, this behaviour was surveyed on 9 out of 10 cars). Altroconsumo, *Lunga attesa per una corsa*, No. 202, March 2007.

105. Ministry of Economy and Finance.

106. C. Bentivogli, *Il servizio di taxi e di noleggio con conducente dopo la riforma Bersani: un'indagine sulle principali città italiane*, Bank of Italy, study congress *I servizi pubblico locali: liberalizzazione, regolazione e sviluppo industriale* (2008).

107. Bank of Italy, Italian Antitrust Authority, Asstra, Anav, Earchimede.

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Chapter 9

Energy

This chapter discusses the regulatory framework for energy regulation from a multi-level perspective, including the effects of liberalisation in the electricity and natural gas sectors. This involves a discussion of the price dynamics, as well as production, distribution, imports and new investments. The specific case of investments in natural gas facilities is addressed. The chapter also discusses the regulation of quality in the energy sector. It presents the regional energy plans from a multi-level perspective. Finally it discusses the role of local public service companies in the energy markets.

Introduction

Since 2000, Italy has undertaken a liberalisation process in the energy sector. EU energy packages and internal legislation (mainly Legislative Decrees 79/99 and 164/00) have fostered the opening of parts of the electric energy and natural gas sectors to competition (production, transmission, retailing for electric energy, imports,[1] distribution and retailing for natural gas). This has also induced competition "for" the market, subject to non-discriminatory practices only for those parts of the energy sector where a natural monopoly persists (local transmission and distribution).

Apart from these EU-wide trends, the Italian 2001 constitutional reform also played a major role in assessing the structure and performance of the energy sector, transferring very relevant powers to regions and local institutions. Energy was inserted in the list of policy areas with concurrent legislative powers for the State and regions. However, the regulatory structure has assigned legislative and control powers to different levels of government on grounds that are relevant to investment decisions in the energy sector. In particular, the environmental regulation that directly affects the authorisation procedure for most energy investments and planning by local governments has been left to the central government (Legislative Decree 152/2006).

In addition to these EU-wide competition driven changes and the domestic institutional reforms, the energy sector is also affected by environmental concerns for sustainable development. Both European legislation (mainly the European Energy Plan) and internal environmental legislation have played a major role here, by assessing the regulatory framework through which central and local governments encourage the deployment of new and renewable sources. These legislations define the level of commitment to national targets related to energy efficiency and saving, "green" energy production, and consumption.

The sharing of responsibility for regulatory powers across levels of government, and sectors that intersect the energy field[2] have resulted into the exercise of veto power by local authorities against energy infrastructures as well as a significant level of litigation between the State and Regions. This has also been accompanied by a lack of co-ordination between levels of government which as a consequence, has reduced the achievement of shared goals in the national interest. However, the liberalisation process has also been partially successful in branches of the energy industrial sector that were first opened to competition and where regulation played an active role. Extra rents and costs to former energy sector monopolists have been reduced, allowing ENI, ENEL and former "*municipalised*" companies, to expand and compete in bigger and active markets ("*Municipalised*" companies operate as part of municipal operations – see chapters on energy and local transport).

However, liberalisation has not been coupled with a full privatisation.[3] Major players in energy markets, namely, the former monopolists and "*municipalised*" companies, are still publicly-owned. Either the State, directly through the Ministry of Economy (or indirectly through a publicly-owned bank, the *CDP – Cassa Depositi e Prestiti*), local municipalities or other

public bodies own the majority shares (or the controlling share) of these companies. As a result, in each segment of the electricity sector, the State owns 32% of the equity stakes and 30% of each segment of the gas sector when taking into account firms listed on the Stock Exchange, for which it is possible to have information on the participation quotas. This has implications for the regulatory structure and the regulating entities of the Italian energy sector.

A first challenge may be that in an economic context where fiscal pressure is already set at a high level with significant public expenditure, energy companies may be seen by local governments (at all levels) as "backstop" financing entities. Although this is not unique to Italy, this may result into pressures to tie the regulatory structure in favour of incumbents rather than fostering the entry of new companies and increasing efficiency of the system as a whole. Similarly, the process of opening to competition might be perceived as sufficient, and that all positive consequences have already been exploited. This would imply that fully opening parts of the energy chain that have not yet been completely open or where liberalisation has not effectively started are no longer required (for instance, in natural gas distribution or in the dispatching market for electric energy).

A second challenge faced by the regulatory structure of the energy sector refers to difficulties, in a liberalised framework, at setting targets, some for environmental needs, that may differ from the energy market ones, and which could nonetheless be perceived as important or compulsory from a broader point of view. This is the case for the national environmental targets set for energy policies at European level (see Box 9.1), as well as fulfilling the need for national security through a geographical differentiation of energy inputs. In these cases, policies can operate in a liberalised market setting proper incentives (or penalties), trying to steer markets, but results are not necessarily measured, and might not be cost-effective. Therefore, achieving policy coherence in a context of multiple objectives is a difficult process.

Box 9.1. **Action Plan and the Italian energy environmental targets**

The European Action Plan, adopted by the European Parliament and becoming effective, aims at promoting the use of renewable energy sources, reducing greenhouse gases (GHG) emissions and final energy consumption. It sets legal binding targets at an EU level, by 2020, equal to a 20% cut of GHG, a 20% share of final consumption from Renewable Energy (RE), of which 10% from RE fuels in the transport sector. The process involves an allocation of the burden of GHG reduction and RE share. For Italy, a 13% cut for non-Emission Trading sectors is foreseen with a proposed share of RE that amounts to 17% of total consumption in 2020 (in 2005 it was 5.2%).

The problem in implementing such targets is more acute due to the structure of the regulatory framework and in particular, the different levels of government that impact on markets linked by the energy chains. This may induce issues of co-ordination, litigation, delays, and inefficiency. The following section tackles these issues, focusing on the challenges of the multi-level government framework for electric energy and natural gas markets in Italy.

This chapter provides a brief description of the effects of liberalisation in the electricity and in the natural gas sectors, reviewing the actual structure of energy infrastructures and performance of energy markets. Market liberalisation often has implications for the quality level of the services provided, in terms of reliability. In order to

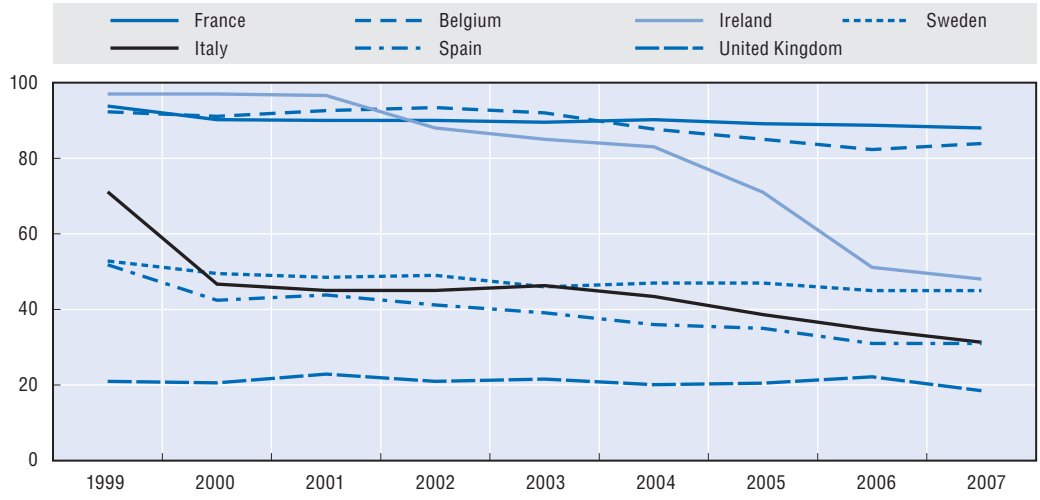
avoid such a risk, the regulation of quality plays a major role in liberalised markets. This will be addressed in a specific section. The chapter analyses the multi-level layered structure of decision making about electric energy and natural gas, focusing on the role of Italian regions. From the standpoint of energy companies, former "*municipalised*" companies have played a crucial active role in the transition from the former monopolised markets to the liberalised ones. Some of these companies have succeeded in growing and changing from local public entities to global players. This will be analysed further below in a section on the role of local public service companies in the energy market.

The effect of liberalisation in the electricity sector

After the introduction of the reform, the Italian electricity sector can be described as one in which the regulatory framework assures full and open competition from a European perspective. A high degree of (potential) competition is indeed granted both at the upstream and downstream levels: legal separation was introduced in the low-voltage distribution networks and an independent system operator (TERNA) was created, and owns the national grid.[4] Full and open competition was also introduced on the demand side.[5] Electricity is traded in a power exchange market (IPEX), which is publicly owned and managed. A public body (*Acquirente Unico*), which also acts as a provider of last resort, is active in the market as an aggregate collector of groups of consumers' demand (see below).

At the upstream level (electricity generation), concentration has declined sharply since the beginning of liberalisation, partly due to divestiture of generating companies (GENCOs) by ENEL, the former legal monopolist. As a result, in 2007, the market share of ENEL was close to one-third of the total, with a reduction of roughly 40 percentage points of the share maintained in 1999 (Figure 9.1).

Figure 9.1. **Gross electric production, market share of major producer; selected countries**



Source: Eurostat.

With the exception of Ireland, where the main generation company decreased its market share from 97% in 1999 to 51.1% in 2006, no other country experienced such a rapid contraction of the dominant player. In Italy, the share of the dominant player fell from 71.1% in 1999 to 34.6% in 2006.[6] However, notwithstanding the fact that direct competitors

have increased their market share during the same period, ENEL's dominant position still persists. The second company in the market, Edison, had a market share of 13.5% in 2007, from 7.3% in 2000, but remained only equivalent to a third of the dominant player. Together A2A, Edison and Edipower,[7] have a market share that is slightly above 20% (AEEG, 2008). In 2006, the degree of concentration in electricity generation, measured by the Herfindahl-Hirschman Index (HHI), was still high but the value was intermediate between competitive markets such as the UK and Sweden and other markets which have not yet opened up to competition such as France and Belgium (European Commission, 2008).

Electricity transmission is owned and managed by TERNA, which is also responsible for the development of the existing national grid. Investments in new national transmission lines are made in agreement with regions: 49 requests for building new transmission lines have been reported since the inception of liberalisation (Table 9.1).

Table 9.1. **Requests for authorisation for new transmission lines above 150 kV**

Region	Number of requests	Requests withdrawn	Number of requests under EIA	Number of requests decreed	Average time for decrees (months)	% of requests built	Average building time (months)
Piedmont	8			3	13		
Aosta Valley	1			1	11		
Lombardy	9		1	6	17	16%	6
Trentino AA	3	1		2	10	50%	12
Veneto	5		1	1	7		
Friuli VG	3		1				
Emilia Romagna	1			1	13	100%	14
Tuscany	2			1	8	100%	12
Marche	2						
Umbria	1			1	8		
Lazio	2			2	17		
Abruzzo	2	1					
Campania	3	1	1				
Apulia	2						
Basilicata	1						
Calabria	2		1				
Sicily	1		1				
Sardinia	1		1				

Source: Elaboration from MISE data.

Since then, only 18 requests were authorised and 4 were fully built and operational by the end of 2008. The requests that have not been withdrawn are waiting for the environmental impact assessment to take place. The average waiting time for the requests that have been examined is 12 months. Even if the law prescribes that the procedure should end within 180 days from request, the environmental impact assessment exceeds the compulsory time limit, resulting into significant delays. This situation is not unique to Italy, as environmental issues may halt or slow down investment in energy capacity. Similar issues arise in Australia. In Japan, in order to streamline the process in the energy sector, Strategic Environmental Assessment was waived for power construction.

Price dynamics

Electricity is traded in an organised market (IPEX) that is articulated in a day-ahead market, an adjustment market and a dispatching one. At present, demand is active in the day-ahead market and in the adjustment one; yet traders can also operate through

bilateral contracts, which amount to roughly 33% of the total demand (AEEG, 2007). At present, only TERNA can operate in the Dispatching Market (MSD, *Mercato dei Servizi di Dispacciamento*), from the demand side. Therefore, TERNA acquires the necessary power to balance the grid from power plants active in the MSD following a merit order criterion, even though the final structure of dispatching foresees the active participation of the whole demand to MSD. For this reason, a compensating mechanism to balance the day-ahead market with the dispatching one is still active since the switch to a full and open participation of demand to all IPEX markets has not yet been achieved.

Electricity prices are among the highest in Europe, for households and industrial companies.[8] Prices with and without taxes for households and industrial consumers are always higher in Italy than in the average EU15 countries. Without taxes they are the highest for households and small industrial consumers (Ia), the second highest for other industrial consumers (industries with a consumption profile from Ib to Ig).

Table 9.2. **Electricity prices for Households and industrial consumers. Italy and average EU15**

		Italy	EU15
Households – Dc (ac: 3.5MWh)	No taxes	0.163	0.123
	With taxes	0.234	0.157
Industry – Ia (ac: 30 MWh; md: 30 kW; al: 1 000 h)	No taxes	0.123	0.120
	With taxes	0.182	0.157
Industry – Ib (ac: 50 MWh; md: 50 kW; al: 1 000 h)	No taxes	0.137	0.122
	With taxes	0.199	0.158
Industry – Ic (ac: 160 MWh; md: 100 kW; al: 1 600 h)	No taxes	0.121	0.105
	With taxes	0.170	0.134
Industry – Id (ac: 1.25 GWh; md: 500 kW; al: 2 500 h)	No taxes	0.114	0.090
	With taxes	0.162	0.117
Industry – Ie (ac: 2 GWh; md: 500 kW; al: 4 000 h)	No taxes	0.111	0.083
	With taxes	0.156	0.107
Industry – If (ac: 10 GWh; md: 2500 kW; al: 4 000 h)	No taxes	0.106	0.079
	With taxes	0.140	0.100
Industry – Ig (ac: 24 GWh; md: 4 000 kW; al: 6 000 h)	No taxes	0.100	0.072
	With taxes	0.128	0.091

ac = annual consumption.
md = maximum demand.
al = annual load.
prices: euro/kwh.
Source: Authors' elaboration based on Eurostat data referring to 2007.

Wholesale energy prices differ across "price zones", *i.e.* main geographical areas (Centre North, Centre South, North, South, Sicily, Sardinia). While producers are paid the zonal price, the demand side of the market pays a single national price regardless of the zone where the withdrawals take place. This price is called *Prezzo Unico Nazional* (PUN) and is calculated as the average of zonal prices, weighed on zonal consumption. Table 9.3 compares area and nation-wide prices. The constraints of the interconnection and transmission grid in Italy imply that a significant difference exists for prices across zones.

In addition, according to AEEG, challenges to competition exist in each of the main zones (Table 9.4). Sufficient competitive pressures tend to exist only in one main zone, the North, as measured by the HHI. Other zones tend to show higher levels of concentration with higher levels in the HHI index. In Sicily and Sardinia this is compounded by the limited interconnection with continental Italy.[9] Table 9.4 presents figures of HHI in each macro zone for energy offered and sold at the day-ahead market.

Table 9.3. **Zonal and National prices (PUN), 2007**

	Prices	
	Mean	Volatility
North	62.2	16.84
Centre north	67.76	17.97
Centre south	68.77	18.55
South	68.75	18.54
Calabria	68.98	19.17
Sicily	80.26	25.49
Sardinia	65.91	26.84
PUN*	70.99	11.2

*Single National Price (Prezzo Unico Nazionale), weighted average of zonal prices.
Source: GME.

Table 9.4. **HHI index in each macro zone, 2007**

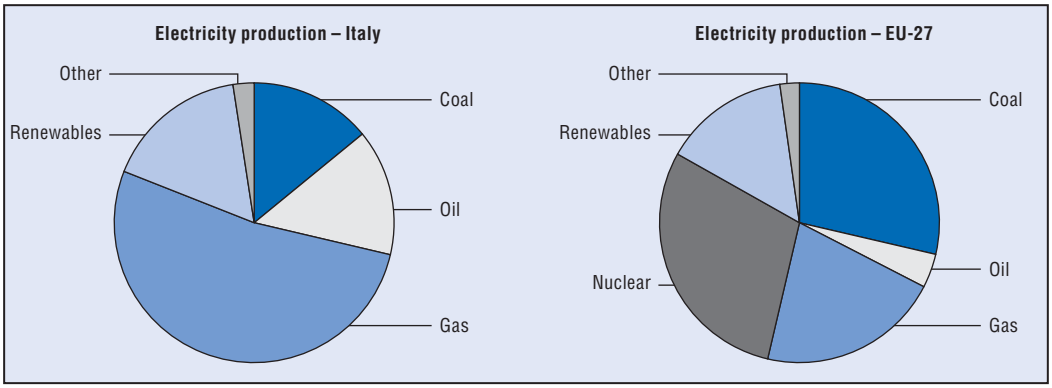
	Offers	Sales
Macro zone north	2 104	1 369
Macro zone south	3 615	2 091
Macro zone Sicily	2 718	3 668
Macro zone Sardinia	3 164	3 207

Source: GME.

Production, imports and new investments

The structure of electricity generation partially explains the price difference with Europe. Figure 9.2 represents the share of electricity production in Italy and in EU27.

Figure 9.2. **Electricity production in Italy and in the EU27**



Source: Elaboration from TERNA.

In Italy, 81% of total electricity production derives from conventional thermal power plants, composed of 52% of plants powered with natural gas, 15% with conventional oil and 14% with coal; 16% derives from renewable, mostly hydro power. The share of wind and geothermal energy is 3%. Photovoltaic production remains symbolic.[10] European figures show a much higher percentage for nuclear (29.5%), coal (28.6%); a reduced use of natural gas for power production (21%) and oil plays a minimal role (4%). Moreover, in Italy the base load is mostly due to imports (49.3 TWh, that equals 14% of total internal consumption).

At present, 66 conventional thermal plants over 300 MW are in operation, excluding self-production. Another 121 plants are in operation with a size comprised between 50 and 300 MW (self-production is excluded). New investments are scheduled which will increase market contestability and affect electricity prices. Table 9.5 provides information about new thermal generation plants proposed since 2002 for plants that are over 300 MW thermal and for which the authorisation procedure is currently under way.[11] The new plants to be authorised are presented by owner, location (region and town), fuel type and capacity (MW electrical). In cases of changes in an existing power plant, information on its previous technical characteristics is provided. According to the projects submitted, 5 520 MWe unit plants will go out of service (30% gas burning, 70% oil burning), while a new capacity is proposed to be built up to 27 200 MWe (76% fuelled by gas, 20% by coal, 4% by other fuel types). From a geographical point of view, 50% of the proposed capacity should be located in the north, 17% in the centre, 33% in the south of Italy.

Table 9.5. **New proposed plants (gross capacity)**

Region	MWe in	Fuel type in	MWe out	Fuel type out
Piedmont	2 150	Gas		
Lombardy	36	Veg. oil	–107	Oil
	3 970	Gas	–426	Gas
			–107	Oil
Friuli Venezia Giulia	800	Gas	–640	Oil
Veneto	1 980	Coal	–2 640	Oil
	2 330	Gas		
Emilia Romagna	1 790	Gas		
Liguria	460	Coal		
Marche	950	Gas		
Umbria	800	Gas		
Abruzzo	980	Gas		
Molise	1 180	Gas		
Lazio	800	Gas		
Campania	800	Gas		
Calabria	1 950	Gas		
	2 640	Coal	–1280	Gas
Basilicata	1 550	Gas		
Puglia	600	Steel industry gas		
	660	Gas		
Sardinia	450	Coal	–320	Oil

Source: Elaboration from MISE, 2007.

Table 9.6 provides detailed information on new conventional thermal generation plants with a capacity above 300 MW thermal, authorised since 2002 and currently under construction. In cases of repowering or changes in existing power plants, previous technical information (capacity and fuel) is provided. In the next three years, 3 250 MWe unit plants fuelled by oil will be turned off and 8 180 MWe will go on-line, with coal accounting for approximately 24% and gas for the remainder. The new capacity will be split almost proportionally over northern, central and southern Italian regions. The new authorised capacity should go on-line by 2010, while almost 50% of it is expected to be available with the 2008 authorisations.

As a consequence of the new flow of investments, natural gas is going to become the marginal technology for most of the year. According to Fontini and Paloscia (2008), this might induce, *ceteris paribus*, up to a 17% reduction in pre/tax electricity costs (net of any

Table 9.6. **Authorised plants under construction**

Region	MWe in	Fuel type in	MWe out	Fuel type out
Piedmont	380 800	Gas Gas	–130	Oil
Lombardy	430	Gas	–330 –120	Oil Gas
Emilia Romagna	800	Gas		
Abruzzo	800	Gas		
Lazio	1 980	Coal	–2 640	Oil
Campania	400	Gas	–412	Oil
Calabria	800 800	Gas Gas		
Apulia	750	Gas		
Sicily	240	Gas		

Source: MISE, 2007.

international fluctuation of natural gas prices and excluding possible changes in transportation, dispatching and other costs).

Distribution

The distribution of electricity is a natural monopoly. The liberalisation process has allowed newcomers to enter the market when acquiring the status of electricity distributor (in some cases part of the network from the incumbent). The Ministry of Economic Development has released the concession for the distribution of electric energy to 76 companies (mostly publicly-owned) that supply 214 municipalities. Table 9.7 describes the distribution of new concessions per region.

Table 9.7. **New electricity distributors per region**

Region	Number of distributors
Piedmont	11
Aosta Valley	3
Lombardy	13
Trentino AA	0
Veneto	2
Friuli VG	5
Emilia Romagna	3
Tuscany	1
Marche	7
Umbria	1
Lazio	3
Abruzzo	5
Campania	5
Apulia	2
Basilicata	0
Liguria	1
Calabria	0
Sicily	10
Sardinia	4

Source: Elaboration from MISE data.

ENEL Distribuzione supplies all remaining municipalities. Legislative Decree 79/99 allowed only one concession per municipality for electricity distribution. Local utilities were

granted the opportunity to purchase from the ENEL distribution networks falling in their respective municipalities. This was particularly relevant for major cities (Rome, Milan, Turin) where the former local public service company that held part of the network, acquired the remainder. All concessions were renewed by thirty years (at present they are set to expire on 31 December 2030). In terms of quantity distributed, ENEL Distribuzione holds the largest share of the market (Table 9.8). The first five distributors in terms of volume (counting AEM and ASM as a single company after merging into A2A) have more than 500 000 clients, while 52 distributors have less than 1 000, and 10 have less than 100 users.

Table 9.8. **Electric energy distribution, per distributor**

	GWh	Market share
ENEL	254 671	86.4
Electrabel/Acea	10 616	3.6
Aem Milano[1]	7 526	2.6
Asm Brescia[1]	4 506	1.5
Iride	3 412	1.2
Trentino Servizi	2 263	0.8
Hera	2 237	0.8
Agsm Verona	1 928	0.7
Others	7 764	2.4
Total	294 923	100

1. From 2008, merged together in A2A.

Source: AEEG, 2007.

Retail market

The retail market was fully liberalised in July 2007. In one year, almost 1.5 million households changed supplier, with a switch rate equal to 6%, a percentage much higher than the one experienced for gas in the corresponding period after the full opening of the retail market. For domestic clients and companies connected in low voltage, with less than 50 employees and EUR 10 million in revenue, the law (Legislative Decree 79/99) stated that if they did not want to switch to the free market, they should rely on the energy traded by Acquirente Unico (so called "*maggior tutela*"). In 2007, energy traded by AU covered 32% of total demand.

The effect of liberalisation in the natural gas sector

The structure of regulation for natural gas has clearly moved towards market liberalisation: upstream and downstream markets are fully opened to competition; the transmission company is unbundled from the major sectoral player (ENI); a temporal window has been established where all concessions for natural gas distribution have to be elicited through public tenders. However, the technical characteristics of the natural gas industry and the economic profile of the sector both slowed the opening process. For the former, the physical structure of the import infrastructure and the characteristics of the contractual agreements among national and foreign parties played a relevant role. For the latter, the existence of a strong incumbent (ENI) active at all levels of the production chain of the sector (perceived as a "national champion" in the industrial policy) generated relevant endogenous barriers to entry (ACGM 2005).

Concerning the upstream market, competition is limited by the existing structure of the import facilities. At present, four major pipelines connect Italy to exporting countries

(plus one exchange point with Slovenia at Gorizia, Friuli): TAG at Tarvisio (Friuli, NG from Russia); Transitgas at Passo Gries (Piedmont, natural gas from North Sea); TRANSMED at Mazara del Vallo (Sicily, natural gas from Algeria); Greenstream at Gela (Sicily, NG from Lybia). Four projects of expansion of the interconnection grid are underway. Two of them should be completed by 2012: ITGI in Puglia, for an estimated capacity of 8 800 million m^3 per year; GALSI, connecting Algeria with Sardinia (which, at present has no natural gas network) and Tuscany, with an estimated capacity of 8-10 000 million m^3. The two other interconnections: Trans Adriatic in Puglia, with an estimated capacity of either 8-20 000 million m^3 or 5-12 000 million m^3 according to the selected branch, is under intergovernmental agreement for a feasibility study. InterconnectTyrol, in Trentino Alto Adige, has an estimated capacity of 1 300 million m^3 and is now under the feasibility study.

Legislative Decree 164/00 sets market-share ceilings. It took effect beginning of 2002 and will last until 2010. Therefore, starting in 2002 no operator was allowed to introduce more than 75% of total consumed gas in the national grid. That limit was expected to decrease every year by 2% up to 61%. Antitrust limits have not been renewed so far for post-2010. ENI still holds a dominant position in imports, which account for 87% of total consumption.[12] From 2002, its share of total imports decreased from slightly above 70% to 64% in 2007. The second operator, ENEL Trade, imported slightly less than 13% of natural gas, and the third operator (Edison), 8%. In total, there have been 21 importers active in the market, yet for limited quantities (AEEG, 2008).

Investments in natural gas facilities

Investments in LNG facilities require a specific analysis. At present, only one active LNG re-gasifiers terminal (Panigaglia, Liguria) exists. It is owned by ENI (Box 9.3). There are 13 requests for authorisation to install new re-gasification terminals (Table 9.9). Even if the authorisation process for most of them has formally ended, no terminal has yet started to be operational. All 13 LNG terminals proposed so far have been brought to court by local administrations or NGOs. Only one (Porto Levante) is physically being installed and is scheduled to become active by end 2009. By end 2008, the Tuscany offshore terminal was under construction.

In general, even if LNG terminals have low environmental impacts (compared with other energy infrastructures), their perception from local communities, the administrative burdens and the effectively unclear time schedule of the procedure have implied a high investment risk: the Ministry of Economic Development estimates that authorisations for any kind of energy infrastructure require between 1 to 3 years even if according to current legislation most of them should be either authorised or rejected within 180 days.

Natural gas transportation and storage are not subject so far to a full proprietary unbundling. Eight companies hold national or regional transportation grids. Snam Rete Gas, which belongs to ENI,[13] is by far the largest, owning 8 548 km out of 8 668 km of the national grid, (the difference belongs to Società Gasdotti Italia) and a total of 31 081 km out of 32 930 km of the national and regional transportation networks. There have been nine requests for authorisation to build pipelines for the transportation of natural gas, for a total of 1 002.4 km. Seven of them, presented in 2004-05, are waiting for the environmental impact assessment. Two of them are newer, and were presented in 2007. EIA procedure is ongoing.

ENI owns Stoccaggi Gas Italia (STOGIT), the dominant storage operator that owns 8 out of 10 storage running facilities, with a total capacity of 13 840 million m^3 out of 14 230. Edison Stoccaggi Italia owns the remaining two. Ten requests for concessions of new

Table 9.9. **Investment in LNG re-gasifiers.**

Project	Proponent	Capacity	Due	Situation
Porto Levante offshore (RO)	Terminale GNL Adriatico (Edison 10%, Exxon Mobil 45%, Qatar Terminal Limited 45%)	8	2009	Authorisation released in 2004. Terminal built 60% (in Spain). Authorisation for the pipeline connecting it to existing grid issued.
Brindisi	Brindisi LNG (100% British Gas Italia)	8	n.d.	Authorisation released in 2005, suspended in 2007. Court appealed by municipality.
Toscana offshore (LI)	OLT Offshore LNG Terminal (Endesa Italia – Amga – Asa 51%, OLT Energy Toscana 49%)	3.75	2009	Authorisation released in 2006. Terminal under construction. Courts appealed by municipalities.
Rosignano (LI)	Edison – BP – Solway	8	n.d.	Nulla-osta released. Waiting for EIA.
Gioia Tauro (RC)	LNG MedGas Terminal (49% CrossGas, 25.5% Sorgeni, 25.5% Iride)	12	2012	Nulla-osta released under constraints. EIA completed. Authorisation ongoing.
Taranto	Gas Natural Internacional	8	n.d.	EIA procedure ongoing. Agreement with Snam Rete Gas to build pipeline once authorisation is granted.
Zaule (TS)	Gas Natural Internacional	8	n.d.	Waiting for EIA. Agreement with Snam Rete Gas to build pipeline once authorisation is granted.
Trieste offshore (TS)	Endesa Italia	8	n.d.	The region seems available to authorise one plant only in the region.
Porto Empedocle (AG)	Nuove Energie (ENEL 99%)	8	2010	Project modified to fulfil Port Regulation Plan. EIA completed. Authorisation ongoing.
Rada di Augusta (SR)	ERG Power&Gas – Shell Energy Italia	Phase 1: 8; phase 2: 12	n.d.	EIA completed. Authorisation ongoing.
Ravenna (RA)	Atlas Ing. (Gruppo Belleli)	8	n.d.	New off-shore plan to be examined by MISE.
Senigallia (AN)	Gaz de France	5	n.d.	New off-shore plan to be examined by MISE.
Civitavecchia	Gavio	8	n.d.	New off-shore plan to be examined by MISE.
Portovenere (SP)	GNL Italia (ENI 100%)	4.5	2014	Proposed increase of existing Pangaglia LNG capacity up to 8 Gm3. EIA started in 2007. Local municipality is against.

Source: AEEG, *Annual Report*, 2008.

storage facilities are waiting to be authorised. Four of them are in Emilia Romagna, three in Basilicata, two in Lombardy, one in Molise. Two requests (Alfonsine in Emilia Romagna and Bordolano in Lombardy) are waiting for the result of the environmental impact assessment. They will add up to 2 900 million m^3. The three others (Bagnacavallo in Emilia Romagna; Montenero di Bisacce in Molise and Cornegliano Laudense in Lombardy), which amount to a total of 2 220 million cubic metres, have passed the environmental impact assessment and are now waiting for the finalisation of the authorisation process. Of these, only one is expected to become active in 2012.

According to AGCM, the dominant role played by former monopolists in import, transportation and storage facilities, coupled with the contractual structure of natural gas imports (long-term contracts with *take or pay* clauses), the rigidity of natural gas supply and the existence of a segmented demand, has contributed to constrain effective competition in the internal natural gas market and to hinder the creation of new infrastructures that might relax the constraints.

Distribution and competition for the market

Legislative Decree 164/00 has forced the natural gas distribution sector to move towards competition *for* the market, and has made it compulsory to use tender processes for selecting the distributor. This aims both at increasing efficiency and at guaranteeing a minimum level of service quality. The law specifies the relationship between the company

that provides the service, the local community and the authority, whose role is to protect consumers and promote competition. Local communities play a political role, namely, command and control over the service, through a contract ("*contratto di servizio*") that defines, *inter alia*, the duration of the contract (within the time limit set by the law, namely, twelve years), the economic terms of the service (royalties, payments and similar), investment needs (maintenance and network development), the characteristics of the service (costs for users, specific local needs, etc.), its quality and the local community's inspection power. The structure of regulation could in principle generate potential conflicts of competence. To reduce those and effectively promote competition, providing a common basic normative structure for all distributors, the law prescribes that the central government adopts, under the proposal of the authority, a general common sample for the service contract for all concessions ("*contratto di servizio tipo*"). Such a contract should specify the minimum level of requirements for all contracts, while local communities can add additional stringent requirements to the terms specified by the sample service contract and identify specific needs to be fulfilled by the operating company. However, even if the draft of the sample service contract has been released by the authority (Del. 55/04), it has not yet been approved, because the operators have appealed this decision to the Administrative Court (see paragraph below Table 9.10).

The aim to promote competition to guarantee a stable regulatory framework has been hampered by three main elements of uncertainty:

- The prorogation of deadlines set by Legislative Decree 164/00 for the tenders.
- The existence of unclear choices for the proprietary setting of the networks.
- The unclear regulatory framework and frequent appeals to the Court.

The first element refers to the deadline set by Legislative Decree 164/00 for the local municipality to award the concession through tender. The law stipulates that concessions can last at the most twelve years. Originally, all concessions (except those that were already set by tender before 2000) were to be awarded by tenders within end 2005. An exception of one to two years could be granted for big concessions or under particular circumstances. Interpretation of the rules (Legislative Decree 164/00 and subsequent Law. 239/2004, so called "*Marzano*" that postponed deadlines) has been unclear and has given rise to several court interpretations (mainly, by the Council of State Cons. Stat. sez. V 3 815, 19/7/2005; Cons. Stat. sez. VI 6 187, 7/11/2005); all the discipline has been partially overruled by subsequent rules (L. D. 273/2005 and L. 51/2006) that have further delayed the deadline for tenders. The deadline was set end 2007; it could have been postponed for two years, plus one provided that a specific and proved public interest existed. Finally, Law 222/2007 further extended the 2007 deadline by 2 years.[14]

Law 222/2007 also stipulates that the Ministries of Economic Development and of Regional Affairs must define the minimum territorial scale for tenders for distribution, and identify the optimal scale on the basis of efficiency and cost reduction. The aim is to reduce inefficiency due to concession fragmentation and to exploit economies of scale and scope, respectively in distribution and in tenders. Moreover, ministries also have to specify the proper tools to generate appropriate incentives across municipalities. The discipline of the tenders has also been affected by the structure of regulation of local public services. Article 23-bis of Law 133/2008, which applies also to natural gas, implies that the tender of a concession of natural gas service ceases to be the compulsory tool to provide the service.

However, application of the law is still delayed due to the lack of decrees necessary to implement it.

Another source of uncertainty stems from the regulation of the proprietary status of the distribution network. Law 164/2000 stipulates that at the end of each concession the distribution network is at "full disposal" of the municipality. However, it does not specify if it is in terms of ownership or if it just prescribes management unbundling, *i.e.*, a structure in which a private company owns the network, the management belongs to the local community that awards it through a public tender to the best offer, which need not necessarily coincide with the incumbent owner. At present, the majority of the distribution network still belongs to the distribution company. Table 9.10 describes the distribution of network ownership per region.

Table 9.10. **Ownership of NG distribution networks per region**

		% of ownership	
Region	Km	Dist. company	Municipality
Aosta Valley	357.5	99	0.6
Piedmont	22 479.9	89.6	2
Liguria	6 047	99.9	0.1
Lombardy	44 613.2	74.2	14.4
Trentino Alto Adige	4 109.1	90.5	6.5
Veneto	28 415.4	81.1	12.1
Friuli Venezia Giulia	6 365.1	74.2	25.5
Emilia Romagna	28 504.6	68.4	10
Tuscany	14 838.9	76.8	9
Lazio	13 963.9	98.3	1.7
Marche	8 448.9	45.5	26.3
Umbria	4 902	62.5	37.4
Abruzzo	8 553.6	78.9	21.1
Molise	2 033.3	85.2	14.5
Campania	10 451.4	85.6	12.1
Apulia	10 935.5	91.4	8.3
Basilicata	2 272.2	76.6	22.7
Calabria	5 291.5	90.1	9.9
Sicily	10 848.2	96.9	3.1
Sardinia		–	–
Not active	361	–	–
Tot. Italy	233 792.4	80.1[1]	11.3[1]

1. The % of ownership does not add up to 100 because of the existence of other proprietary forms.

Source: Elaboration from AEEG data, 2007.

Remuneration for existing and new investments has given rise to several court appeals.[15] The draft of the sample contract ("*contratto di servizio tipo*") defined by the AEEG (Del. 55/04) was brought to the Court by the operators for the section that implies a permanent proprietary structure of the grid in favour of the municipality (that might own it directly or through a specific company). The judgment is still under process. Municipalities were also legally charged for introducing in the tenders a clause that prescribed no re-payment for the investments that were undertaken during the concession and not amortised ("no residual value" clause). From an economic point of view, such a condition reduces market contestability since it advantages the incumbent operator, when the incumbent is the owner of the grid. Moreover it advantages big firms that hold several concessions and that may average out the burden of the investment not amortised across

concessions. Moreover, it might undermine the economic structure of distribution companies since the tariff only allows recovery of the amortised parts of the investments that have a residual life after the end of the concession. The court[16] established that a tender that threatened participants and imposed such a risk would be illegitimate. However, the problem of the proprietary setting for distribution networks is still present: the high investment costs, the unclear regulatory framework for proprietary structure and the vast litigation on this aspect increase uncertainty and reduce the possibility of generating efficiency through market competition.

Law 481/95, which created the Authority for Electric Energy and Natural Gas, specifies that the Authority sets the tariff for natural gas distribution. Every five years (the so-called "tariff period"), the tariff is revised according to a procedure that involves all interested parties. This law also stipulates that the Authority has to follow a "price cap" approach for the definition of the tariff. Consequently, during the first tariff period, the Authority (Del. AEEG 237/00) identified a target on the revenues for distribution (so called "*Vincolo sul Ricavo da Distribuzione*", VRD) that encompasses operating and maintenance costs. The VRD was calculated parametrically and updated every year on the basis of the inflation (plus the increase in the number of consumers) and the targeted increase in efficiency. This decision was appealed in Court.[17] The section preventing those companies that hold a certified budget for the distribution, from reporting it in the invested capital was considered illegitimate. Therefore, an individual method was created, separate from the parametric method,[18] for those companies. This principle follows the "cost-plus" approach (firms can recover in their tariffs the costs incurred for the distribution activity). During the second tariff period, subsequent decisions by the Authority reduced the differences between the two types of tariffs. Under the new individual method (Del. 171/05) companies can recover capital and operating costs. However, if operating costs exceed a particular target, to have them included in the tariff, the company must prove that this is due to external reasons. Moreover, operating costs and technical amortisation are subject to a compulsory efficiency target.[19] In the parametric method, a "normal" tariff has been set[20] and allows firms to parametrically recover the operating costs while tailoring capital costs into the capital invested by the company the previous year.

The AEEG choices on tariff methodology gave rise to court cases related to several aspects of both methods, and in particular on the efficiency parameter. Uncertainty has increased for distribution companies. The problem is worsened by the different time scales of the authorisation for the distribution of natural gas (twelve years)[21] and the time horizon for tariffs, which implies that firms cannot anticipate *ex ante* their revenues when participating to the tender. Furthermore, each VRD is tailored to a proper "tariff zone" ("*ambito tariffario*") which is defined as the set of communities linked to the same distribution network. This generates a variety of tariffs and makes it difficult to calculate. The Authority has announced a different tariff strategy for the next tariff period (AEEG, consultation document 20/08): it aims at reducing the tariff zones to six from the current 2 080, and targets in the future a single tariff for natural gas distribution. Moreover, it aims to further simplify the structure of the tariff and promote competition through regulation stability and reduced litigations.

Few tenders for the distribution of natural gas have occurred so far, for the reasons discussed above. According to AEEG, at the end of 2007 there were 275 tenders. Most of them refer to small municipalities (Giacomelli, 2008).[22] Table 9.11 presents data on the types of concessions aggregated by region. The largest category belongs to distributors

Table 9.11. **Concessions for natural gas distribution per region: Selection process**

	Competitive selection (before Law 164/00)	Direct attribution	Tenders (164/00)	Other
Aosta Valley	24	0	0	0
Piedmont	205	748	11	11
Liguria	12	137	0	3
Lombardy	206	1 114	106	41
Trentino Alto Adige	0	180	1	4
Veneto	114	407	13	46
Friuli Venezia Giulia	66	95	2	5
Emilia Romagna	43	295	5	6
Tuscany	12	192	4	40
Lazio	46	246	7	2
Marche	60	172	8	6
Umbria	6	81	1	1
Abruzzo	44	160	25	2
Molise	43	67	17	0
Campania	60	216	41	3
Apulia	98	131	1	5
Basilicata	28	81	7	0
Calabria	69	169	21	2
Sicily	79	198	5	19
ITALY	1 215	4 689	275	196

Source: Elaboration from AEEG, *Relazione Annuale*, 2008.

(public or private) that directly received the concession from the municipality, with no competitive selection process. The second category refers to concessions which went through a competitive selection process among different suppliers before Law 164/2000, and not necessarily through a tender. The "standard" tool for a competitive selection of distributors identified by the law – namely the tender, groups a small set of municipalities (third category). The fourth residual category groups cases where the distributor serves some clients but does not hold a concession (it serves clients located in the same network but outside the municipality for which the distributor holds the concession) or cases for which there is no data available on the concession.

In tenders, two main groups of parameters can be identified: the economic offer, generally expressed in terms of percentage of VRD that the winner returns to the municipality, and the technical offer that refers to investments, interconnections, management and similar items (plus other aspects that are related to the specific needs of local municipalities). The economic parameter has been the most relevant.[23] Several tenders have been awarded to participants that made high bids on the economic parameter, and have been appealed to court for this reason. A bid that is too high is source of potential inefficiency, since it implies the risk of a winner's predatory behaviour on the existing network (a "hit and run" behaviour). The court shares the same reservation. TAR Lombardy,[24] (Judgment 165/2006 and 205/2005) established on the basis of the AEEG opinion a parametric ceiling to the highest bid, beyond which the bid has to be considered anomalous. It calculated that a normal offer should not be higher than 35-40% of the VRD, since the remaining component of the tariff covers management costs for the distribution service component ("*costo di gestione dell'attività di distribuzione*", CGD) and capital costs (that usually range between 15 and 20% of VRD). Bids on the economic component can be higher, since participants can accept a low rate of return or try to reduce operating costs.

However, bids that are too far from the upper limit should be considered suspicious, since they do not allow the firm to cover its operating costs. The existence of possible risk for safety and quality standards has induced the Parliament to intervene: Law 222/2007 establishes that, on the basis of a proposal made by AEEG, the Ministry of Economic Development and of Regional Affairs have to identify the criteria to evaluate offers in tenders, taking into account quality and safety standards and investment plans. This should simplify the procedure for tender to take place, and reduce the risk of a court's appeal by losing participants. However, at present, such a regulation does not exist.

The regulation of quality in the energy sector

Quality is regulated by the Authority of Electric Energy and Gas, which sets the rules for energy service provision and quality to consumers. The former are set to minimise the cost of service as well as to effectively guarantee competition in energy markets by standardising services, guaranteeing access and avoiding that quality differentiation, for reasons external to independent operators, impede competition. Rules on quality for consumers aim to protect clients with low market power on the demand side (mainly households and small consumers) from possible negative effects linked to market liberalisation, and guarantee a minimum quality standard across all types of users.

For electric energy transmission, the Authority specified technical characteristics to access the transmission grid through a net code ("*codice di rete*"), adopted by TERNA. This code establishes benchmarks for expected quality levels of electricity transmission. In 2006, less than a minute was due to transmission failures out of an average interruption rate per client equivalent to one hour per year (net of interruptions and any other "relevant incidents"[25] independent from the transmitting companies). However, it should be underlined that the benchmarks and the effective levels attained, which depend on the specification of the boundary between independent relevant accidents and other alignment failures, have changed over time. In 2008, an incentive and fee system was introduced, but it is not yet enforced, since the data provided by TERNA on the historical level of services (necessary to calculate the trend which is the reference to establish fees and incentives) has still to be verified by the Authority.

The quality of electricity distribution has been improving since the introduction of quality regulation by the Authority. The average total amount of interruptions for low voltage clients (which include both transmission and distribution interruptions, net of relevant accidents and safety interruptions) was reduced from over three hours in 2000 to less than one in 2007 (AEEG, 2008). However, the quality of electricity distribution is not homogeneously distributed across regions. Moreover, even if the average duration of interruptions is decreasing in Italy, the regional gap between the north and south does not seems to be closing. In 1998, the average interruptions for low voltage clients (served by ENEL Distribuzione or distributors serving more than 5 000 clients) amounted to 163 minutes. In the north, it was 45% lower than the national average and 58% higher in the south; in central Italy it was equivalent to the national average. In 2007, the average decreased by more than 70%. The deviation from the mean, however, is still as high as it was nine years ago: –41% in the north, +62% in the south, while the value for the centre is still equivalent to the national average.[26]

The Authority also regulates the commercial quality of energy-related services (distribution, measuring and trade). Clients are entitled to receive automatic

reimbursements if the services related to electricity distribution are not fulfilled within the limits set by the Authority (and periodically updated). The analysis of the data provided by the Authority shows no significant improvement of the quality for consumers over the year. This might be related to the adoption of a regulatory setting that does not represent an effective incentive scheme, since it does not relate the penalty at the level of each single service failure. For this reason, in 2009, the Authority introduced a new system of incentives that relates penalties for distributors to the effective delay incurred.

In the natural gas sector, quality is measured by AEEG, aiming at reducing risks for final users and guaranteeing the standardisation of the service provided. Also for natural gas, the Authority measures consumer quality, and implements a technical regulation. The latter refers to the physical inspection that operators (active in transportation and distribution) undertake to prevent damages to the network, and to respond to first-aid calls. Roughly half of low and middle pressure networks were inspected in 2007. The first-aid calls have increased over time (from 2002), but the average response time has slightly decreased. This signals an increase in *ex post* quality of the gas distribution service, as well as an increasing stress on the existing distribution network which worsened the *ex ante* quality level (*i.e.*, quality of the physical equipment). This might be related to the problem of competitive network management induced by the competition on the market, coupled with the lack of a standardised regulation for service contracts (see section on Distribution and competition for the market).

Consumer quality refers to the compliance of minimum standard levels for the service (timing for new connections, measurement services, works on the distribution grid, etc.). In 2007, data show a 25% increase in compensation payments for non-compliance to standards compared with the previous year. Interpretation of the data is twofold: it does not necessarily imply a worsening of the quality for services provided. On the contrary, it might indicate a quicker management of automatic reimbursements from the operators.

A general problem of data interpretation on the quality of service refers to information availability. Indeed, data belong to operators, which are then transmitted to the Authority. The Authority can inspect the data; however, no information on misalignments of effective and communicated data is available.

Levels of government and Regional Energy Plans[27]

After the constitutional reform of 2001, energy has become a field for concurrent competence between the State and regions (Box 5.1, Chapter 5). More precisely, "production transportation and national distribution" are under concurrent legislation: regions have legislative powers except for the determination of fundamental principles which are defined by State legislation. However, the situation is made very complex as the regulation that applies to energy is not the only relevant piece of regulation for the energy sector. Other sectoral regulations have an impact on the energy sector, specifying the distribution of competences across levels of governments in fields relevant to energy, such as environmental regulation, safety norms, urban and rural planning, as well as incentives on industrial and agricultural developments that impact choices in energy investments. Table 9.12 describes the distribution of competences about authorisations across territorial levels of governments as well as electric energy and natural gas chain levels.

Table 9.12. **Distribution of competences about authorisations across government levels and energy sectors**

			Level of government			
			National	Regional	Provinces	Municipalities
Electric Energy	*Production*	*Conventional power plants*	> 300 MW thermal: single authorisation by MISE, including accessory infrastructures	<= 300 MW Thermal (#)		
		Renewable energies	Off-shore wind power plants	All other RES (*)	(*)	(+)
	Transmission		Single authorisation released by MISE together with MATTM			
	Distribution			Regional distribution networks ($)	($)	
	Interconnections		Single authorisation released by MISE together with MATTM, for boundary interconnecting lines with tension >= 150 kV			
Natural gas	*Imports (including LNG facilities)*		MISE together with MATTM and in agreement with the region (§)			
	Storage		MISE			
	Transport		MISE together with MATTM			
	Distribution			Regional distribution networks	(£)	(£)
	Trading		MISE together with MATTM			

(#) Regions can transfer to provinces the authorisation process for all plants or plants up to a certain size.
(*) Regions can transfer to provinces the single authorisation procedure.
($) Some regions have transferred to provinces competences on grids with tension < = 150 kV.
(§) Only regional competence for special statutes region.
(+) Renewable energy plants whose power is below the limits set in A (below) can be authorised by municipalities with a simplified procedure (*silenzio-assenso*) if they are not set in protected areas. Regions can raise these limits.
(£) Municipalities and other local territorial entities (mountain communities, networks of municipalities) have competences for tenders for concession of natural gas distribution. Proposal to group concessions to an "optimal size" (*ambito ottimale*), is generally equivalent with the province boundary.

Table A. **Limits for simplified authorisation of renewable energy plants**

Wind	60 kW
Photov.	20 kW
Hydro	100 kW
Biomasses	200 kW
Waste to gas and biogas	250 kW

Source: Our elaboration.

A crucial role in the energy sector regulatory framework is played by the Ministry of Economic Development (*Ministero dello Sviluppo Economico*, MISE) and by the Authority for Electric Energy and Gas (AEEG). The former defines the national targets of the energy policy. Operating in a liberalised framework, it co-operates in the definition of the normative framework and exerts the control power by checking the correspondences between national interests and the trends of the liberalised markets. The Sectoral Energy Authority (AEEG), on the contrary, implements the targets defined at the national level by specifying the regulatory rules that allow markets to exploit competition properties without discriminating across consumers (Box 9.2 presents a more precise description of the

competences of AEEG in the energy field). In general terms, its aim, set by the law, is to create the proper regulatory framework to allow the electric energy and natural gas sectors to provide a reliable and universally accessible service to all consumers while at the same time maximising technical and allocative efficiency.

Box 9.2. **The authority of electric energy and natural gas**

Created under Law 481/1995 to regulate and control the electric energy and gas sectors. Its role is to ensure that markets provide effective nationwide services to consumers, with a satisfactory quality level, defining tariffs, promoting environmental protection and an efficient use of resources. It comprises five members (one President and four members of the board. In April 2008 only two of them were appointed), elected by the Parliament under a qualified majority, and in charge for 7 years. Members cannot be removed and are not re-eligible. They are supported by a permanent staff. In April 2008 the Authority had 134 staffs.

The Competition Authority (AGCM) plays also an important role in the energy sector, operating in agreement with the AEEG. Over time, it has taken several relevant decisions that have had an impact in these sectors. Two recent important cases are reported in Box 9.3.

Box 9.3. **Two important cases managed by AGCM in the energy sector**

Case A371, management and usage of re-gasification capacity

On 16 November 2005, the Italian Competition Authority decided to launch an investigation on the grounds of an alleged abuse of dominant position, into the activities of ENI and GNL Italia, which was a subsidiary of ENI by way of Snam Rete Gas. This case was in relation to conduct observed in the re-gasification of liquefied natural gas. The Authority's decision was based on a notification by the AEEG, which pointed out anomalies in the management and use of the continuous-cycle of re-gasification of liquefied natural gas at the terminal in Panigaglia (SP). The Competition Authority considered that ENI and GNL Italia may have adopted a strategy aimed at blocking third-party competitors of ENI's from supplying liquefied natural gas to the national market. The Panigaglia re-gasification terminal, managed by GNL Italia, was in fact the only facility through which it was possible to import liquefied natural gas into Italy. Given this infrastructure bottleneck, it seemed that during 2002-03 and 2003-04, ENI may have secured re-gasification capacity in excess of its own requirements, to the point of taking over the entire continuous-cycle capacity of the Panigaglia terminal. In fact, the continuous-cycle capacity provided to ENI by GNL Italia was greater than the one used by ENI or that ENI had planned to use. Furthermore, in 2003-04, GNL Italia seemed, to have adopted discriminatory behaviour in favour of ENI, refusing access by third-party operators to the continuous-cycle re-gasification terminal. In August 2003, the entire continuous-cycle re-gasification capacity of the terminal was assigned to ENI, even though its forecasted use was much less. In the Authority's view, the conduct of ENI and GNL Italia seemed to have prevented the supply of natural gas by independent operators, to the wholesale natural gas market. The procedure for presentation of undertakings, introduced by the Bersani Law, stipulates that companies being investigated for possible anti-competitive conduct may present undertakings which would eliminate the anti-competitive behaviour under investigation. Should the Authority assess that these commitments are suitable for the purpose, it will make them obligatory and close the proceeding without ascertaining misdemeanour. If the commitments are not adhered to, the Authority may levy a fine of up to 10% of turnover. The Authority accepted and made binding

Box 9.3. **Two important cases managed by AGCM in the energy sector** *(cont.)*

the commitments by Eni, thereby closing the Authority's investigation into the potential abuse of a dominant position regarding the Panigaglia re-gasification plant. ENI initially offered a commitment to sell 1.5 billion m^3 of natural gas during one year to interested third parties, with a possible increase up to 2 billion m^3 depending on the average price if the sale was conducted by auction. Following the results of a market test and based on the opinion of the Energy Authority, Eni modified its original commitments, doubling the quantity of gas to be sold (4 billion m^3), and extending the time period to two years at reduced sales prices. In the Authority's view, Eni's revised commitments satisfied any anti-competitive concerns as the commitments would allow Eni's competitors to ensure their gas supplies during the interim period before the planned upgrades to pipelines for imported natural gas.

Case A366, anti-competitive conduct on the power exchange

On 6 April 2005, the Authority opened an investigation into possible abuse by ENEL of a dominant position, based on conduct inherent in the company's strategies for supplying the wholesale electricity market. On 17 October 2006, in the light of the new procedures introduced in Article 14 ter of Law 248 of 4 August 2006, ENEL and ENEL Produzione had presented commitments which were published by the Authority in order to assess the reaction by the market. ENEL had initially offered to sell 700 MW of virtual capacity in each of the two years under consideration. Subsequently, following the outcome of the public consultation carried out by the Authority and the observations expressed by AEEG, ENEL changed its commitments, undertaking to divest itself of 1 000 MW in 2007 and proposing to sell virtual capacity of 700 MW in 2008, subject to an assessment of its pivotal market role. It also reduced the supplier price for virtual capacity by around EUR 3 per MW/h as compared with the prices in the originally proposed commitments. The contract prices will be made public when the sale procedure begins. The closure of the investigation into ENEL and ENEL Produzione with the acceptance of the commitments which have now been made binding is the first application by the Italian Competition Authority of Article 14 ter, whereby it is possible to present measures to eliminate the anti-competitive behaviour under investigation. The Authority, where it deems these measures suitable for the purpose, may render them obligatory for the companies involved and close the proceeding without ascertaining a misdemeanour. According to the commitments, in 2007 ENEL, through its subsidiary ENEL Produzione, had to sell 1 000 MW of virtual capacity, equivalent to approximately 3% of the national demand for electricity, on conditions which are in line with those prevailing on the Electricity Exchange. The Italian Competition Authority, at its meeting on 20 December 2006, accepted and made the commitments presented by the company compulsory. These commitments were more wide-ranging than those originally proposed. In 2008, ENEL undertook to sell 700 MW, subject to an assessment of its ability to exercise unilateral power in determining market prices (its so-called "pivotal role"), based on the structural nature of supply and demand. The divestment was supposed to take place in the southern price zone using financial instruments in the form of two-way differential contracts. Under these contracts, ENEL had to pay the other contracting party a positive financial compensation when the price in the southern zone was higher than the contract price, whereas ENEL would receive the price differential from the other party in the case where the price in the southern zone was lower than the contract price. In the Authority's view, the quantities involved in the commitments were such as to reduce significantly ENEL's pivotal role in the markets in question, thus satisfying the anti-competitive concerns which gave rise to the investigation.

Source: www.agcm.it.

The distinction of the boundaries of competence, established by the constitutional reform, has given rise to interpretation difficulties, addressed in Law 239/04. The law distributed competences across levels of government, specified the fundamental principles and joint targets that regions share with the State. The general principle, followed by the law and confirmed by the Constitutional Court, established that each region should determine the authorisation criteria taking into account its own need to balance energy consumption and production. Almost all Italian regions have a net deficit in electric energy. Table 9.13 reports data on net surplus or deficit in 2007.

Table 9.13. **Net deficit or surplus of electric energy production compared with regional demand, 2007**

	Production for consumption (GWh)	Electric energy requested (GWh)	Surplus or deficit of production
Piedmont	19 496	28 730.5	–9 234.5
Aosta Valley	2 735.2	1 182.7	1 552.4
Lombardy	51 970	70 511.9	–18 541.9
Trentino Alto Adige	7 430.9	6 711.1	719.8
Veneto	17 779.3	32 655.4	–14 876.1
Friuli Venezia Giulia	11 410.1	10 697.8	712.3
Liguria	11 621.8	6 866.9	4 754.9
Emilia Romagna	25 593.9	29 389.4	–3 795.5
Tuscany	19 311.7	22 138.3	–2 826.6
Umbria	5 075.9	6 473.6	–1 397.7
Marche	3 791.4	8 341.1	–4 549.7
Lazio	16 490.3	25 242.1	–8 751.8
Abruzzi	4 076.1	7 213.4	–3 137.3
Molise	5 376.1	1 604.4	3 771.7
Campania	7 476	18 666.9	–11 190.9
Apulia	37 007.1	19 603.8	17 403.3
Basilicata	1 537.8	3 162.7	–1 624.9
Calabria	8 920.2	6 281.4	2 638.8
Sicily	23 278.7	21 857.6	1 421.1
Sardinia	13 267	12 597.2	669.8
ITALIA	293 645.5	339 928.2	–46 282.8

Source: Elaboration from TERNA, 2007.

The data show that the highest energy surplus belongs to Apulia. Other southern regions (Calabria, Sicily, Sardinia) and northern regions with a high share of production derived from hydropower (Trentino Alto Adige, Friuli, Aosta Valley, Liguria) have a positive surplus of production. On the opposite side, the more industrialised regions are net consumers of electric energy.

Law 239/04 attributed to the State the tasks of energy programming and addressing security of supply, as well as competence about the single authorisation process for the building and management of electric grids. Such a law was appealed by Tuscany; but the appeal was rejected; however the court established that the State has to consult explicitly with the regions on the topics regulated by the law, taking into account in an effective way their position through the procedure.

The State maintains the regulatory power on environmental policies that have a significant impact on the energy sector. This is the case, for instance, for the incentive policies for investments in renewable sources that derive from the European policy on renewables. The previously cited Budget Law 244/2007 has updated the existing regulations in this field. For energy efficiency and promotion of renewable energy sources it has *i)* set

rules about energy saving certification; *ii)* established a compulsory photovoltaic production in new buildings; *iii)* simplified the authorisation process for renewables sources; *iv)* set the prohibition of sale of electric apparel with an energy efficiency class lower than A (from 2010); *v)* updated the green certificates scheme.

Piedmont has appealed to the constitutional court against Law 244/2007 for the part that attributes to the State power of regulation about authorisation of energy production from renewable sources; the appeal has not been discussed yet.

Law 244/2007 has also addressed the problem of convergence of regional targets on renewables and efficiency. It prescribed that the Ministry of Economic Development establish within 90 days from the approval date of the law the distribution across regions and autonomous provinces of the minimum compulsory increase of electric energy production from renewables to reach the national target of 25% of internal gross consumption within year 2012. The regions, within the subsequent 90 days, update (or must adopt) their Energy Plans in agreement with the shared burden, and are subjects to control by the Ministry every two year. Regions must involve provinces and municipalities in reaching the targets, and set Agreement Plans ("*accordi di programma*") with the central government to promote the industrial development of renewable energy and energy efficiency fields. At present, the distribution of the minimum required burden across regions has not been undertaken, since the deadline set by the law to the Ministry has not been respected.

Almost all Italian regions (and autonomous provinces) have defined their Energy Regional Plans (Table 9.14). Some regional Plans have been adopted before the constitutional reform that has devolved competences to regions, and some even before the liberalisation reforms. In Piedmont, the Energy Plan has not been updated yet. Meanwhile, the region has adopted an agreement with local municipalities to monitor the needs and the gaps between the effective energy structure and the planed one. Several provinces (AL,

Table 9.14. **Regional energy plans**

Region/autonomous province	Situation
Aosta Valley	Approved in 2003
Piedmont	Approved in 2004
Lombardy	Approved in 2003
P. A. Trento	Approved in 2003
P. A. Bolzano	Approved in 1997
Veneto	Approved in 2005
Friuli-Venezia Giulia	Approved in 2007
Liguria	Approved in 2003
Emilia Romagna	Approved in 2002. Updated in 2007
Tuscany	Approved in 2000. Update in progress
Umbria	Approved in 2004
Marche	Approved in 2005
Lazio	Approved in 2001
Abruzzo	Not yet adopted
Molise	Approved in 2006
Campania	Not yet adopted
Apulia	Adopted in 2007
Basilicata	Approved in 2001. New plan released in 2009, currently under approval.
Calabria	Approved in 2005
Sicily	Draft release
Sardinia	Approved in 2003. Update in progress

Source: Elaboration from ENEA.

BI, CN, NO, TO, VB) and municipalities have adopted provincial and municipal plans. Lombardy, after approving the Plan in 2003, adopted an Energy Action Plan in 2007, aimed at improving the energy balance according to the principle of Law 239/04, encouraging plant efficiency and the diffusion of renewables.

In Veneto, the Plan will have to be updated to include the changes in the production due to the conversion of the Porto Tolle power plant. The region will approve new power plants only once the conversion of the Porto Tolle power plant from oil to coal will have occurred, and only if it will be proved that the expected increase in demand will more than compensate the increase in supply. In Tuscany the old Plan is currently being updated; it will be tailored to 2020, and it includes criteria for the localisation of wind power plants. Some provinces in Tuscany (SI, PI, LI, LU), have adopted a provincial energy plan, as well as several municipalities. The State has appealed the Constitutional Court against Tuscany, charging Regional Law 39/2005, which attributed power to the region for the authorisation to distribute natural gas. Regione Molise adopted the Plan in 2006; it is not being updated. The plan has been cited in the Court since it prescribed that authorisation was to be released only after the adoption of proper regional guidelines for investments. The Court has accepted the appeal. Sicily has not adopted a Regional Plan yet, and its definition is still in progress.

The role of local public service companies in the energy market

The liberalisation process has stimulated the growth of municipalised companies that at the time of liberalisation already owned parts of the electric and/or gas distribution networks and/or production plants and that (in some cases) were also active in the provision of other local public services (transportation, waste and environmental management, water cycle). The development of local public service companies had already been favoured by their transformation from local municipalised companies, into private companies (yet with a large or majority share owned by public bodies) (Chapter 8). This allowed them to enter the financial market and start a merger and growth process, which enabled them to exploit economies of scale. Being active in the upstream and downstream energy sectors they took advantage of market opportunities that were released by former monopolists (mainly in the electricity sector). They also exploited their vertical integration in the energy market. Moreover, their intersectoral structure allowed them to exploit economies of scale in the energy and related fields, such as the waste-to-energy cycle and tele-heating systems. Several former municipalised companies increased their capacity in the energy field: the largest in terms of value of production[28] are A2A, Iride, HERA, ACEA, ENIA, Acegas-APS, Ascopiave. Table 9.15 provides general information on these operators. They are all not only active in energy markets but in other local public services (waste management, environmental services, etc.). Some also operate in transportation services through subsidiary companies.

The case of A2A is praiseworthy (Table 9.16). It was created early 2008 as a merger of former municipalised companies in Milan (AEM) and Brescia (ASM), with companies active in environmental management services (AMSA, urban waste management, Milan, and Ecodeco, urban and special waste management in some provinces of Lombardy and Piedmont). A2A holds a 60% share of Edison (and through it, a share of Edipower). It is the biggest company among ex-municipalised companies, and one of the major players on the Italian energy market: it is the second largest in the electricity production sector for installed capacity, the second largest for the supply of electric energy; the third for natural gas distribution; the first Italian provider of tele-heating, and the biggest provider of

environmental management services (the second for waste management, the first for waste-to-energy provision). The majority of the company's share is still owned by the two main municipalities (27.5% Milan; 27.52% Brescia; other public and private investors hold smaller shares; the floating amounts to 33%). It is managed under a dual system: each municipality appoints the board of the surveillance and management council, respectively, where the head of the former boards of AEM and ASM are sitting.

Table 9.15. **Energy local public utilities: Data summary**

	Province[2]	Number of employees[3]	Value of production[4]	Main sector[5]	Share of revenues from main sector
A2A[1]	MI-BS	8 500	5 175	El. En.	–
Iride	TO	3 004	2 530	El. En.	61%
Hera	BO	6 194	2 365	NG	43%
Acea	RM	5 792	2 187	El. En.	62%
Enia	PR	1 901	1 226	NG	49%
Acegas-APS	TS-PD	1 390	443	NG/El.En.	25% (NG) 23% (El.En.)
Ascopiave	TV	300	318	NG	92%

Only local public municipalities whose main activity is either electricity or natural gas.
1. Merger of AEM and ASM
2. Legal base or main provinces of activities
3. All data refer to 2006 except: A2A = 2008; Acegas-APS: 2007
4. Milion euros. All data refer to 2006 except: A2A = pro-forma restated, 2008; Acegas-APS: 2007
5. Calculated as a percentage of revenues.

Source: Elaboration from Bianco *et al.*, 2008.

Table 9.16. **A2A data**

Date of creation	1/1/2008, as a merger of AEM and ASM, acquiring AMSA and Ecodco	
Stock value	7.6	Billion euros
Revenues	5.175	Billion euros
Gross margin	1.013	Billion euros
Cash flow	521	Billion euros
Personnel	8.500	
Electric capacity Installed	3.400 6.100	MW (end 2007) MW (end of 2012)
NG distributed	5	Billion m^3
Heat sold	1.5 3.1	Million MWh (2007) Million MWh (end 2012)

Source: Elaboration from A2A data.

Conclusions

The current analysis shows that the liberalisation of energy markets has been a story of (partial) success in Italy. It has allowed new players to enter the markets and to provide better and more reliable services to consumers. However, more detailed analysis reveals that the range of the positive impact of the markets' opening differs across sectors and levels of the energy chain for several reasons.

The regulatory framework of the energy sectors has favoured the move towards a market-based approach, distinguishing between planning and controlling. The independent regulating Authority, AEEG, represents a crucial component and focuses on the whole sector rather than levels of activities in specific subsets. It has a unique set of competences and specialised human capital. The success of the implementation of an independent regulating authority in this sector is witnessed by the proposal of extending such a regulatory structure to other sectors, creating a national Authority for transport and

perhaps for other local public services as well or attributing to AEEG also competences in these sectors (Chapter 8).

However, other factors have limited the benefits that could be expected from liberalisation. The implementation of the constitutional reform has overlapped on the regulatory framework defined at the beginning of the liberalisation process. As a result, there is a split of competences across government levels that were previously attributed to the central government for planning, targeting, and authorising. Moreover, the multi-level government framework that has been defined differs across economic policies, in particular for environmental and energy policies that affect energy sectors. This may result in several regulatory inefficiencies. The first are the delays in authorisation processes and a proved inefficiency of deadlines in procedures, set by laws but that are not effective in guaranteeing a fixed time for the administrative procedures and putting them to an end. The second is the risk of litigation between the central and regional government on competence sharing and long delays due to agreement on procedures between government levels. The third is related to the difficulties of coupling levels of analysis about the optimal sharing of the national targets across local governments. There is also a risk linked to the appeals to the Admnistrative Court against the authorisation issued.

The existence of strong incumbent market players plays an important role as these incumbents are facing a large number of local small aggressive players. Both groups are mostly publicly-owned by different levels of government. Competition has emerged more actively in the sub-parts where the rules were stringent enough and have been effectively implemented, such as for electricity generation. This has produced positive results for both past incumbent and small players. However, the public ownership of most players active in energy markets may result into potential conflicts of interest between governing bodies and the expected outcomes of market competition. Given the fact that most players are local public utilities, the sharing of competences across levels of governments has had implications for the efficiency of the regulatory framework. This may result in difficulties in the adoption of tenders for the concession of the distribution of natural gas, with corresponding litigation. This makes the general task of defining a stable regulatory framework that could effectively be accepted all stakeholders, more difficult.

Market targets also need to be considered in the light of policy objectives. The figures provided in the chapter in terms of investments in electricity generation, requests of authorisation for LNG facilities, revenues for local communities from tenders for the attribution of natural gas distribution concessions, show that energy markets have had positive results. They succeeded in generating technical efficiency, selecting marginal technologies, directing investments where there is higher equity return and extracting the most of monopolistic extra rent in the competition for the market. However, these market outcomes may not necessarily coincide with allocative efficiency of energy markets, when other environmental externalities, intergenerational optimality, and social targets are taken into account. Co-ordination mechanisms may not yet be fully effective in guiding markets towards energy sources diversification, greenhouse gases reduction and contributing to reducing regional disparities. These are certainly huge challenges faced by many countries. The challenge is made more difficult for Italy as the country has extremely limited resources of energy in order to reduce its dependence on foreign imported supplies.

The authorities are fully aware of the challenge and have taken action to address it. Energy is a core issue for the competitiveness of the Italian economy. The government has launched a debate on the possibility of adopting a national policy towards nuclear energy. Nuclear energy has been used by some neighbouring countries, such as France, which were facing similar challenges being deprived of natural energy resources. In addition, in the context of the climate change discussion, nuclear energy has received increased attention all around the globe, in OECD countries and beyond. As a result, the authorities have announced a proposal to build four III generation nuclear power plants, relying on the EPR technology in most likelihood. This could produce up to an estimated 15% of Italian gross energy consumption.

The authorities estimate a time-to-market ranging between eight and ten years including site scoping and authorising. The investment is aimed at reducing dependence from fossil fuels, reducing GHG emissions, increasing geographical diversification of energy sources and stimulating research and investments in nuclear technologies. In terms of fossil fuels, the flows of investments in gas-fired power plants already imply a reduction of the share of oil in total production, which reduced GHG emissions. Investments in LNG facilities allow for greater geographical diversification of (gas) imports. The issue of nuclear is subject to complex analytical considerations. Nuclear may help to reduce reliance on imports from electric energy produced abroad through congested interconnection lines. However, the adding up of new capacity and their market impact will depend on several factors, including the location along transmission lines. The specific regulatory and institutional structure may impose specific constraints, with time delays for investment facilities, in the light of veto power exerted by local communities. As a result, the time for site scoping and authorising may have to be revised upwards.

Other issues may also arise falling beyond the scope of this chapter, such as competence sharing from a constitutional sense between regions and the national level, to assess where the deficit of electricity generation warrants investment in nuclear energy. It may also require a strengthening of energy planning mechanisms. This may open some constitutional issues that again cannot be addressed as part of this chapter. The other implication is again in terms of delays for authorisation. The impacts in terms of competition on the market will also have to be assessed.

Policy options

The chapter has analysed the challenges faced by the energy sector from a multi-level regulatory governance perspective. Tackling those challenges properly can help speed up the diffusion across the sectors of the benefits of the liberalisation process. The chapter offers a number of recommendations for the Italian national authorities which could help to clarify and strengthen the regulatory framework.

Adopt a regulatory structure that reduces risks and investment costs

The investment costs in energy facilities are implicitly increased by the high investment risk, which depends also on the structure of the regulatory framework. Two reasons account for this:

- Procedures for investment authorisations in the energy sector are such that there is currently a lack of fixed and firm deadlines for authorisations in Italy. Authorisations that have already been awarded can be revoked. Moreover, the complexity of procedures and the level of litigation imply that court enforcement is difficult and costly. This issue is not

unique to the energy sector, but has a disproportionate impact on much needed investment in that sector. This gives rise to several inefficiencies, such as preemption moves by firms, excessive requests, higher time-to-market investments, higher discount rates.

- Competences are shared across levels of government. This is particularly true for investments in renewable energy sources for which there is no clear definition of the distribution of competences across levels of government since it refers both to environmental and energy targets. This implies a risk of unclear sharing of competences between regions and the national level, with a risk related to the clarity and certainty of the regulatory framework.

In order to reduce risks, co-ordination mechanisms should:

- *Set energy-environment trade-offs* and outline clear priorities and times of adoption.
- *Strengthen decision processes* affecting the adoption of norms that intersect regional and central government levels. This reduces *ex post* litigation and clarifies the sharing of competences.
- *Include sunsetting clauses* that help reduce risk by specifying *ex ante*, with certainty, the timetable of the procedures, avoiding overcrowding of requests and pre-emption.

Speed up the adoption of required regulation and norms

Several norms establish compulsory deadlines, which are not respected. Updates or release of regulations that are needed are not always fulfilled. This is the case for the Regional Energy Plans that have not been adopted by all regions or that need to be updated. Similarly, deadlines set by Law 244/2007 for national and regional governments have not been respected. The criteria to evaluate offers in tenders for concession of the distribution service of natural gas, as established by Law 222/2007, have not been released. Respecting the deadlines can speed up the liberalisation process and help clarify the regulatory framework. This could be done by:

- *Setting compelling deadlines* for the adoption of regulation both at national and regional levels, with penalties for non compliance.
- *Guaranteeing certainty for the timing of processes*, attributing to the responsible bodies an economic liability with an incentives system and punishments if deadlines are anticipated or not respected.
- *Encouraging co-ordination with projects on network investments in other sectors (for instance broadband communications market) in order to share excavation and digging costs in urban areas.*
- *Inducing or expanding virtual yardstick competition among local authorities and players*. National and local regulators can often only rely on observations coming from the firms they regulate. Introducing a national system of yardstick competition would enrich the regulator's ability to set efficient rules. In the natural gas distribution market, at least a portion of the firms' compensations depends on the performance of other similar firms.

Adopt market-based regulation in all parts of the energy sectors

Properly regulated markets can contribute to reach targets set at political level. In order to do so, markets should be reinforced at sectoral level by completing market liberalisation in all parts of the energy chain:

- *Avoiding impeding the liberalisation process* for the markets that have not yet been completely opened.

- *Strengthening proprietary separation* of the natural gas transmission company from ENI, to avoid negative competition effects in other parts of the gas network.
- *Setting clear guidelines to simplify the adoption of tender procedures at the local level and clarify burdens and duties for private companies.*

Moreover, a market-based approach can be adopted to increase efficiency in the sharing of competences across regions and between regions and the State, by:

- *Removing the uniform electric energy balancing requirement* and allowing southern regions to profit from their lower opportunity costs in investments in renewables. From an economic point of view the uniform distribution of electric energy balance is not efficient, since opportunity costs of investments are not equally distributed across regions but depend on population density, economic density, geographical characteristics, network structures. Introducing a compensation scheme could allow southern regions to take advantage of their surplus of potential renewable energy sources. (In fact, southern regions are in a more favourable position in relation to renewables than the central and northern ones, mainly due to the combined effect of photovoltaic and wind power).

Enhance technological and geographical diversification of energy inputs and imports

Italy is a specific country with significant geographical variation in terms of patterns of supply and demand, local transport grid capacity, and connection with alternative inputs and exports. Diversification of energy inputs should be organised accordingly and coupled with massive investments by the national grid to fully capture the advantages due to local variations. Investments in LNG facilities are one of the best examples to allow greater geographical diversification of imports but their location need to be clearly coupled with credible short-term investment in transmission capacity. A similar argument applies to alternative energy sources as well as to policies aimed at starting investments in nuclear power energy in Italy. The complementary nature between investments in input/import facilities and investments in network transmission is fundamental. A national plan pointing out complementary investments in facilities and transmission might be appropriate to reduce *ex post* co-ordination costs and to allow the country to take full advantage of the corresponding opportunities.

Reduce conflicts of interest

The presence of significant public ownership, either at national or local levels, both in the electricity and the gas sectors may result into potential conflicts of interest. Governing bodies, setting rules and regulating the market, may not be fully neutral in relation to the expected outcomes of market competition, with potential implications for entry and long-term investments by competitors. A clearer definition of incumbents' duties and/or a pressure towards privatisation may help reduce it, avoiding inefficient outcomes. Another option would be to shield the management of core assets by national or local authorities into specific separate branches, distinct from those with a regulatory power.

Notes

1. Import is considered a free activity if gas is produced in EU countries while it is subject to authorisation by the Ministry of Economic Development if it comes from non-EU countries.
2. See section on *Levels of government and Regional Energy Plans*.

3. Even if full privatisation is not the only desirable goals, as in some segments that are natural monopolies such as distribution, complete privatisation without adequate regulation could worsen the situation of consumers.
4. Legislative Decree 79/99 established the independent management of transmission and dispatching functions, giving to GRTN the role of ISO. TERNA (a subsidiary of ENEL) held the transmission lines. In 2005, the merger of TERNA and GRTN took place. No electricity market player was allowed to hold more than 5% in the new company. ENEL was allowed to retain a quota up to 20% but with voting rights limited to 5%.
5. From 1 of July 2007 all limits to consumers for choosing producers have been removed.
6. Eurostat, data from 1999 to 2006.
7. Which are linked by cross-shareholdings – see the section on *The role of Local Public Services companies in the energy market*.
8. It is the highest for EU15, for households with an average consumption of 3 500 KWh, but with and without taxes (Eurostat).
9. See a description of the Antitrust Authority investigation on the abuse of dominant position by ENEL in the competition chapter.
10. Elaborated from Terna, 2007.
11. For these plants the authorisation is released by the Ministry of Economic Development. See the section on *Levels of government and Regional Energy Plans*.
12. Long-term contracts, recently renewed with Russia until 2035, would allow ENI to maintain a dominant position in the market in the foreseeable future. The contract, signed between ENI and Gazprom, signed in December 2006, established that in exchange for the renewal of gas supply to ENI until 2035, Gazprom can enter the Italian retail market selling directly up to 3 billion m^3 per year.
13. At the end of 2007, ENI held a stake of 50.3% in Snam Rete Gas, publicly listed on the Milan stock exchange.
14. The deadline does not apply to Sicily, since it is a Special Statute Region ("*Regione a Statuto Speciale*"). Regional Low 86/2003 set the end of year 2015 as the deadline for tenders to take place.
15. See TAR Lombardia 3 794/05; TAR Lombardia 3688/05; TAR Abruzzo 753/04; TAR Lombardia 183/06.
16. TAR Lombardia 3 793/05.
17. TAR Lombardia 6694/01, 6695/01, 6698/01.
18. Del. AEEG 87/03.
19. That was originally set at 5%, but it has been charged in the Court, and replaced by a decreasing parameter of up to 4.4%.
20. Del. 170/04 and subsequent modifications.
21. The Decree 164/00 set 12 years as the upper limit for concessions to expire. In principle, a municipality could set a concession for a shorter time, and make it coincide with the tariff period. However, such an hypothesis is purely theoretical. It has been pointed out that the twelve years limit appears to be too short compared with the average amortising time of the investments. Indeed, almost all concession that have been tendered have been granted for twelve years.
22. Giacomelli's data refer to a subset of tenders (155) of the set of tenders described in Table 11.
23. ANIGAS.
24. TAR Lombardy is the administrative court competent for tenders that take place in Lombardy, such as those that gave rise to AEEG opinions reported in the text. Moreover, it is also AEEG's appeal court based in Milan.
25. "*Incidenti rilevanti*".
26. Elaborated from AEEG data.
27. This paragraph describes the general distribution of competences across the Italian level of government and analyses in more detail a set of Italian regions, namely: Piedmont, Lombardy, Veneto, Molise and Sicily. The information on these regions stems also from a questionnaire prepared by OECD and submitted to the above mentioned Regions. The analysis does not aim to

provide a complete description for the energy regulatory framework but to describe in detail some cases.

28. Data refer to companies whose main revenues stem from the electric energy and/or natural gas sectors only. Data was updated by the author following Bianco, M., Mele, D. and Sestito P. (2008), "Le grandi imprese Italiane dei servizi pubblici locali: vincoli, opportunità e strategie di crescita, Questioni di Economia e Finanza", *Occasional Papers*, No. 21, Banca d'Italia.

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TERNA: *www.terna.it*.

MISE: *www.sviluppoeconomico.gov.it/*.

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