OECD REVIEWS OF REGULATORY REFORM

REGULATORY REFORM IN FRANCE

GOVERNMENT CAPACITY TO ASSURE HIGH QUALITY REGULATION

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

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AND DEVELOPMENT

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FOREWORD

Regulatory reform has emerged as an important policy area in OECD and non-OECD countries. For regulatory reforms to be beneficial, the regulatory regimes need to be transparent, coherent, and comprehensive, spanning from establishing the appropriate institutional framework to liberalising network industries, advocating and enforcing competition policy and law and opening external and internal markets to trade and investment.

This report on *Government capacity to assure high quality regulation* analyses the institutional set-up and use of policy instruments in France It also includes the country-specific policy recommendations developed by the OECD during the review process.

The report was prepared for *The OECD Review of Regulatory Reform in France* published in June 2003. The Review is one of a series of country reports carried out under the OECD's Regulatory Reform Programme, in response to the 1997 mandate by OECD Ministers.

Since then, the OECD has assessed regulatory policies in 20 member countries as part of its Regulatory Reform programme. The Programme aims at assisting governments to improve regulatory quality — that is, to reform regulations to foster competition, innovation, economic growth and important social objectives. It assesses country's progresses relative to the principles endorsed by member countries in the 1997 *OECD Report on Regulatory Reform.*

The country reviews follow a multi-disciplinary approach and focus on the government's capacity to manage regulatory reform, on competition policy and enforcement, on market openness, specific sectors such as telecommunications, and on the domestic macro-economic context.

This report was prepared by Stéphane Jacobzone in the Public Governance and Territorial Development Directorate of the OECD. It benefited from extensive comments provided by colleagues throughout the OECD Secretariat, as well as close consultations with a wide range of government officials, parliamentarians, business and trade union representatives, consumer groups, and academic experts in France. The report was peer-reviewed by the 30 member countries of the OECD. It is published under the authority of the OECD Secretary-General.

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1.1. The administrative and legal context for regulatory reform in France

France has been engaged on significant reforms to open up and liberalise its regulatory system for some twenty years. The "State does everything" approach that has long been the attitude following the reforms of 1945 – 1949 is gradually being replaced by a more moderate vision with a Republic undergoing a decentralisation process, a desire to be more transparent to citizens and an approach to regulations that takes account of the contributions made by the latest communication technologies. For about ten years this simplified approach has had a significant influence on improving the efficiency of the State even if it has had more of an effect on administrative practices than on the implications of regulations for economic and social life. The liberalisation of the market, including more and more protected networks in certain sectors, is gradually fitting into a European context. A wide range of deregulation and liberalisation measures has transformed both financial and goods markets. On the other hand, the employment market has experienced specific developments which are outside the scope of this report.

Great progress has been made and the economy in France is becoming increasingly competitive. Questions of competition are now faced head on in discussions on administrative justice. In spite of the administrative burden shown by numerous international comparisons and national perceptions, France is still an attractive country for international investment. The French institutional system was also modernised in the 1970's as far as transparency and relations between constituents and the civil service. Introducing a management ethos based on performance should also provide incentives to encourage modernisation in the public sector. Today the legal quality of the French state machine is acknowledged in many European countries, as well as in non-member countries of the OECD.

However, and because of the institutional strength of the regulatory system, changes have largely been gradual, altering the traditional framework of republican institutions bit by bit. Unlike other countries, France has not known any major crises or serious economic difficulties which would have led to the regulatory system being completely reformed. The regulatory system is structured in France within the framework of the 1958 constitution which restricts the Parliament's role while giving the government wide-ranging powers. The predominant role of regulation, as far as the State is authorised to intervene, is rooted in a long-term historic movement which has seen centralisation and unification of the nation around the State and the law. Alongside, is the concept of the State as the guarantor of a public service mission.

The regulatory approach is still marked by the priority given to legal order, often neglecting third parties and the economy. By its nature the French legal system, which stems from written Roman law and does not have sunsetting clauses, leads to a backlog of legislation. The movement to codify and simplify administration then appears to be the necessary counterpart to what is, to a certain extent, increasing complexity. Until now, codification has enabled part of the backlog of existing legislation to be rationalised but it has not reduced its complexity because it has been done without changing any legal requirements, *i.e.* without substantially changing the law or regulation. Moreover, moves to simplify administration have long been conducted in a way that has concentrated on suggestions of the civil service rather than the needs of users. Finally, the decentralisation reform started in 1982 and which aimed at developing local initiatives and mobilising resources for reform gradually ended in having the power being divided between the central State and territorial authorities. It led to a complex institutional architecture dividing regulatory authority between the national level and three levels of infra-national administration.

Two new elements suddenly emerged in this context. The first was the European process which had a major impact on the French regulatory system. The European approach favours competition to stimulate economic growth and build up a large market. This had a major impact in particular on public utilities influenced by the French public service approach. The public service then had to find ways to adapt, in order to combine the beneficial effects of competition and preserve the essential principles which justified its existence. At the same time, France also plays an important role in having services of general economic interest recognised (SIEG) at the European level. Finally, European regulation, by means of directives, is currently a major source of national regulation where derivative law, which transposes European directives, now represents almost half of the flow of new regulations.

The second is linked to the emergence of new information and communication technologies. They represent a challenge but also an opportunity to modernise the regulatory system. These new tools will enable opportunities to increase contact between citizens, business and the civil service, by reducing the burden of regulations. In addition these tools can be used as a vehicle for modernising the whole regulatory system which will allow changing the administrative apparatus opening it up more to the needs of citizens. France has certainly grasped every advantage involved in developing e-government and has committed itself to pursuing a path of vigorous modernisation.

The search for quality regulations has long manifested itself in a formal respect for drafting rules with the search for excellence in the elaboration and consistency of the law. It is also linked to the expertise of the major control institutions and particularly the Council of State, the keystone of administrative case law. The restrictive definition of the domain of the law through the 1958 constitution was in theory supposed to control excessive production of laws experienced under former regimes. However, this approach to quality did not include any incentives to use the regulatory tool in a light-handed way in order to prevent regulations proliferating.

The costs of regulatory inflation gradually became obvious: the increase in economic and social public intervention produced a massive reliance on the regulatory tool.[1] In thirty years, the average number of laws rose each year by 35%.[2] This data underestimates the true facts because the law only represents one part of the regulatory system, compared with decrees, orders and circulars of all sorts (see Box 1). And so there were 82 000 decrees in force in 1991, with an annual production at the time of 670 decrees a year.[3] Production has greatly increased over the last few years with more than 11 000 additional decrees between 1995 and 2002 (Table 1).[4] In addition, the average size of documents has increased, from 93 lines for a law in 1950 to 220 in the 90s. The size of the official gazette increased by a factor of 2.4 between 1976 and 1990. This concerns only the flows because there is no statistical instrument to measure the stock of existing regulations. However, some analysts estimate the number of documents as 8 000 laws and 400 000 various regulatory documents including decrees, orders and circulars.[5]

Table 1. **Flows of new regulatory documents 1995 - 2002**

	1995	1996	1997	1998	1999	2000	2001	2002	*Total for the period*
Laws	39	75	26	45	54	46	44	35	364
Orders	0	9	0	20	0	29	19	9	86
Decrees	1 346	1 129	1 310	1 214	1 098	1 268	1 323	1 546	10 234
Regulations	83	60	66	99	116	115	108	127	774
TOTAL	1 468	1 273	1 402	1 378	1 268	1 458	1 494	1 717	11 458

Source: SGG.

These trends tend to give France, rightly or wrongly, the image of a bureaucratic country suffering from an exponential proliferation of regulations. Thus, France has constantly lost ground in some international rankings. According to non-governmental data, France ranked 60th in citizen's perception of

the burden of regulations, 35th for the cost of institutional change, and 57th for the administrative burden for start up companies.[6] Legal controls both carried out by the Constitutional Council and the Council of State are little help in curbing such trends because they do not allow the economic and social impacts of a given regulation to be assessed. They do not consider in any way the cost of a new regulation to society, but only its legal structure in relation to the existing system, its relevance to older legislation which has not lapsed by limitation, and its relation to general principles of law. This is all the more true since regulatory impact analysis (RIA) plays a minor role, compared with other countries (see Section 3.3).

In this context France does not have any sunsetting clauses to phase out older regulations. Codification enables to improve the management of regulations but does not reduce their intrinsic complexity. Although new laws often include re-examination clauses, they remain optional and have no effect on the legal value of the legislation. The whole stock of legislation thus becomes increasingly difficult to manage as can be witnessed by the difficulty encountered to incorporate European directives which need to find their place within the complex legislative provisions and existing regulations.

The civil service is organised in a professional way through a competitive examination system for recruitment that favours the republican meritocracy ensuring a high level of skills and integrity. However, it shows a certain closed attitude towards the outside world, particularly because it is very difficult to recruit external high level posts. Legal expertise is widespread but paradoxically does not necessarily enable high level experts in sufficient numbers. Economic expertise exists but is not generally widespread. It often remains within the confines of specialised analytical departments. Management[7] involves a vast amount of regulations that do not encourage fluency and flexibility as well as the fragmentation of staff into a large number of "statutes".[8] This leads to a compartmentalised approach to the production of regulations and partly curbs modernizing efforts. The overarching legal approach to training higher level executives is sometimes detrimental to a more global vision of the economic and social advantages of regulatory practice.

Box 1. A view of the French legal system

The instruments are arranged in steps between the legislative and regulatory levels. Article 34 of the 1958 constitution defines the subjects in a restrictive way which are pertaining to the legislative domain following proper criteria, which are neither institutional (dependent on the body, the sovereign Parliament), nor procedural (the legislative procedure). If a document is not considered a law, then it belongs by default to the "regulatory" domain, which is run through decrees.

Legislative documents

- *Organic laws.* Following Article 46 of the constitution they mainly aim to shape the running of public authorities. Their value is above the law and they are subject to a strict constitutionality check and require a larger majority representing over than half the total elected members.

- *Laws authorising the ratification of international commitments. They* represent between a quarter and a third of the annual production. Governmental initiative, No amendments.

- *Simple laws. These* laws are voted by Parliament on permissible topics.

- *Edicts.* The government may ask Parliament to authorise the taking of measures that are normally in the domain of the law by means of edicts. These bills have immediate effect but lapse if the draft ratification law is not lodged within the timescale provided for by the enabling Act. This procedure is used for very technical subjects (administrative simplification) and was sometimes used for very sensitive reforms (Social security reform in 1996).

Regulatory documents (decrees, orders, circulars)

Regulatory documents are designed to stipulate conditions under which a law will be applied. The length of the delays between publishing a law and implementing corresponding decrees may cause problems for the proper implementation of the law even if it is possible for a citizen to refer to the judge of public law when the administration has not implemented the decrees within a reasonable timeframe.

Decrees. These are regulatory acts normally signed by the Prime Minister, who, according to the Constitution, has standard regulatory authority. Certain decrees are however discussed in the Council of Ministers, and therefore signed by the President of the Republic, who presides over the Council of ministers, either because a text of higher level stipulates so, or because the government thinks that the text deserves such process. The laws often stipulate that certain decrees which are necessary to their implementation, will be taken according to the Council of State, in order to better guarantee their legal quality. The decrees taken after advice of the Council of State and those taken after a discussion in the Council of Ministers (a decree can have both), can only be amended following a decree taken under the same circumstances as the original.

Orders. These are acts lower in rank than decrees, emanating from a lower administrative authority than the President of the Republic or the Prime Minister: ministers, prefects, mayors, presidents of departmental or regional councils. They form part of the subsidiary regulatory power that ministers have to ensure that the services under their authority operate properly. They can also enact regulatory measures in matters where a legislative or regulatory bill have given them this power. Apart from these cases, ministers do not have any regulatory power. The order, like the decree, includes both introductions that refer to previous regulations and enacting clauses specifying the contents of the document and its legal effects. The orders can be of a regulatory nature when they set down a general rule, (*e.g.*: a municipal order prohibiting parking) or an individual order (*e.g.*: appointment).

Circulars. These are instructions sent by the Prime Minister to his ministers or by a superior authority to its subordinates. Circulars may include precisions in order to interpret a law or a decree, as well as instructions on whom to implement a given legislation. The Government has been fighting against the multiple circulars sent to the local authorities (Prefects, heads of State services in the local authorities), which pill up through a system of multi-year "framework circulars" (the "national incentive instructions), which have to repeal all the previous circulars which are not useful any more. The public judge checks the legal character of circulars which are giving imperative instructions. The judge verifies that they are interpreting correctly the valid decree.

Some acts from independent administrative authorities which are independent regulators. These bodies may act by means of letters and communications with an impact on the market.

Decisions of competent professional bodies: for self-regulation and for devolution of a derived regulatory power (see Section 4).

1.2. Recent initiatives to improve control of regulations and the capacities of public services

Although there is not yet an overall policy, strategic reforms have been implemented. They aim to improve transparency and accountability of public action and simplify relations with public services. These efforts enable authorities to respond to a certain number of drawbacks of regulatory inflation and to limit its consequences. They illustrate a key characteristic of the regulatory system in France: the tension between the ever greater complexity of the State apparatus and the regulatory system which is offset by a systematic search for rationalisation, codification and simplification. In recent times the beginnings of a global strategy for reforming the State and the quality of regulations have begun started to be implemented.

A first wave of reforms in the 1970's stemmed from the desire to improve relations between constituents and public services. As a result, the post of Ombudsman was created in 1973, the laws of 1978 and 1979 on access to administrative documents and the purposes of administrative decisions were enacted and a regime of silence is consent was adopted for construction permits in 1977. This aimed at reducing the distance between citizens and public services and to end the tradition of secrecy and opacity associated with administrative decisions.

The second wave of reforms during the 1980's and 1990's was marked by the administrative simplification implemented from 1983 onwards and extended from 1996 onwards. This aimed at reducing *ex post* the impact of regulations by reducing the number of forms and simplifying declarations but without being able necessarily to deal with the original problem, *i.e.* modifying the upstream regulations and laws. This simplification effort was carried out at the same time as the relaunch of codification from 1989 onwards.

On a wider scale an overall economic liberalisation movement[9] took place during the 1980's as part of the European economic integration. The end of price controls in 1986 and the opening up of financial markets contributed to the liberalisation of economic life. These reforms undertaken from the middle of the 1980's also included an extensive privatisation programme carried out by successive governments. However, there were still more than 1500 public companies or economic bodies in 2001, employing more than a million people and with a turnover of 176 billion euros.[10] Finally, reforms in public utilities, particularly electricity and telecommunications, gradually enabled markets to be opened up in line with the European system and led to setting up independent regulators.

This economic liberalisation movement certainly bore fruit. In spite of the regulatory burden revealed by certain indicators mentioned above, France was one of the top OECD countries to benefit from an influx of foreign direct investment in 2002,[11] with a share of almost 10% of total FDI against 5% in 1999. The major advantages of the French economic system revealed by the same international indicators are the excellence of the transport and communications infrastructure as well as the scientific and technical potential. But at the same time these infrastructures bear witness to the role the State has played in these areas in the public service institutional context. Since then the assessment of regulatory performance has required an overall vision of factors that contribute to economic activity. It is true that in recent years other indicators have shown less satisfactory performance in terms of new businesses created which has only been redressed very recently.

This wave of privatisations noted since the middle of the 1980's partly preceded the modernisation of the State and the reform of the whole regulatory policy. The State has had to face up to the fact that some of its most dynamic senior management left for the private sector while public management regulations made external recruitment difficult. The perception of the remoteness of the State[12] expressed by some French analysts goes in hand with the perception of a crisis in institutions. This underlines "a growing distance between the general State philosophy and public service which remain the key elements of French society and economy and the expectations of a country open to international economy and exchanges and benefiting greatly from economic and financial globalisation".[13]

As a result, from the end of the 1980's emerged an awareness of the need to reform the State with, amongst others, the circular of 23 February 1989 on the regeneration of public service. This programme had four objectives: the increase of responsibilities by expanding management autonomy; reforming working relations; evaluating public policies; improving the reception and service for users. This was intended to be an experimental, participatory procedure relying on autonomous centres of responsibility with a global budget. This programme also introduced a planning system for managing staff, strategic thoughts about new technologies, increasing mobility, the need to identify any agent within administrative procedures. This approach enabled a major shift in direction but, however, as a Senate report showed,[14] came up against the financial framework of the State operation.

Since then, the 1994 *Picq* report highlighted the need for an overall effort to reform the State. This report followed the 1991 Council of State report on the proliferation of regulations and their inadequate quality. Following these reports French analysts gradually realised that the increased number of formal regulations was in practice of little use to direct, modernise and control State operations. The *Picq* report suggested an overall strategy to modernise the role of the State by refocusing it on its basic responsibilities, by improving the delegation of responsibility and modernising budgetary and accounting rules. The *Picq* report also led to initiate regulatory impact analysis (RIA) as of 1996. Since then the modernisation strategy for the central State followed three main themes including in particular an overall strategy for ensuring quality regulations:

- In drawing up rules and improving the quality of regulations.

- During 2001, the French Mandelkern group developed further proposals to improve the quality of regulations following the OECD work by improving the *ex ante* evaluation of regulations through RIA, as well as *ex post* evaluation and monitoring its implementation. The conclusions of this report are currently being translated into administrative action.

- In financial management

- Following the 1989 circular and its call for modernising accounting and administrative management rules, a great deal of progress has been made with the Organic Law on Finance Laws (LOFL) of 1 August 2001 which will give public services greater scope in managing the resources they are allocated. Management by targets to improve performance with the measuring of results ought to relate eventually to the past regulatory quality by making it easier to evaluate *retrospectively*. This effort to modernise financial management also involved collecting taxes and reducing the burden of tax regulations weighing on citizens and business.

- In managing human resources.

- Inter-departmental committees on State reform (2000, 2001) tackled the problem of improving the management of human resources. An observatory for public employment was created in 2000 and ministers will have to be given tools for managing employees in 2002. Some statutes have been merged. A network of officials responsible for modernising management has been set up to operate throughout ministries.

A more consistent approach to reforming the State and modernising the quality of regulations is just emerging. These movements reflect to a large extent the underlying considerations for reforms in many other OECD countries. This movement has been expanded with the reforms announced since the beginning of 2003. The law enabling the government to simplify the legal system through edicts adopted in July[15] will enable wide-ranging simplification of administration for the first time, right up to the legislative level. This is supplemented by efforts to speed up e-government and by the modernisation of financial regulations following the law adopted on 1st August 2003.[16] Finally, from an economic perspective, thoughts on the governance of the State as a shareholder, led to setting up an agency for managing public shareholdings. The latest European directives on energy have also been transposed.

2. THE DRIVING FORCE BEHIND REGULATORY REFORM: NATIONAL INSTITUTIONS AND POLICIES

2.1. Regulatory reform policies and their main principles

Overall, regulatory reform policies involve setting up a system for managing the quality of the influx of regulations, improving the quality of existing regulations and upgrading existing regulations. The 1997 *OECD report on Regulatory Reform* recommends that countries should "at policy level adopt major regulatory reform programmes which set clear targets and frameworks for implementing them" (see Box 2).

Box 2. Good practices to improve the capacity of government to provide high quality regulations

The OECD report on Regulatory Reform, received favourably by ministers in May 1997, includes a co-ordinated range of strategies for improving regulatory quality, many of which were based on the 1995 Recommendations of the OECD Council on Improving the Quality of Government Regulations.

A. SETTING UP A SYSTEM FOR MANAGING REGULATIONS

1. Adopt regulatory reform policy at the highest political levels.

2. Establish explicit standards for regulatory quality and principles of regulatory decision making decisions.

3. Build regulatory management capacities.

B. IMPROVING THE QUALITY OF NEW REGULATIONS

1. Assess regulatory impacts

2. Consult systematically with affected interests.

3. Use alternatives to regulations

4. Improveg co-ordination of regulations

C. UPGRADING THE QUALITY OF EXISTING REGULATIONS

(other than the strategies above)

1. Review and update existing regulations

2. Reduce red tape and government formalities.

Source: Scott Jacobs *et al*., (1997), "The quality of regulations and the reform of the public sector" in *The OECD report on regulatory Reform: Synthesis*, OECD, Paris.

The main driving forces for regulatory reform policies in France have been both the dynamics of the European system and the realisation that the growing cost of regulations is a drawback from the point of view of international harmonisation. In short, the desire for transparency, for modernising relations between the State and the citizens also underlies a large number of initiatives.

This has led to regulatory reform policies that have historically been based around a policy of transparency and administrative simplification concerning the stocks of existing regulations. Apart from the 1978 and 1979 transparency laws, amended by the law of 12 April 2000 on access to administrative documents, administrative simplification involved two constituent parts:

- Simplification as such, aimed at procedures and obligations for making declarations. This action has been extended to administrative language itself with a committee set up specifically for this.

- Codification started just after the war and was relaunched from 1989 which represents a major part of administrative action (See Section 4).

The regulatory reform policies have theoretically been extended to include the flow of new regulations since 1997 with mixed results. If recent circulars have set out the need for effectiveness and clear objectives in legislation, the approach does not follow the systematic framework of the Regulatory Impact Analysis (RIA). In addition, these circulars run the risk of only producing a purely formal application if conditions for their implementation are not specified in detail and upheld by a body specially created to ensure that they are observed and with sufficient power where other public authorities are concerned. The approach in terms of costs and market distortions is still little used to evaluate legal documents *ex ante*. However, there is an awareness of the costs of regulation *ex post*. Thus if the principles of the OECD recommendations have gradually been broadcast throughout the French context, this has been done surreptitiously and without the economic purpose being fully acknowledged.

In short, these policies have set out to modernise regulatory institutions with the establishment of independent regulators for public utilities, first of all for telecommunications in 1996, then for electricity in 2000. The rights of these authorities were then gradually increased and their powers consolidated without ever questioning their institutional and legal independence. In short, the modernisation of the regulatory framework of the financial sector is going ahead with a draft financial modernisation system (see Box 8).

The solid legal character of the French system, with formalised procedures for preparing and recording (see Section 2.3), has long masked the necessity for a global effort aimed at improving the quality of regulations and strengthening the resources for developing controls initially. There are directives prepared by the Prime Minister, such as that of 26 August 2003 which recall the importance that must be attached to the quality of the rule of law, by using the legal expertise of ministries appropriately and co-ordinating it between different ministerial departments. However, such directives do not have any legal force binding on legislation that has been drawn up, and their impact has not been assessed. Moreover, in some sector ministries, legal and economic expertise resources have long failed to respond to the *prior* demands of regulatory quality and evaluation.

Thus regulatory reform policies have retained a fragmented character for a long time without a global framework of concepts enabling regulatory quality to be defined. But the OECD recommendations offer unified principles for the quality of regulations, derived from the recommendation for Improving the Quality of Government Regulations of 1995 which stipulates that:

> A good regulation should: (i) be necessary to serve clearly defined policy objectives and to be effective in carrying out these objectives (ii) have a solid legal base (iii) generate profits that justify the costs, taking account of the effects within society (iv) minimise costs and market distortions (v) promote innovations with incentives and approaches based on targets; (vi) be clear, simple and practical for users; (vii) be consistent with other regulations and policies; and (vii) as far as possible, be compatible with the competition, commerce and principles aimed at encouraging investment at an internal and international level.

However, from 2001, the work carried out as a result of the Mandelkern report has led to planning conditions for transposing principles for regulating quality which apply at the inter-departmental level.

2.2. Methods for promoting regulatory reform within public authorities

The work of the OECD shows that permanent institutions responsible for reform with explicit responsibilities and authority to manage reform and monitor it within public authorities, are required to keep the direction straight and avoid over-regulation.

The centre of government

Under the 1958 constitution, the Prime Minister holds regulatory power in a general way and "uses public authorities". This situation differs from previous institutional parliamentary systems where this pre-eminence and stability of office were not clearly stated either. Since then the Prime Minister's office at the centre of government plays a key role in the instigation of regulatory policies.

The General Secretariat of the Government (SGG), which was created in 1935,[17] plays a co-ordinating administrative role for government and therefore regulatory work. It comprises about 100 people. The SGG acts as a monitor for drawing up and publishing laws and regulatory legislation. It also acts as a legal adviser for the Prime Minister and members of the Government (SGG 2002). However, the role of the SGG remains unassuming at a public level with duties like those of a "clerk of the court" to the Republic.

The main role of the SGG is to ensure that constitutional, legal and regulatory legislation is observed by the authorities drawing up the regulations. These rules are regularly evoked by the Prime Minister. The last circular of 1997 also specifies that drafts must arise from a presentation report and must be accompanied by an analysis of resources and an impact study, and refer to the rules and obligatory consultation procedures for bodies or institutions before being discussed by the Council of Ministers and being placed before Parliament.

For about ten years the SGG has played a major role in simplifying formalities, administrative transparency or rationalising systems. Considering that it is supposed to provide impetus, following the recommendations of the Mandelkern group, it has sometimes been considered that it should be given responsibility for organising, encouraging and, if necessary, providing the necessary constraints for the quality of regulations, following the example of similar existing structures in foreign countries such as the OIRA in the United States and the Regulatory Impact Unit in the United Kingdom. This insists on its permanence, its proximity to the Head of Government, its mastery and current control of certain procedures as well as the closeness of relations with the Council of State from which its leaders have come.

The organisations responsible for regulatory policies as such belong to the Prime Minister's office. They have been modified by frequent revisions. The *Commissariat for State Reform*, set up in 1995 following the Picq Report was replaced in 1997 by the *Inter-departmental Delegation for State Reform* (DIRE) which dealt with reform policy for public authorities until 2003. All these organisations were reformed in 2003 with:

- The Delegation for Modernising Public Administration and State Organisations (DMGPSE). It implements ministerial reform strategies originating from the Prime Minister and in particular measures for applying the organic law of 1 August 2001 (see Appendix 1).

- The Delegation for Users and Administrative Simplifications (DUSA).

- The Agency for Developing E-Government (ADAE).[18]

Parliament

Parliament also plays a significant role in the dynamics of policy regulation in France. As Parliament has two chambers, each of the two assemblies has a permanent "law" committee dealing with regulatory work.[19] In addition, the Parliament has had a parliamentary office for evaluating legislation since 1996 as well as an analysis and control team which deals more with budgets. In recent years a number of parliamentary reports have enabled to clarify governmental choices regarding regulatory reform, modernising and simplifying administration.[20]

The Council of State

The Council of State controls the legal status of regulatory legislation as well as advising government in the first instance. Set up originally in 1799 to help draw up the most important regulatory legislation and to resolve disputes in government against a background of double civil and administrative jurisdiction, it was largely responsible for the Napoleonic Codes (1799 – 1814) which are still the keystone of legislation and regulation in France. In its current form the Council of State sees its role shaped by the order of 31 July 1945 which set out the principle that it had to be consulted for any legislative project.

This role was confirmed by the 1958 constitution which stated that the Council of State had to examine draft laws and orders (see Box 2) before they were submitted to the Council of Ministers as well as major draft decrees, described by the "Council of State decree" law. The Council of State issues a recommendation on the legality of legislation, on its form and its administrative appropriateness. The government is not obliged to follow the advice of the Council of State but it may only enact the bill adopted by the Council of State or the draft in its initial state. However, if it decides not to pay any attention to an illegality pointed out by the Council of State it runs a greater risk of litigation[21]: even if the Council of State recommendation in its consultative form does not include its contentious parts, it is very rare for the core analysis to be different. The Council of State has also had to be consulted for all draft community acts since 1992 to determine whether they are considered a law or a decree under the constitution. The government has the option to consult it for a recommendation on any other regulatory legislation. The Council of State's recommendation is secret but the government may make it public. The Council of State gives a public report each year to the President of the Republic which sets out mainly legislative, regulatory or administrative reforms that it intends presenting to the government.

The Council of State is also the highest level of administrative jurisdiction. Today it is the appeal judge for administrative justice, following the reforms of 1953 which set up ordinary administrative courts and first instance administrative courts and then the reform of 1987 which set up 7 administrative appeal courts. As a first and last resort it considers appeals mainly against decrees, administrative authorities' and independent regulators' decisions.

In fact, the role of the Council of State exceeds its official function as such because of the influence of its members within the government. There are many Council of State members on secondment from other bodies which play a key role such as the General Secretariat of the Government, the Ministry of Justice, the Prime Minister's office as well as various other ministerial offices and ministerial legal organisations.

The specific role of the ministries of finance and justice and the competition committee

The activity of the Prime Minister's offices is mainly focussed on regulations relating to private individuals. Related to business and tax matters, the Ministry of Finance has a specific function because of its overall role, and also because of the importance of human and financial resources. Its range of power is very wide.[22] The Ministry of Finance plays an important role in simplifying administration, particularly where electronic administration is concerned. This ministry is the driving force in projects to modernise the economic initiative in favour of SME's and also for financial modernisation. It has a great range of legal services.

If necessary, the Ministry of Justice may have a consultative role in legal matters but essentially in its area of competence, for example the commercial code or the organisation of legal or accounting professions. It has also played a major role in financial modernisation.

The competition committee has also played an overall consultative role for matters concerning competition law.

Assessment

The Council of State plays a central role in directing and controlling the procedures that take place within the regulatory process. However, its approach often remains purely legal. The Ministry of Finance may take the economic dimension into account but does not have global powers. The specialist Prime Minister's offices have not been in existence long enough to evaluate their activities. In a word the role of the SGG remains substantially neutral and closely dependent on the Council of State's legal point of view. In spite of the large number of players, there is currently no permanent body responsible for initiating drawing up and implementing the application of a global, permanent policy in favour of improving the quality of regulations.

2.3. The administrative system and the process of creating regulations

In France there is a specific administration system for the process of creating regulations, for laws and legislative documents on the one hand, and for general regulatory legislation on the other. The different stages for drawing up a bill are described in the diagrams in Appendix 3 and depend mainly on the type of regulatory bill:

- Draft law
  - Originating from government (see Diagram 1)
  - Originating from Parliament
- Edicts (Diagram 2)
- Decrees (Diagram 3)

Regulations and circulars do not have such a detailed procedure and may be signed by one or more ministers before being released in the official gazette.

Regulatory and legislative documents

The government has general control over regulatory and legislative documents. Parliament can propose laws because Parliament may submit laws itself but because the Government has control over the agenda, they only represent 4% of legislative documents. In addition, the scope of these initiatives is severely restricted by Article 40 of the Constitution which prevents proposals for laws which would reduce public resources or increase expenses. Above laws, organic laws aim to clarify the workings of public authorities and are subject to a strict constitutionality check and particular voting processes.

Drafting legislation is subject to a set of controls and counter proposals co-ordinated by the SGG which is supposed to enable compulsory consultations while ensuring the legal status of the legislation. The Council of State plays an essential role in these checks. The SGG has set up a unique co-ordination and conflict resolution system:

- *Inter-departmental meetings* (1 300 – 1 400 meetings per year in 2000 – 2001). These inter-departmental meetings are the responsibility of the Prime Minister or his advisers, with representatives from the ministries involved. A member of the Prime Minister's office ensures the consistency of government policy or prepares the arbitration submitted for the Prime Minister's agreement with the decision being notified by the SGG. This process is mainly a confrontational process, sometimes contentious, at inter-departmental level where the government has internal talks. In some cases technical ministries or the smaller and less important ones could have the impression that ministerial consultation does not allow them to put over their point of view compared with the richer or better equipped ministries such as the Ministry of Finance. However, arbitration documents are covered by the "Secrecy of the deliberations of Government and responsible authorities with executive power", (Article 6 of the law of 17 July 1978).

- *Preparation and the Council of Ministers' Secretariat.* Each measure on the agenda is the subject of a file drawn up by the SGG which includes the document submitted to the Council of State ("pink colour"), the Council of State's recommendation ("green colour") and the document arbitrated after the Council of State's recommendation ("blue colour") plus a note setting out the content of the document and making the positions of the Council of State and the Government clear.

The final process depends on the type of legislative document:

- Draft laws are submitted to the office of the Parliamentary assembly of its choice by the Government after discussion in the Council of Ministers.

- Draft edicts are prepared beforehand like draft laws. They are adopted in the Council of Ministers and are published in the official gazette. The only difference is, because of the enabling Act, the Government may make legislative modifications by regulatory means. Then it just needs to submit the draft law to ratify the orders to the Parliamentary office within the timescale set out by the enabling Act.

- Decrees are signed by the Prime Minister. However, a minority of them is discussed in the Council of Ministers and signed by the President of the Republic.

A basic element of the constitution of 1958 is the supervision of Parliament by the government. The executive power has a number of instruments to force Parliament to enact legislation in the required terms.[23]

The "infra legal" system

The space allocated to the "sub-legal" system is, theoretically, very limited in the French institutional system (see Box 1). In practice, the complexity of the legislation or the sparing character of the law make interpretation texts necessary which can sometimes go beyond their strict auxiliary role and take on a regulatory character. However, the judicial checks of the Council of State enable this process to be controlled.

This system of infra legal standards has a very important impact on the facts without their drafts having to be subjected to constrictive rules and without their economic effect having to be assessed well.

The legal systems that ensure that drafting procedures are observed

Given the importance of the administrative process, the government must observe a certain number of legal procedures the content of which cannot be ignored for all legislation which is drafted in accordance with a precise legal constitutional rule, organic law, statutes or decrees. The types of checks to ensure that procedures are observed have been gradually expanded. Initially, the Constitutional Council could only be referred to by the President of the Republic, the Prime Minister or the Presidents of the Assemblies. This option has been expanded to 60 deputies or 60 senators with the 1974 constitutional reform, which gave a major counterbalancing role to the Constitutional Council. Decrees, bylaws and circulars could be challenged before administrative courts and if necessary directly before the Council of State by any person who had a personal interest. The Constitutional Council or the Council of State may respectively invalidate all or part of the legislation challenged depending on the degree to which clauses provided for in the legislation were not observed in legislation of a higher legal level. In these appeal proceedings the SGG is the Government's legal representative in the high courts or it co-ordinates the defence. In recent years appeals have been made within a relatively short timescale, rarely exceeding 12 months for appeals against decrees in the Council of State. The Constitutional Council has less than one month to decide. This presupposes that ministers have sufficiently developed legal structures behind them to support the SGG.

Assessment

However, such a system, in spite of its formal character, only partially contributes to the quality of regulations. The Economic and Social Council is only required to consult on draft economic or social laws or the territorial assemblies for Overseas Territories for laws involving them. On the other hand, rules for drafting laws for signing and publication are not subject to specific sanctions relating to their clarity, their purpose or the fact that there has been an impact study because they are not included in legislation that could give rise to sanctions in administrative law. Some of the drafting rules, particularly those relating to modifying earlier legislation with legislative or regulatory impact may slow down some modifying procedures which are codified very precisely. This explains why the government has chosen to legislate using edicts to push ahead the simplification process by using regulatory measures at a higher legislative level.

2.4. Co-ordination between levels of government

The 1995 OECD recommendation on the quality of regulations advises governments to choose the most appropriate level of government to intervene and set up co-ordination systems if necessary. In addition to this the 1997 report advises governments to encourage regulatory reform at all levels to avoid duplication and overlapping of responsibilities between the different levels of government with regulatory powers.

The way in which powers are co-ordinated between the central State and local authorities reflects the ambiguities and the difficult renunciations of a unitary State committed to a process of decentralisation of which neither the unitary State nor some of the players in the institutions necessarily accept all the consequences. This makes it all very complicated, reducing potential gains from decentralisation. In addition, decentralisation transfers confers major areas of competence to local levels which are often dispersed and very small for some municipalities with human and financial resources that are not adequate for quality legislation.

France is traditionally a unitary State where authority is exercised by a power base in Paris. Departments date from the Napoleonic period and they are administrative constituencies, they were set up as local authorities in 1872 whereas municipalities were given a legislative status in 1884. The 1946 constitution set up overseas departments and territories and their existence was acknowledged in the constitution. However, this vision of the Jacobin State was gradually perceived as difficult to reconcile with the need to modernise the country which required initiative to be given free rein at local level and to bring power closer to the citizens. This gave rise to decentralisation.

Decentralisation

Decentralisation is a method of transferring power from central government to territorial authorities whose executives are controlled by an assembly elected by direct universal suffrage. It was preceded by a regionalisation phase designed to balance the excessive weight of the centralised State and the capital. The reform of the regions in 1964[24] created about twenty regions, rather modest in size on a European scale, and was careful not to recreate regions that corresponded to old historical identities.[25]

The decentralisation process which started by the law of 2 March 1982 was designed to bring the decision-making process closer to citizens. The laws of 7 January and 22 July 1983 transferred powers to local authorities, the precise breakdown of which is analysed in greater detail below. This devolution of powers gave local authorities full autonomy over decision-making and the management of their budgets (free administration principle), with the representative of the State responsible for post facto verification of the legitimacy of their orders. Territorial authorities all have a deliberative assembly elected by direct universal suffrage[26] and an appointed executive consisting of a President of the Regional Council, President of the Departmental Council and a Mayor. At the local level, there are currently three levels of territorial authorities: municipality, department and region. France has 36 700 municipalities, 100 departments (including 4 overseas), 26 regions (including 4 overseas) and overseas territories.

However, local authorities only have delegated regulatory power in the areas relating to their field of responsibility. Local authority orders are enforceable after being sent to the prefect who verifies their legality and who can refer them, if necessary, to the administrative court. Consequently, while the reform has reduced the degree of administrative oversight, it has not eliminated it completely in that the prefect, the representative of the State, no longer has the power to exercise *ex ante* control over the appropriateness of local authority legislation but that of *ex post facto* review of the legality of that legislation.

Other elements complemented this system. The law of 26 January 1984 standardised the status of local personnel by bringing it closer to and harmonising it with the general status of civil servants of the State. A 1984 law instituted a contractual relationship between the State and local authorities with planning contracts, which are analysed below. After the reforms implemented between 1982 and 1986, the movement paused until 1992. The law of 6 February 1992 improved legislative transparency at local level by giving citizens the right to information and to participate in local decisions.

The most recent laws have developed interaction between municipalities (law of 6 February 1992) in order to encourage the consolidation of certain powers of the municipalities. The law of 4 February 1995 created the idea of “country” when an area was geographically, culturally, economically or socially cohesive. This was supplemented by the law of 25 June 1999. The laws of 25 June and 12 July 1999 defined the concept of built-up areas and the community of built-up areas and encouraged simplification through competent groups in the economic and social fields.

Devolution

Devolution was designed as a necessary accompaniment to decentralisation to give local authorities a voice in local State services. It was defined under the terms of the decree of 1 July 1992 which set down the devolution charter. This charter introduced a principle of subsidiarity under which central government departments or services with national power only keep the tasks that cannot be delegated at local level. With the exception of certain sectors (Chief Education Officers for national education, justice, defence budget, etc.), prefects are responsible for supervising all devolved State services. They co-ordinate relations between the State and local authorities, check local authority regulations and are responsible for implementing all national civil policies (culture, agriculture etc.). In addition, the prefect is responsible for ensuring public order.

Dividing powers and regulatory responsibilities

The move toward decentralisation generated numerous overlaps in sharing responsibilities particularly between departments and the regions, and between the regions and the State (see Appendix 5) even though in a unitary State such as France the State has retained general authority. These difficulties were not resolved very well by the existing co-operation systems. Consequently, a new institutional reform was introduced in 2003 under the constitutional law adopted on 17 March, which should be followed by a number of legislative and regulatory measures (see Box 3).

The national level alone has the power to amend the constitution and exercise judicial authority. Even when local authorities exercise powers, these powers has been delegated. The State (central government) which has transferred these powers retains a general prerogative of oversight. Furthermore, legislation proposed by the executive and adopted by Parliament can modify, add to or withdraw any of the powers that have been devolved.

The traditional powers of municipalities concern the police and security at local level, fire protection, building, maintaining and equipping primary and nursery schools, adult education, family assistance (childcare facilities), social housing, waste and water treatment, cemeteries, abattoirs and urban planning, etc. However, the small size of a large number of municipalities makes it very difficult for them to discharge all their responsibilities properly. While there is opposition to mergers between municipalities, there has been strong growth in the use of co-operative structures, initially set up in the form of inter-municipal associations in the 1930s and 1940s to manage water, waste or energy, to promote the consolidation of powers.

The department is responsible for building, maintaining and fitting out secondary schools up to age 16, family assistance and aid for young people, social housing, waste disposal, and for managing water resources, agriculture and tourism. It also has certain responsibilities in terms of cultural activities through the provision of parks and public spaces, sports and leisure facilities and the road network. The region is responsible for building and fitting out secondary schools for 15-18 year olds, adult education, rail transport at the regional level and tourism. It also has responsibilities in terms of cultural activities.

This complex whole reveals a lack of cohesion in the division of powers and a number of overlaps.[27] For example, in the field of education the State retains the power to manage staff and define programmes, whereas responsibility for nursery schools, technical schools and secondary schools lies with the municipality, department and region respectively. The situation can become even more complex in the case of urban conglomerations in which a fourth level, that of “urban community”, has responsibility for managing a number of common resources for a number of municipalities (transport, waste etc.).

Box 3. The decentralisation reform in 2003

This constitutional reform specifies the decentralised organisation of the Republic and increases the regulatory powers of all local authorities by broadening the areas in which they can exercise their powers. They may even disregard legal and regulatory provisions on a trial basis in certain instances for which provision has been made in an organic law. This reform, which recognises that no local authority has any power over another, nevertheless sanctions the possibility of a local authority assuming a leading role for a joint activity conducted within a consistent framework. The reform introduces the option of locally organised referendums and establishes the right to petition citizens to get them more involved in setting the agenda for the deliberating assemblies. In addition, this reform confirms the option open to territorial authorities to set the tax basis and the rate of certain taxes, and also establishes the right in principle to balance resources. Lastly, any proposal relating to the organisation of local authorities must first be submitted to the Senate.

The reforms put forward in 2003 aimed at clarifying these duties, particularly by specifying that some authorities may act as lead partners: the region for economic development and vocational training, the department for social services. Overlaps still remain, however. With regard to the police, the mayor retains most of his powers, while the department is responsible for traffic police on departmental roads and the State co-ordinates the two police services operating in France, namely the national police and the "gendarmerie". When this reform is complete, if the department sees its powers increased with responsibility for all social assistance, managing the "medico-social" sector remains complex with the municipality retaining a certain role with regard to social action and the discharge of social responsibilities delegated by the department. The State retains overall legislative and regulatory powers for the health sector, whereas the mayor continues to chair the administrative board of hospitals and health institutions.

As far as education is concerned, it was envisaged that every authority would henceforth be responsible for both building and running all educational establishments under its responsibility. The State would set educational policy targets and would be responsible for the salaries of teaching and non-teaching personnel. However, this reform assumed that the management of over a hundred thousand officials would be transferred to local authorities and, in response to public protest, had to be slightly modified. In addition this plan makes it mandatory for the municipality and the department to be consulted over the projected location of higher education establishments. With regard to young people and sports, the municipality retains responsibility for facilities for very young children, local sporting facilities and subsidies to clubs and associations while the department pays rent to the municipalities for the use of local authority equipment (for secondary schools up to age 16). The region does the same for secondary schools for 15 – 18 year olds. The State also manages national funds for developing sports and training at regional centre level. In cultural matters the complete overlap of powers is retained.

Co-operation and co-ordination instruments

Co-ordination instruments have been put in place to manage the complex system created by decentralisation, with notably planning contracts between the States and the regions from 1984 onwards. In a number of areas, as local authorities have overlapping powers, multi-partite agreements may bring together one or more authorities to carry out common projects. Two waves of planning contracts took place between 1984 and 1989 and between 1989 and 1993. The second wave also aimed at encouraging combining strengths at local level in terms of “country”, “territories” or “urban communities”. Some of these contracts aimed at dealing with problems in rural areas, by carrying out the necessary changes to public services in poorly-populated areas while the opposite was true for contracts with certain major regions such as the contract between the State and the Ile de France which aimed at influencing certain overall aspects strategically.

These contracts cover operations that are very variable in nature and scope and are not always a priority for central State services. Contracts are signed between the State and the President of the region who may, in practice include departments, Municipalities or the co-operation bodies between the authorities. Some contracts have even been signed and commit lower level authorities with no prior consultation with them. Evaluating these contracts which represent 10 – 20% of all State investment in the regions appears to be difficult. In all, the contract instrument appears quite formal and difficult to implement for modest results.[28]

In addition, a large number of local executive managers or members of local authority assemblies are members of Parliament at the same time. This helps assure that the opinions of local authorities are relayed to central government level.

Legality checks

Checking local authority decisions for legality by the prefects includes a *retrospective* check, when the decision is referred to a jurisdictional court and an *a priori* examination. This *a priori* examination takes place during a "pre-contentious" phase with the submission of observations on the laws which involves between 2 and 3% of the latter. During the inductive check, the prefect may refer any bylaw approved by the local authority to the administrative Court. This check was reinforced by the law of 29 January 1993 which gave prefects the option to stop a contract from being signed or a public service being delegated if competition rules have not been observed. This law was indicative of the will to restrict certain abuses of competition responsibilities that had been detected.

However, the real nature of the check must be set against the regulatory inflation involved in the production of legal norms by local authorities, as in 10 years, the number of acts has increased by 40%, to reach 7.7 million acts a year in 2000[29] (See Table 2). The number of appeals is low, especially the number of appeals finally lodged which remains lower than 1 500 per year.[30] As well as the small size of some local authorities, in particular the municipalities, this situation presents difficulties in rural sub-prefectures in obtaining an adequate level of competence. Prefectures in fact set up teams of experts and advisors at local authorities to help them.[31]

Table 2. **Trends in the control of local authorities' regulatory activity by the prefects**

		1990	1992	1994	1996	1998	2000
(1)	Total number of acts sent (in thousands)	5 543	5 375	5345	5890	6929	7736
(2)	Number examined (in thousands)	142	146	148	176	178	174
(3)	Rate as a % (2)/(1)	2.57	2.71	2.77	3	2.57	2.25
(4)	Number of initial prefectorial appeals	1.535	1.822	2.403	1.961	1.729	1.713
(5)	Rate of appeals as a % (4)/(1)	0.028	0.034	0.045	0.033	0.025	0.022
(6)	Number of appeals definitely lodged	1.041	1.369	1.879	1.484	1.228	1.293
(7)	Success rate of appeals in the High Court	76.76	78.04	78.63	82.35	77.83	72.54

Source: DGCL (Local authorities board) 2001.

Budgetary checks

This check is carried out by the 24 regional audit offices (CRC's) set up by the Act of 2 March 1982. Having to account *retrospectively* to these regional offices is the price that has to be paid for removing *a priori* supervision and increasing the powers of local authorities. This technical check may lead to the order being reworded but not to its being cancelled. It applies to the largest 16 221 local authorities plus the 50 000 local or specialist public institutions involved in local public service. On the other hand the accounts of the smallest 21 000 municipalities, (less than 2 000 inhabitants), are checked directly by Paymaster General. He represents the Treasury in the department. Local authority budgets must be sent to the prefect who checks the legality together with the Regional Audit Office which has to supply a recommendation for him. A summary of the prefects' budgetary checks (DGCL 2001) shows that in total, more than 105 000 local authorities and local public institutions are checked each year. If the check can be jurisdictional and restricted to observing formal procedures, the regional audit offices can also assess the efficiency of public policies (Box 4).

Box 4. **The action of local authorities analysed by regional audit offices.**

The summary of the Regional Audit Offices' reports by the National Audit Office[32] provides a critical insight into decentralisation policies:

- S*ocial assistance.* In spite of the willingness to clarify powers between local levels, grouping these powers in blocks, for example as far as social aid is concerned, has led to a division based on vague criteria and to supporting shared powers while instituting joint powers. The observations of the Audit Office also show the difficulties in terms of inadequate regulatory quality for action at local level (for example departmental regulations for social aid), the lack of co-ordination and the sometimes difficult relations with social security bodies which depend indirectly on the State. Finally, devolved State services are not really in a position to exercise the control granted to them by the law.

- *2 degree education.* Even if the National Audit Office thinks that second degree decentralisation has had a positive outcome, it has stressed the overlapping of responsibilities and the continued major interventions of the State and the municipalities in an area which is the department's or the region's responsibility.

- *Local public service delegated powers* (See Box 5). This includes the many services at local level (water, sewage disposal, cable communications, electricity). The analyses of the office show the impenetrability of delegated management which the Act of 29 January 1993 wanted to end by reinforcing procedures for putting public service delegated power out to tender, matched by limiting the length of contracts and with the requirement to provide annual reports. In spite of this Act the results remain mixed. There are a number of irregularities with regard observing competition because the local authorities use various legal "vehicles": semi-public companies, associations. This includes:

- *The management of water, waste and sewage disposal:* in spite of a steady, convenient service, municipalities lack the resources to enable them to really master the operations they are responsible for.

- *Electricity:* local authorities are responsible for the public energy distribution service which has to be contracted out to EDF (French electricity company), outside pre-existing state control. However, they play an important role in rural areas which is the result of an historical electricity management system within the municipalities, confirmed by the Act of 10 February 2000 on electricity. The 175 applicants represented 5.4% of the total energy charges in 1999. Transparency of decisions, mastery of public service contract relationships and checking contract holders seem difficult to provide.

Evaluation

The French move towards decentralisation and bringing regulatory power to a local level, has a number of praiseworthy, positive aspects. It has enabled the Republic to loosen its fetters and gives a considerable level of autonomy to local bodies. However, it has also created a tangle of powers that it is often difficult to unravel. *Ex post* co-ordination and control systems do not currently provide a really satisfactory answer to the level of complexity thus created. Simultaneously managing three levels of local authorities has turned out to be a source of complexity and administrative management costs. France seems to be trapped in its contradictions by trying to gain as many features of a federal State to draw benefits from it while maintaining the institutional framework of a unitary State at four management levels, none of which she can do without.

The national European level

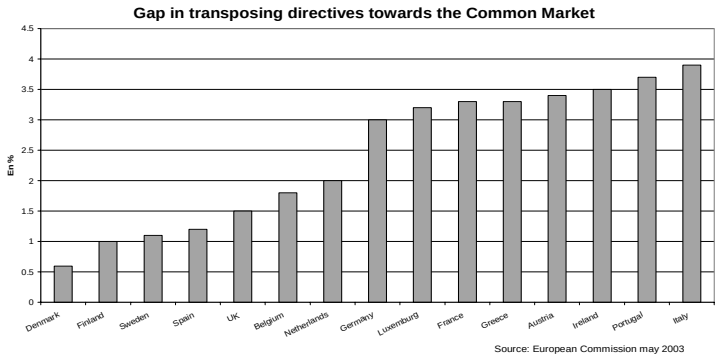
As in other European countries, the production of regulations at national level is very influenced by the European level from which almost half of all regulations will emanate in future. EU initiatives have helped to modernise the French economy and have supported considerable deregulation.[33] For all that, this move is coupled with a difference of perspective between the traditional vision of public service in France and the requirements for developing a European market based entirely on competition. The European system and its implications in terms of independent regulators have, in fact had a great effect on the traditional edifice of French law and the separation between administrative and civil law. They led to reassess the notion of general interest in relation to private interest and to integrate the competitive

dimension. Recent years have been marked by the search for a better balance and mutual understanding between the regulatory world of French public service (see Box 5) and the European perspective of an open, competitive market, but retaining general interest services.

Co-ordination processes between France and Europe are old and structured. The General Secretariat of the Interdepartmental Committee for European economic co-operation (SGCI),[34] which reports to the Prime Minister, co-ordinates regulatory activities for the French Government at European level. Initially, draft directives are notified to the SGCI which informs the French authorities and in particular the Ministries concerned, to prepare the transposition. Since 1992 (Article 88-4 of the Constitution), all draft community directives are referred to the Council of State to decide whether they come under the law in the sense of Article 34 of the Constitution.

In France, prior public consultation and impact assessment of the proposed directives remain minimal. This does not make it any easier to understand the objectives of the European policy at an internal level, all the more so since European projects are often the means for national governments to overcome internal resistance and have legislation passed for difficult measures. It can then partly deny responsibility for them pleading that they are valid because of their supranational European context. However, formal consultation of Parliament for matters which come under the law, following the Council of State's recommendation, has meant that the situation has improved considerably.

The transposition of directives is outlined in a circular from the Prime minister dated 10 November 1998, which asks for a legal impact study of the document on existing French law. The SGCI calls together the ministries affected by the directive which must take the necessary measures for transposition in the form of a draft law, decree or regulation (see diagram in the Appendix 4). Every 6 months the SGCI produces a statement on the progress made on the directives by the ministries. In recent years France has taken a considerable time to transpose European directives, with more than 90 directives that have not been transposed and more than a dozen that have not been dealt with after more than 2 years.[35] The situation slightly improved recently. At the end of the first semester of 2003, France's rate of delay was ranking 10 out of 15 in Europe.



This situation is a source of legal uncertainty, because it can raise doubts as to the standard in force if there is a temporary contradiction between a European directive and national law. The reasons for these delays are difficult to understand but there are a great number of them. Apart from directives which have come up against internal resistance against their implementation for a long time, such as those relating to certain public services, it appears that implementing any new directive in France requires the whole existing regulatory system to be re-examined, which is very fraught. Business circles think that implementing directives gives rise to "gold plating", with increasingly improved regulations,[36] whereas in some cases direct "verbatim" implementation could be all it needs. Implementing directives at local level entails additional difficulties, considering the small number of technical instruments available to a large number of small authorities.

The Ministry for Foreign Affairs has adopted an emergency plan to respond to this challenge, with methods stemming from the United Kingdom, making ministries responsible for the implementation rate of directives in their area of responsibility and by involving the French Parliament more at a prior date. Unlike Italy, the French Parliament does not have a specialised permanent committee for European matters. Since November 2002, the delay has been reduced, following, in particular, the implementation of directives on the gas market, maritime safety or electronic commerce. In future, as far as residual aspects are concerned, European directives will be integrated into laws which have various arrangements for community adaptations.

None of this will be easy. While France has long been one of the driving forces of the construction of Europe, recent years have seen a clear rise in differences in assessing laws which involve particularly the public service "à la française" (see Box 5). The French legal system has been struck very hard by the community approach, particularly by the setting up of competition and independent regulators, the dismantling of an integrated management of public services and the need to clarify the various roles of the State. The existing syncretism in public service with the confusion between its resources, its tools and its goals, has caused recurrent difficulties. The resistance of the unions conveys the reticence of employees who perceive any modification to public service as an attack on their status and influence on certain political decision makers considering the size of the public sector.

France has also tried to act to have its approach accepted by community courts with the 1995 Stoffaes report which marked the first turning point. However, the idea of the Commission's "universal service" is more restricted: it gives rise to narrower definitions and to institutional solutions to provide this universal service which do not necessarily include an integral, monolithic approach with equalisation of rates. However, a document signed by the French President and his British and German counterparts asked the Greek President of the Council in the spring of 2003 to recognise the Services of General Economic Interest as an essential part of the European economic and social framework. This document also asked that applying the rules on State aid and competition should not endanger the running of public services.

Major internal debates are also going on in French institutions. The 1994 Council of State report, called the *Bélorgey* report, defended a sovereign approach to public service which depends primarily on public intervention on as well as the vision of a public service which contributes to the Republican pact and which belongs to the citizens.[37] This report advocated maintaining public property, extended cross-subsidisation and industrial integration, all of which differs from the European point of view. A follow-up report, compiled in 1995 by the vice president of the Council of State, M. Denois de Saint Marc, showed a willingness to open up with regard to the European dimension and broke with the traditional French doctrine by being based on the distinction between the tasks and their aims and practical details of organisation. Following this report the government gave up the idea of putting *Public Service* within the Constitution but allowed to favour a different approach towards regulation in France which would modernise the French institutional framework. Subsequent work by the Economic Analysis Council made a reconciliation easier between an economic analysis of the foundations of public service and the view of the universal service intended by the Commission. Regulation systems were set up with independent regulators which partly disrupted the integrity of the traditional legal framework while gaining its own institutional legitimacy.

The discussions are certainly not over yet. However, the more rational perception of the possibilities and limits of public service in France, as part of the new public economy (Laffont Tirole 1993), together with a narrowing of the gap between ideas of universal service and general interest service, is enabling the two points of view to converge to a relative degree.

Box 5. Economic and legal dimensions of public service

Public service relates back to justifications for public intervention: shortcomings in the market, natural monopoly, public good, externality, redistribution criteria. Its legal doctrine in France is based on a long history of decisions in the administrative courts, while economic analysis itself has also changed a great deal.

The legal dimension

The idea appeared in French law as a result of an 1873 judicial decision in the "Tribunal des conflits", a specific ultimate appeals' court to resolve conflicts of competence between public courts and private courts... It replaced the idea of sovereign authority establishing administrative law and evolved according to decisions in administrative courts. It was in line with the Duguit school of public service. He was a lawyer who identified general interest tasks that he felt the State should organise. Four criteria are used to identify a public service:

- A public authority initiative (State, local authorities);
- A general interest task;
- A public authority check using conventions, agreements or contracts;

A public authority prerogative, departing from general law.

Three important principles came out of the decisions of the administrative courts between 1902 and 1930 and determined the strategic direction of public service today: continuity, adaptability and equality in public service.

Public service work may be carried out by bodies with various degrees of legal status:

- *directly:* under State control. The service then depends directly on the authority with which it is almost integrated but with a separate accounting system.
- *through distinct bodies*: *public institutions*, either *administrative* in nature or *Industrial and commercial public institution (EPIC).* (1 400 national public institutions and several tens of thousands of local public institutions). Although they have a certain financial and management autonomy, they report to the body they depend on, the ministry or regional authority. EDG GDF (French Electricity and French Gas companies) are EPIC's.
- *by delegated powers* to a third party *under the terms of a* "*public service concession*". The private body may be an association, a public or private company or a semi-public company.

Under community influence, public service commitments are being implemented which deal with user participation, accessibility and quality. Economic efficiency was not one of the legal criteria. The principle of continuity of public service was recognised as a principle with constitutional force by the Constitutional Council. The right to strike must be reconciled with this. Labour regulations states that a 5 days notice must be given before going on strike in the public service. During this time, one "must negotiate". There is no specific clause on minimum service. The adaptation principle allows the service to evolve. Users do not have any rights for the service to be maintained. The equality principle has important consequences in terms of price setting and universal service. 1936 and 1946 brought a major change which amended the right of possession of a number of public service activities by nationalising the railways, air transport, electricity and gas.

The economic dimension

Recent economic thinking highlighted the gains to be made from a competitive approach even in the public sector.[38] This challenges the positions of the State as an operator and the State as a shareholder and emphasises the conflict of interest with the State as a regulator. The economic approach underlines the confusion between the ends which justify public service and the means which represent the structures and the civil servants responsible for providing them. This "crystallisation of ideas"[39] led to a protean State which could be an operator while defining the regulatory framework, which prescribed the requirements of public service and ensured they were implemented, fixed prices and rates, defined long-term strategies and ensured personnel were protected by specific statutory provisions. This led to exploiting the idea of public service equally to designate an activity (public energy service), social imperatives or development of the region (public service tasks), a status (the public function), a management method (public enterprise), an ethic (to serve) (Henry Cohen 1999).

However, this approach implies a benevolent, informed State (Laffont 1999), the one that pertained during the prescriptive economy from 1930 – 1960, marked by Pigou (1932) and Ramsey Boiteux. This point of view disappears if you bear in mind the State's limited rationality, the fact that public service is not always disinterested and may be in the hands of decision makers who have wide discretionary powers. The possibility of a biased State taking over the regulatory school (Stigler 1971) led to the desire to reduce the State's regulatory role. The new public economy (Laffont Tirole 1993) aimed at compensating for weaknesses in regulations, using incentives and contracts to provide civil servants with appropriate information. This also involves organising competition within the State's own services when it is not an obstacle to the required co-ordination (Laffont 1999).

3. ADMINISTRATIVE CAPACITY TO PRODUCE NEW QUALITY REGULATIONS

According to the terms of the OECD approach (Box 1), improving the quality of new regulations depends on many factors being present at the same time. Transparency plays a key role, in terms of consultation, applying and implementing new regulations and the possibility of appeals. Examining the possibility of alternatives with regard to regulations and above all using Regulatory Impact Analysis also enables the quality of the flow of new regulations to be improved. Finally the training of executives as well as setting up new institutions using independent regulators also help to bring about quality regulations.

3.1. Administrative transparency

The transparency of the regulatory system helps to bring about a stable, accessible regulatory environment which encourages competition, business and investment and helps to protect against the excessive influence exercised by private interests. Transparency also strengthens the legitimacy and equity of the regulatory process. However, this multi-dimensional concept is difficult to translate into reality. Transparency involves a wide range of practices including formalised processes to draw up and amend regulations, consultation with interested parties, using simple language when wording legislation, publishing, codifying and other ways of making it easier to search for and understand the regulations, administrative discretion checks and finally implementation and predictable, consistent appeals procedures.

3.1.1. Procedural rules for preparing regulations

An essential element of transparency is that prescriptive procedures aimed at creating legislation are clear and known. The existence of official procedures governing the preparation of legislation in France only involves the wording of the most important laws, and to some extent decrees, dealt with after the Council of State's obligatory recommendation. However, in France the difficulty arises from the multitude of lower level regulations which mean that the citizens affected by the regulations do not always know how the processes involved operate.

The fact that the Council of Minister's agenda is made publicly available, and fixing the main trends of government policy since 1974, enable an overall view of the "Government programme", which is formulated each semester for the following semester. This facilitates political support and allows the priorities to be adapted, making them consistent with government policies. This includes, in particular, the list of draft laws that the Government plans to submit to Parliament for voting on, the list of draft decrees which will be submitted to be included in the Council of Minister's agenda and the list of topics that are to be the subject of a paper in the Council of Ministers. It is this programme that will then be used as a general framework for drawing up the agendas for the Council of Ministers. This is why different ministers are in charge of giving the necessary directives to their departments to ensure that the necessary work – studies, meetings, discussions, consultations and any decisions – is completed in the time allowed. However, this programme is not made public, although it is not necessarily confidential. This situation differs from the United States where a standardised agenda of federal regulatory activities is published twice a year. This standardised agenda is drawn up by the OIRA [Office of Institutional Research and Assessment] which has a central inspection and monitoring role for all regulations drawn up by the government.

Transparency of procedures also involves publishing the decrees provided for by a bill. Normally the SGG ensures that decrees for implementing laws are published within a timescale that must be no more than 6 months after the law has been promulgated. The ministry responsible for the draft law must provide a provisional timetable listing the envisaged implementing decrees and a file setting out the basic provisions for the planned decrees. Sometimes, however, the implementing decrees are never promulgated, preventing the law from being enacted and creating an ambiguous legal situation. Thus, according to the available figures,[40] the growing number of laws causes blockages with about 21 laws enacted since 1981 that still cannot be applied and 169 laws that can only be partially applied.

At the same time there is no particular rule relating to the preparation of minor legislation outside of the general directives on the preparation of regulations distributed by the Prime Minister's office to the government. This situation, therefore, does not promote transparency for the citizens. This is very different from Canada which sets out very strict procedures for drafting all levels of regulations, also publishing them (see box).

3.1.2. Consulting the public on new draft regulations

It is common in the French administrative system that parties involved in drafting a law or defining a policy meet beforehand. However, this is neither systematically applied nor formalised at a legal level, except in the environmental field (see below). The parties have a great amount of freedom to make proposals and counter-proposals when consulted on a regulation concerning either draft laws (initiated by the Government), or draft decrees from the Government's autonomous regulatory domain. On the other hand, and by their nature, neither draft parliamentary laws nor parliamentary amendments can be considered for prior consultation, carried out by the government, on a proposed law. Similarly, the freedom of parties involved to propose or counter-propose is quite limited when it concerns a decree for implementing a law.

Prior consultations are held in accordance with two principal methods:

- official consultations carried out as part of the official system for drawing up draft laws or decrees provided for by the Constitution or organic laws. This makes it compulsory for certain bodies to be consulted such as the Economic and Social Council or economic and social assemblies in overseas departments.

- the more informal meetings dealing with preliminary draft laws. These procedures are not standardised and may take the following forms:

  - Exchanges of views of commissions, committees or other groups set up for the purpose. Most often they allow several categories of constituents to meet to debate a governmental policy to be followed or the preliminary terms of a draft regulation. They represent various interests which are not always represented in official consultation proceedings. This procedure enables constituents' opinions to be taken into consideration at quite an early stage and, if necessary, also their counter-proposals. This work is normally carried out by sub-groups (made up of grassroots representatives) who contribute the most proposals and suggestions for amendments.

  - Bilateral consultations with representatives of the parties involved enable constructive work to be done on the critical examination of a draft rule. For example, in tax matters or business regulation, close consultations take place with the official representatives of the businesses concerned, MEDEF (French businesses movement), and also, and often, with a restricted group of large private international businesses. the AFEP (French Association of Businesses)

  - Exploratory missions entrusted to MP's or influential people to examine a draft reform. Their role would be to consult all interested parties and if necessary to test a draft law. They normally rely, to a considerable extent, on officials and administrative departments which provide support for drafting and which are heavily involved in administrative projects. These officials retain the necessary distance to carry out useful synthesis work. These tasks have often been carried out by groups from the Planning Agency and enable officials, union officials, representatives of economic circles and experts from the academic world to meet.

The development of the Internet has been the major innovation in enabling constituents to get together to work on regulations. Ministries have used this vehicle to launch several forums to enable the general public to react to projects involving several topics. The most in-depth consultation was carried out on the draft decree prepared to implement the Act regarding electronic signatures, which enabled people involved with the Internet to give their technical point of view on a legal rule that concerned them first and foremost. At the end of 2001 the Government decided that each national public internet site distributing information on public policies would have to have some means of debate with the citizens on specific topics (Digital fingerprinting). Local public sites would be encouraged to develop this type of functionality in co-operation with the general sites www.service-public.fr and www.vie-publique.fr.

In addition to this, a large number of consultative bodies connected with central government carry out a double function:

- to explain as best they can the choices of the government, when these include highly technical information;

- to enable constituents to be formally involved with the government's decision by giving them a voice from the moment regulations are drawn up.

These bodies often do not have any specific legal existence: because of the Council of State considered that setting them up was an internal order measure, at the discretion of the heads of departments.[41] Due to their specialist nature, there is necessarily a large number of corresponding consultative bodies. It is estimated that several thousand committees, councils and consultative assemblies are connected to single central State departments.[42] Several ad hoc consultation committees may exist in the same sector, for example the environment: The National Council for the Protection of Nature, the

National Council for hunting and wild animals, the High Commission for Sites, the National Water Committee, the National Noise Committee or the High Commission for listed buildings. These consultative bodies can be approved by various laws of different levels (constitution, law, decree or order). Most of these committees, councils or consultative assemblies enable differing interests or opinions to be voiced by including important people not connected with government, selected either because of their expertise or as a representative of professional groups or associations. Very often professional employer and employee unions, non-profit making organisations defending the interests of certain categories of citizens and local elected representatives are represented on these bodies.

These consultative bodies connected to the government work in different ways:

- With *an optional recommendation.* The government is free to consult the advisory body or not, depending on whether it considers this consultation useful to solve the problem it is facing. The decision-making authority is not bound to comply with this recommendation.

- With *a compulsory recommendation,* the government has less room for manoeuvre (more frequent). If the consultative body's recommendation must be sought, the decision-making body is free to comply with it or to override it.

- With *a binding Recommendation,* the government may only act along the lines of the recommendation it has been given. It simply retains the option of not acting at all, of postponing or abandoning the decision.

The various bodies do not have a standard consultative procedure as the rules are defined for each individual case. Nevertheless, some procedural rules are common. These have been elaborated by administrative case law. For example, the result is that all elements of the matter for consultation, whatever procedure used, must be submitted to the body to be consulted so that its members may be completely informed. Consultation normally takes place in the weeks before the law is presented to Parliament, or for regulatory laws, before they are signed by the Prime Minister or the ministers. If it is compulsory to submit a draft for consultation and there is no consultation or there are irregularities in the consultative procedure, the regulatory law will be revoked by the administrative judge or the Council of State if necessary. In fact, certain rules concerning the procedures that the state must follow when dealing with consultative bodies have been set by the decree of 28 November 1983 (obligation to convene the consultative body and send them relevant useful documents at least five days before the meeting; quorum rule; barring members holding a personal interest in the issue from the deliberation; minutes of the meeting must be drawn up).

The committees', councils' or assemblies' recommendation is normally made after a vote on a law or guidelines from the government; this law or these guidelines may be amended or rejected by the body which may, in addition, introduce specific requirements. The length of time the consultative procedure takes varies according to the bodies, questions asked and the urgency which may be requested by the Government.

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

In spite of the large number of formal options for consultation, for some topics there are fewer consultation and drafting procedures.[43] Therefore, alongside this general background, press leaks also play a significant role and allow us to find out a little about the evolution of the process. In addition, the most

organised groups certainly have privileged access to some of the information. Moreover, when there has only been partial prior consultation, the Parliament's role is to afterwards listen to various interest and population groups, which will try to make their voice heard through the limited means provided by amendments. Sometimes, the absence of prior consultation triggers spontaneous reactions in the public and unions' opinions, with public protest movements or strikes which force a second consultative phase. This non-systematic approach is very different from that of Canada, for example, which provides for strict, transparent consultation. In Canada in particular, part of the consultative process must be carried out before it is passed on to central government according to public openness procedures (see Box 6).

The specific case of environmental matters

Concerning the environment, the law of 10 July 1976 requires an impact study before issuing planning permission, particularly for listed buildings. In addition, the rules for expropriation require a public inquiry when a compulsory purchase is made before a construction permit is issued. The law of 12 July 1983 and 2 February 1995 on the protection of the environment established a public debate committee. Then the law of 13 July 1991 on urban matters provided for consultation on procedures affecting conditions of life at the local level. These consultative procedures mainly dealt with building activities and in particular with the 500 000 construction permits issued by local authorities each year. A draft law is being drawn up to strengthen the consultative and control processes for high security buildings.

Box 6. Consultation and transparency in Canada

In Canada,[44] government regulatory policy stipulates that "all partners, industry, workers' consumer groups, professional organisations, other levels of government and interested individuals", must be consulted at all stages when problems justifying regulatory intervention are identified. The law on "Statutory Instruments" states that government or ministerial regulations must be subject to prior systematic consultation with interested parties. The result of this must be included in the regulatory impact analysis (impact study) which must be attached to the law before it is passed on to central government. The regulations must be "pre-published" after they have been examined by the Privy Council Office, with at least a 30 day period for public comments. These comments must be taken into account by ministers in the revised version or else they must justify the reasons for not taking the comments into account. It is only then that the law can be examined for final validation by the Privy Council Office Committee Secretariat and can be approved by ministers to be signed by the Governor General.

Assessment

The undeniable effort in consultation, however, results in a large number of consultative bodies. This proliferation and lack of standard procedures may lead to a complex situation. The excessive number of consultative bodies is a source of confusion and leads to impenetrability. In spite of the fact that there appear to be a number of consultative procedures, the general consultative system often remains insufficient. In the Netherlands, when the Government was faced with a similar situation, it decided in 1997 to abolish a large number of consultative bodies to improve transparency and control. This has enabled more open consultation and limits corporatism.[45] Such an approach provides an interesting example for France which could thus rationalise and improve the efficiency of its consultative process. It must be noted that the edict, adopted in 2003 to simplify administration, proposes rationalising consultative bodies (See Box 9).

3.1.3. Transparency in applying and publishing regulations

Once published officially regulations must also be accessible so that groups and individuals affected by the regulations can incorporate their requirements. The principle of accessibility and intelligibility of the law by the public has had constitutional force since 1999.[46] Governmental and ministerial laws and regulatory measures are centralised and published in the Official Gazette which has been available in its entirety on line since 1990[47] and available on CD Rom for the last 50 years. As French law does not put a

time limit on the validity of laws, the management of the Official Gazettes updated a database which included old laws published before 1943, which went back to the end of the 18 century, some of which are still partially in force.[48]

The Official Gazette is published by the Chief Editors of the official gazettes which also edit about 700 titles including works organised by topic and about fifty codes or collective agreements (agreements between unions and employers which have regulatory force relating to employment relations when they are agreed) As well as the Official Gazette, these editors also publish various economic and financial bulletins (Official Bulletin of civil and commercial announcements, Bulletin of compulsory legal announcements, Bulletin of public markets' announcements).

In addition, as far as "infra legal" regulations are concerned, the law of 17 July 1978 on administrative transparency obliges governments to publish directives, instructions, circulars, ministerial notes and replies which include an interpretation of positive law or a description of administrative procedures. The decree of 22 September 1979 states that each government must produce an Official Bulletin which comes out at least quarterly. They therefore exist for all government departments and are also available on line. However, a large number of subsidiary laws are often excessively complicated. This is noted at local levels, at the local government levels which must apply them or by professional associations. This reduces transparency accordingly.

Parliamentary debates at the National Assembly and the Senate, are published in the official gazette for parliamentary debates. The documents, including draft laws and proposed laws, and the reports and recommendations of the parliamentary committees, are also published. They can also be accessed on the Internet.[49] More generally, the *www.vie-publique.fr* site enables all questions from the public on institutions, official publications and the public sites' directory to be answered.

At the local level, the regulatory order measures taken by devolved authorities (local State departments) or decentralised authorities (regions, departments, municipalities and other regional authorities) are published by methods specific to these authorities which hold a collection of laws in force available for the public.

A public department set up by the decree of 7 August 2002[50] is responsible for general distribution of the law over the Internet. This department makes all prescriptive acts as they are now, having undergone successive amendments (the constitution, codes, laws and regulatory legislation issued by State authorities, national collective agreements, laws resulting from France's international commitments), legislation from the constitutional Council, the Council of State, the Court of Cassation and the Jurisdiction Court, rulings of the Court and decisions of the European Commission for Human Rights, the European Court of Justice and High Court decisions freely available to the public. It also makes available to the public a selection of judgements made by the National Audit Office and by other administrative or judiciary authorities. It enables access to the "Laws and Decrees" in the Official Gazette of the French Republic, to the Official Gazette of the European Communities and to official ministerial bulletins.[51] Finally, this service allows on line access to all the forms currently in use by the French Government.

In spite of the major efforts at transparency, and the indisputable technical investment, the fact remains that the large number of regulations actually prevents the general public and small businesses from understanding the regulatory framework and analysing the nature of their obligations. In fact, access to the law for the non-specialist is trickier than it at first appears. The need for the style of writing to be clear and accessible has only very recently been made official and a number of legal documents remain dense and very technical.[52]

3.1.4. Transparency when implementing regulations

France generally has a transparent environment for implementing regulations using numerous, repeated efforts. Regulations can be opposable one day after they have been published in the Official Gazette. However, the written adoption of a regulation is only a part of the regulatory framework. The government must then implement legislation so that the public and businesses may comply with it.

If there is no law or specific mechanism to provide for transparency in implementation, two distinct laws, dated 1978 and 1979, have enabled the French regulatory system to achieve honourable standards in terms of access to administrative documents and in improving relations between its citizens and the government.[53]The law of 1978 put an end to a long tradition of secrecy and created an independent authority to make transparency easier, the Commission for Access to Administrative Documents (CADA). This law states that all non-personal administrative documents issued by the State, regional authorities and various public bodies, are accessible, with some exceptions such as those concerning national defence or secret government discussions. The CADA supervises the application of the law by issuing recommendations when it is approached by a member of the public. It can propose legislative and regulatory amendments. Any refusal to communicate must be substantiated in writing and the appeal decision must be taken in less than 6 months. The annual number of recommendations made by the CADA has gone from less than 500 per year after it was set up to a little less than 3000 per year, half of them being favourable.

In addition, the law of 11 July 1979, amended in January 1986, requires the government to substantiate any individual administrative decisions that reduce public liberties, impose a sanction, repeal rights, refuse permission or an advantage provided by the law. These decisions can only be taken when the interested party has been able to present their written and oral observations (law of 12 April 2000). The notification of decisions must be accompanied by an indication that appeal procedures are available. Replies must mention the possibility of appeal as well as the existence of a rule that silence implies consent. Prime Minister's circulars dated January 1985 and February 1989 required the anonymity of officials to be lifted in their relations with people who contact them so that the talks may be more personal. If this circular is sometimes observed to a limited extent by some departments, there is no choice but to note that most written documents on everyday, social or tax matters will in future be signed personally.

These laws were supplemented by the law of 12 April 2000 on the rights of citizens in their relations with government departments (DCRA) which requires the department to send an acknowledgement of every request. This acknowledgement must indicate the time that will pass before silence implies that the department has tacitly rejected or accepted a decision as well as any appeal procedures. The period after which silence implies rejection is reduced from 4 to 2 months. Any department receiving a request in error must pass it on to the competent department.

Apart from these mechanisms for transparency and substantiating decisions, several bodies monitor the correct implementation of regulations.

- *The various general ministerial inspections* monitor the department they are part of with a status that guarantees the objectivity and technical quality of the inspection.[54] Their reports ask the department to react and are addressed to the Minister. They may formulate proposals for reforms. These reports are not usually published except with the permission of the Minister.

- *The Council of State, the National Audit Office and the Court of Cassation* publish a report each year which plays a major role in evaluating and advising on the application of regulations.

- *The Commission for Parliamentary Laws* publishes a report each year on the application of laws voted for as well as a global statement per legislature. It examines the ability of the government to implement the law using implementing decrees.

Experiments can also be used to better appreciate the relevance of new regulations, a solution which has, since 2003, a constitutional framework. Experiments can be implemented by the State (Parliament or Government). For example, by ensuring that the new rules are only applicable during a limited time before being evaluated. The legislator and the Government (each in their respective domain) can also give power to certain territorial collectives to apply, experimentally, rules which normally would have come from laws or decrees. This mechanism is strictly controlled by the Constitution and by organic law, in order to uphold the principle of equality, in light of the provisional co-existence of different laws. It can only be used in matters touching on public liberties or constitutionally guaranteed rights.

3.1.5 Appeal possibilities

Administrative justice is a well-established practice in France with an easy, frequent appeals procedure against administrative laws. The appeals system is fairly liberal, which makes for easier access for the petitioner. Thus the appeal may be made without a lawyer which is the case in three quarters of cases in the High Court and in a third of cases in the Appeal Court. Administrative justice has a significant number of cases with 116 000 cases dealt with in the High Court in 2001, 15 000 appeal cases and more than 13 000 cases before the Council of State.[55] Appeals against decrees and ministerial regulatory acts are judged directly by the State Council as a first and last resort. The only difficulty concerns delays which, while they have been reduced, since the 1987 reform, may represent 12 – 24 months for some regulatory legislation. An appeal against an administrative decision is not considered a rejection. Everything has been put in place to make appeals easier against a background of equality before the law (Box 7). In addition that an appeal would suspend the effect of the contested decision with an emergency interim ruling has recently been introduced. On the other hand, seeing a regulation, decree or order invalidated by an administrative judge represents a setback for the department in charge of the regulations whether it be a ministry, a local authority or an independent regulator. From then on all preparations for decisions often aim at supporting the legislation adequately so that they are not subject to invalidating appeals. It is the role of the ministries' legal departments, the Secretary General of the Government as well as the Council of State in his prior consulting role to provide this.

Finally, beyond the procedures themselves, a certain number of administrative and judicial mechanisms enable what could appear to be a rigid principle to be corrected because the judge can always interpret the law strictly if there is a manifest lack of applicable law, except in penal law. In addition, the two highest courts, the Court of Cassation and the Council of State may highlight regulations which had become obsolete or inappropriate in their annual report and may suggest to public authorities the direction reforms should take.

Box 7. The various types of appeals and associated procedures

Appeals may or may not relate to jurisdiction:

The appeal that does not relate to jurisdiction relates to reference standards. This appeal may be:

- an appeal to a higher administrative authority: the administrative check is normally carried out by an authority that is higher than the one that made the criticised decision. The higher authority may dismiss the decision of the lower authority.

- an application to the same administrative authority to reconsider its decision: the constituent may also contact the authority that made the decision and ask it to go back on its decision. The authority that made the decision may revoke or withdraw it.

These two types of appeals even exist where there is no law and can be based on a point of law, of fact and expediency. These appeals extend the period for appeal relating to jurisdiction.

The appeal relating to jurisdiction aims to ensure that the action of the government is subject to the principle of legality and observes the law and general interest. The sanction is to invalidate the administrative decision, whatever the reason for the illegality (illegality relating to the status of the authority making the decision, the purpose, the form, the object or the reasons for the decision). The right of interested parties to make an appeal on the grounds of jurisdiction is a recognised constitutional principle like public liberty.

Administrative jurisdiction is competent both to defend the rights of constituents against the government and to make the government respect the rules of law. Actions can be brought against disputed appeals to obtain a repeal of an administrative decision or to request damages in compensation for any damage suffered. There are some exceptions where civil jurisdiction can decide on public authority decisions regarding competition matters (see section 3.4 and chapter 3). Administrative jurisdiction has three levels, with the administrative courts as first level judges in the high court, administrative appeal courts and the Council of State as the Supreme Court. However, the Council of State acts directly in appeals against decrees, orders not ratified by the legislature, ministerial regulatory decisions and administrative decisions made by collective bodies with a national remit.

In order to contest a regulatory decision, the constituent must show that this decision directly damages his personal interests. Associations or unions may act to defend the collective interests of their members. A wide range of legal means can be called up to challenge the decision,[56] and its motivations themselves can be contested if it is thought that the government is wrong about a situation of fact, is acting with incorrect legal reasoning, is determining the legal facts incorrectly, is wrong about the appropriateness of the measure in relation to the objective or finally has committed an obvious error in assessing the situation. The rules for formulating appeals before the administrative court only requires a summary submission, a summary of the facts and grounds, and a copy of the challenged decision and minimum stamp duty. Decrees and other rulings can be challenged within a two month time limit from their publication. They can, however, be contested at any moment, either by requesting an appeal from the ministry, by declaring their illegality by appealing the decision applying them. A specific administrative decision may be challenged within two months of the date it was published; in the same way a default rejection decision (after four months of silence) may be contested within this same time period.

An appeal against an administrative decision does not suspend its legal effects. This “key rule of public law” is intended, above all, to protect the actions of the government, which was originally one of the justifications for administrative action. However, the law of 30 June 2000 brought about the possibility of emergency interim ruling procedures.)

- The *interim ruling of adjournment* enables an adjournment to be obtained at the same time as a request for revocation. The necessity for urgency and serious doubts on the legality of the decision referred to must be established;

- The *protective interim ruling* allows the judge to “order any useful measures without obstructing the execution of any administrative decision”: to do this it may make use of its powers to grant an injunction;

- The *freedom interim ruling* allows the judge to order any measures necessary to protect a basic liberty which is being seriously infringed. The time period for this judgement is 2 days.

If the applicant is successful in obtaining a repeal of the decision, this repeal has effects on everybody: The government must apply the judge's decision even when it has made an appeal. The revoked administrative decision is considered never to have happened and thus disappears retroactively. In addition, the laws of 1980 and 1995 established a system of fining public people who did not carry out a legal decision within four months. The fine is combined with any damages and interest. The public agent whose behaviour has caused the public authority to be fined may be fined itself. If the high court decision is negative, the applicant has two months to appeal. The administrative court of appeal will re-examine the case entirely within the limits of the submissions and grounds filed. If the decision is negative, the applicant may appeal to the Council of State but only by citing irregular court proceedings or any error in ruling they may have committed.

Appeal to the Ombudsman

However, experience has shown that administrative appeals did not always provide a satisfactory solution, particularly in rare cases where the excessive complexity of the law forced both the government and the judge to make decisions which seemed obviously inappropriate, even if they were legally justified. This is why a specific appeal procedure was put in place with the Ombudsman. The Ombudsman is an independent administrative authority (see section 3.4) established by the law of 3 January 1973 based on the Swedish model. The Ombudsman is appointed by the President of the Republic for a 6 year term of office which cannot be renewed in order to guarantee his independence. The Ombudsman's role is to find an answer to inequitable situations, even when such instances result from a strict application of the law. This is done in a humanitarian way, with easy access,[57] and to resolve difficult individual cases with about 40 000 appeals a year.

The ombudsman does not have any decision-making power. He has powers of instruction which enable him to obtain explanations from the government. He also has the power of recommendation to end conflicts between parties. From the point of view of regulatory quality, his major role lies in his power to propose reforms to laws or regulations in the light of his experience on the ground. His annual report which he sends to the President of the Republic and which he presents himself to Parliament, takes stock of the most serious malfunctions and draws up proposals which often end in reforms.

3.2. Choice of policy instruments: regulation and alternatives

Seeking alternatives to regulation is not a key feature of the French system. This is due to both the centralised practice of a country with written Roman law, and to the role of the European framework. However, there is concern on a political level: a government directive of May 2002 requires ministers to try to prevent excessive legislation and regulation and to seek alternative solutions to enacting laws. Nevertheless, these directives have no legal value and are not supported by a systematic approach aimed at questioning the necessity of any new regulation.

Mechanisms which constitute real alternatives to regulation exist. For example, for the transition to the euro, difficulties related to the introduction of new notes and coins were resolved by means of consultation with the banking profession, without any intervention of the legislature or regulatory authority. This solution may be feasible for resolving a specific problem concerning an organised profession by providing the authorities with reliable representatives, but it cannot necessarily be applied generally. There are, in fact, three types of main alternatives which will be discussed below.

Rules negotiated within the scope of the contract

Rules may be agreed by contract where negotiation and consultation appear to be more effective. Formalisation by contract is customary in respect of employment law (role of collective bargaining and collective agreements) and has developed in various directions, in particular, in relations between the State and its servants (within the scope of draft agreements and statements of conclusions), and with state-owned companies (programme contracts) and local authorities (means of transferring powers). The process is also used with regard to national and regional planning and development (State/Region contracts).

However, there are significant limitations to formalisation by contract: contracts do not replace regulations. Declarations that they are of general application or approved are still necessary to give universal effect (*erga omnes)* to agreements entered into with professional organisations. With regard to the civil service, contracts do not replace regulations. They precede and add to them: rather than an alternative solution, they are a means of drawing up the regulation. The expected benefits of prior consultation and negotiation are, nonetheless, clear: hopefully, salaried employees or public servants will better adhere to the new rules that apply to them.

"Delegated" rules within the scope of self-regulation

Self-regulation is practised by a number of professions. However, the idea that trust must be placed in companies to propose rules and agree to self-discipline, and in the market, to penalise practices which breach such rules is not very widespread in France. Where the field is technical and requires an association of professionals for the rule to appear legitimate, the law can entrust regulatory power to an authority emanating from the profession, and normally subject to ministerial approval. The authorities directing or managing institutions incorporated under private law may also be responsible for public service tasks.

Eleven professions currently have professional associations,[58] entrusted with certain prerogatives of public authority with regulatory powers attributed to them by law. The reason for this is related to the quality of services provided, which results in special constraints susceptible to penalties. The powers of the Professional Associations are limited (internal organisation and running of the Professional Associations, drafting of essential clauses of standard contracts for the profession). The professional codes of ethics are prepared by the Associations but entered into force by decree from the Council of State under the dual French system of public and private law. Finally, sports federations, associations incorporated under private law, take decisions within the scope of the public service task entrusted to them, some of which are of a general nature and are, therefore, regulatory, applying to all associations or committees falling under their authority.

Private authorities holding some regulatory power may only exercise it where it is granted to them by law and under the supervision of the administrative judge. Ministers and their departments exercise certain prerogatives with regard to such authorities, the nature and extent of which vary according to the bodies: power to appoint directors, presence of a Government representative in governing bodies, power to approve regulations. The accounting field has clearly demonstrated this issue. The law of 1 August 2003, on financial security, establishes a High Council of the Audit Commission, with supervisory, overview and disciplinary powers, where the professionals will be represented, but will be in the minority. It involves, therefore, the State taking over again.

Finally, the Chambers of Commerce and Industry *(CCI)* have a delegated regulatory role, as, from 1981, they received responsibility for the one-stop shops setting up companies, with the establishment of Company Formalities Centres, which each year carry out 60% of the formalities related to the setting up, take over or transfer of companies. The CCIs set up by the law of 9 April 1898 are public institutions managed by 4 500 full members elected by professionals, with members appointed by the prefects having only an advisory function.[59]

Use of alternative economic instruments in the case of the environment:

Beyond the traditional alternatives of self-regulation and contracts, the environmental field has shown that it is possible to use other economic incentives, such as tradable permis and voluntary agreements with industry. These have been developed in France as in other countries of the OECD interested in an innovative environmental policy. Although in practice it is still rather limited, the strategic overview of alternatives to regulation with regard to the environment has made a lot of progress in France.[60] This overview shows that the use of regulatory instruments is justified, in particular, with regard to total bans or when a critical threshold effect is used. In other cases, public policy may resort to voluntary agreements, tax instruments or the setting up of markets for pollution rights.

Voluntary agreements represent an interesting alternative compared to the fiscal approach, for limiting economic losses related to public intervention, and have been used since 1975-76 to reduce pollution from classified installations. Since then, voluntary agreements have been signed by some companies,[61] for motor car, glass and aluminium manufacturing and certain heavy chemical activities. A number of agreements drawn up since 1996 have undergone comparative European assessments.[62] However, the agreements require legitimate penalties for breach of the undertakings, and until now, their legal value has not been recognised by the Council of State.[63]

Taxation represents another alternative instrument to regulation: numerous taxes have been introduced, with an increase from 38 to 49 taxes between 1985 and 1996. They are for modest amounts and represent just under 1% of the GDP as regards the part relating to the environment. A general tax on polluting activities *(TGPA)* was introduced in 1999 from existing taxes in the area of air and waste, and extended to water.

The strategic thinking regarding climate change showed that the setting up of the Kyoto protocol would imply introducing taxation, and also the possibility of voluntary agreements through a policy of quotas and credits for early preventive action, which could be used within the scope of markets for rights when the international market for tradable permits is opened up. An interdepartmental mission on the greenhouse effect is working in liaison with companies to set up an experimental market for tradable emission permits on a national level and a national register of emission quotas. This action is being taken, following the directive on greenhouse effect gas emissions, which will come into effect in 2004. Finally, for the transposition of the ceiling directive regarding atmospheric pollutants, the Ministry of the Environment has issued technical recommendations[64] in favour of a system of exchange of quotas accompanied by regulatory measures, in preference to taxation. All in all, France makes great efforts, therefore, in a very constrained legal and international environment, to seek alternatives to regulation in this field.

3.3. Understanding the effects of Regulatory Impact Analysis (RIA)

The 1995 *Recommendation of the Council of the OECD on Improving the Quality of Government Regulation* emphasised the role of the RIA in systematically ensuring that the most efficient economic options were considered. The 1997 OECD Report on Regulatory Reform recommended that the public authorities "integrate regulatory impact analysis into the development, review and reform of regulations". The *Regulatory Impact Analysis: Best Practices in OECD Countries* (OECD, 1997) report gives a detailed list of best practices, but barely mentions France, given the little progress made at the time of the study.

Use of the regulatory impact analysis has remained limited in France, focused on budgetary matters from a strictly public accounts viewpoint. For the first time in 1987, a decree by the Prime Minister required an assessment of the budgetary impact and impact in terms of jobs for all regulations. The beginning of the implementation of impact studies in France dates from the consequences of the Picq report and the work of the State Reform Committee n in 1995. In 1996, a trial was conducted for draft laws and decrees adopted after consulting the Council of State, followed by a mixed assessment by the Council of State and Central Investigation Committee on the Cost and Regulation of public services. The reviews show that impact studies were drawn up after the initial preparation of legislation and, therefore, and did not provide a general framework for analysis. They were provided at the end of the process, when the legislation was passed on to the Council of State, and following pressure from the Government's Secretary General's Office. Therefore, they served as justifying *ex post* measures already taken. They were not systematically passed on to members of parliament and, in general, the quantitative and economic content was insignificant.

Nevertheless, the practice was extended by a circular dated 26 January 1998, following the recommendations of the assessment by the Council of State. In theory, the impact study is an important document aimed at assessing a priori the administrative, legal, social, economic and budgetary effects of the measures envisaged and at ensuring, convincingly, that all their consequences were assessed prior to the decision being made public. The impact study is passed on to the Parliament and the Council of State when the legislation is examined.

According to the legal terms of the circular and from a theoretical viewpoint, the impact study should first present an analysis of the legal and administrative impact of the measure: starting with a precise account of the applicable legislation and regulation, the administrative authority should prove that, of the various possible solutions, it has chosen the one that makes a change to the rule of law which best meets the objectives of the reform and the need for legal certainty. The impact study should also enable the effect of new regulations on society and the economy over the short and medium term to be measured. It identifies expected improvements to social well-being, in micro and macro-economic terms, with an assessment which enables the costs resulting from draft legislation and the new formalities and their effects on employment to be taken into account. It sets out the budgetary effects of the new provisions. A cost-benefit assessment may be presented, balancing the benefits against the costs of the measures proposed, and those of alternative solutions from both a quantitative and qualitative point of view. The impact study also involves a follow-up and ex post assessment.

At present, assessment of French practice remains difficult.[65] An assessment of the terms for drawing up impact studies carried out in 2002 revealed that although the exercise is carried out from an official point of view, the contents of the document produced are of an unequal density and quality and do not sufficiently clarify the decision that they accompany. The shortcomings noted during the analysis and observed by the Council of State have not really been rectified. According to the Mandelkern report of 2002, and the analysis of the Council of State of 2002 on a sample of impact studies, these documents remain a formality, drawn up only as a result of the obligation imposed by the Council of State and the Government Office of Secretary General. However, this does not mean that the *ex ante* assessment is not carried out, but that it is done differently, outside this framework.

The analysis of the French system is being conducted in this case in the light of the best practices of the OECD,[66] which recommend, in particular, that the following criteria be followed:

1. *Maximise political commitment to RIA.* The use of the RIA must be supported by the highest levels of government. Despite a clear political commitment in 1995-1996, when the practice was begun, it has to be pointed out that with the end of the State Reform Commission in 1997, the whole impetus was no longer the same and there was strong scepticism among most of the government departments and senior officials. The document recommending the impact studies, which is a circular, does not have much force of law within the French administrative legal system. As this draft, outside the political sphere, was not given permanent authority by any government department, in some respects it fell into abeyance with the fall in political support.

2. *Clearly allocate responsibilities for the RIA programme*. In order to involve the regulatory authorities, while assuring quality control and consistency, responsibility for the RIA should be shared between the regulatory authorities and the central body in charge of quality. However, in France, the official responsibility of the central unit, the General Secretariat of the Government, is to ensure that there is an impact study, not to control its quality. In doing so, the General Secretariat of the Government conforms to its role of Statutory Office, ensuring that procedures are followed in terms of the official and legal environment framework, but not the intrinsic substantive contents of the legislation. The Council of State examines the legislation from a legal perspective, but as such, impact studies have no legal effect, and the Council of State has no legal means to control their economic content.

3. *Train the regulators and persons drafting regulations*. The officials drafting the legislation should have the necessary training to prepare the RIAs in order to assess the quality of the regulation, and to understand the methodological pre-requisites and data collection strategies. Training is necessary for the RIA to be perceived as a vehicle for structural change within the actual government departments. In France, the high quality of the initial training does not, however, leave any room specifically for the preparation of impact studies. This is also related to the lack of a methodological framework for impact studies.

4. *Use a consistent but flexible analytical approach.* In France, the content of impact studies is of an unequal density and quality, and not sufficient to clarify the decision. This does not mean that decisions are not analysed, in particular, with regard to their budgetary and economic impact. However, such analyses do not use a general framework taking into account the costs and benefits in terms of external effects on society. The difficulty in measuring social benefits, and the absence of any structured and systematic approach severely reduces the usefulness of the impact study approach in supporting decision making.

5. *Develop and implement data collection strategies*. Data collection strategies exist within the economic studies and statistics analysis departments of the ministries, and the INSEE *[French national institute of economic and statistical information]*. Where data exists, a quantitative analysis may be carried out. Where it does not exist, RIA requirements are not currently sufficient to act as a guideline for producing the statistics system, which is being carried out over the long term around powerful tools.

6. *Target RIA efforts.* RIA efforts should be targeted at regulations with the largest impact and the greatest possibility for improving results. However, in France, impact studies have been required for all legislation and decrees in Council of State, being based on the legal importance of the legislation and not its economic impact. In the United States, RIA requirements are subject to an economic impact threshold of 100 million dollars, or where the rules might generate costs for a specific sector or region, or adversely affect competition, employment, investment, productivity or innovation.[67] Consequently, the enforcement of the impact study becomes too significant in relation to the technical resources available in the ministries, and is only observed from a formal perspective. For legislation prepared with a sufficiently long timeframe, these studies are particularly detailed and of high quality. Thus, the examples quoted for universal health insurance and bioethics, in fact, follow an important interdepartmental preparatory document within the framework of the Planning Agency for the former, and with an experts advisory authority for the latter.

7. *Integrate the RIAs with the policy-making process, by starting at as early a stage as possible.* This should bring to the policy making process the discipline of systematic assessment of costs and benefits, provide for identifying alternatives and seeking the best political option. The main divergence in France from this principle has, in fact, caused impact studies to become meaningless: usually the study is carried out too late, ex post, on average 48 hours following arbitration on the decision and prove essentially to be a summary supporting the legislation in question. This necessarily prevents the impact study from being an overview tool contributing to the decision. It is, therefore, just a formality and an additional administrative cost.

8. *Involve the public.* This allows for improved data collection drawing on the information held by those affected by the regulation. Consultation also enables the alternatives and acceptability of the regulation proposed by the parties to be discussed. In France, the impact study is made public, but only at the end when it is submitted to the Council of Ministers, which in fact prevents any involvement of the public beforehand. The publication of the RIAs as early as possible should encourage those responsible to improve their draft analysis, as it will become public. In Australia, a public annual report compares the quality of the RIAs of all the ministries.

Additional criteria relate to the distribution of results and effect of the impact analysis on the existing stock of regulations. Given the embryonic stage of the practice in France, they are, in fact, of little interest, even if radical action with regard to the stock was absolutely necessary. The circular of 26 January 1998 on impact studies failed in its attempt to use these studies to limit the increase in regulations or improve the quality of regulations.

The fact that impact studies are used incorrectly does not mean that there is no ex ante assessment of regulations in France. It simply means that this assessment is carried out according to processes which are not very systematic nor very transparent. The assessment is made by means of memoranda drawn up by the departments of the ministries, which are as much devices to defend or attack a decision in view of the final arbitration of the Prime Minister's office. These assessments are made from an economic, budgetary or legal perspective, and their quality depends on the technical resources available to the ministries, the Ministry of Finance being generally the best equipped. However, as there is no central institution in charge of assessing the regulatory quality of legislation as such, this aspect is not adequately taken into account.

Overall, the process does not favour the capacity for accountability, as all ex ante assessments, which are not public, in fact serve to refer the decision by arbitration back to the departments of the prime minister, and not to the public debate.

Overall assessment: The relative disappointment seen today with regard to the impact studies appears to have been met in France by a degree of indifference. It would be desirable to be able to eventually make impact studies meaningful. For this to happen, they simply need to be carried out beforehand and include existing assessment elements. They also need to be able to include an assessment of the regulatory quality as it is. This is the price of implementing a true Regulatory impact analysis process.

3.4. Setting up of independent regulators

Independent regulators[68] are one of the institutions of modern regulatory governance, which rapidly became widespread during the years 1980-1990. The institutional action and shape of these authorities, therefore, notably affect the quality of national regulatory systems. In fact, they enable the quality of the regulation to be improved, by operating in the market free from the interference of political and administrative circles, particularly in the liberalised or privatised sectors, and for the close surveillance of competitive markets. To achieve satisfactory results, the problem to be resolved is setting up institutions which are sufficiently independent to prevent the risk of being taken over by private interests, but which are in a position of accountability in order to translate long-term political priorities. In practice, the setting up of such authorities results from international commitments, mainly from Community directives, as far as France is concerned, although these institutions are also mentioned in WTO agreements or recommendations of other multilateral institutions.[69]

Regulators exist in France in the fields of communication and radio and television services, competition, as well as the protection of civil liberties and administrative transparency.[70] In 2003, France extended the electricity regulatory powers to gas, with an energy regulator, thus fully transposing the corresponding European directive. A law modernising the regulation of the financial sector was adopted in August 2003, which merges and consolidates certain existing regulators by creating a Finance Markets Authority *(AMF)*. The action of the Competition Council and Telecommunications Regulation Authority *(ART)* is analysed in more detail in sections 3 and 6 of this report. In addition, a bill is in progress that will extend ART's competencies into the postal arena.

Box 8. Financial security reform

The law on financial security passed of 1 August merges the Stock Exchange Commission (COB), the Financial Markets Board (CMF) and the Financial Management Disciplinary Board (CDGF) into a single authority, the Financial Markets Authority (AMF), which has a legal personality and financial autonomy. Its task is to protect savings, information on investors and the proper functioning of the market. It is managed by a board of 16 members, with a separate committee of 12 members for penalties. This regulator will have authority over financial analysts, in terms of codes of ethics, and will be the representative when dealing with other international regulators, in particular the SEC, with regard to rating agencies.

As regards insurance, a single regulator, the Mutual Insurance Companies and Provident Societies Supervisory Board replaces the current separate authorities, by obtaining, in addition, the power to approve companies operating in France.

The ministries maintain their authority with regard to regulation for mutual insurance companies, insurance and credit companies. The AMF will only have regulatory authority for asset management, market and investment services. This law also consolidates audit regulations, with a High Council of the Audit Commission, which has a strong State presence, and puts an end to the previous self-regulation system of this profession.

The concept of independent regulator corresponds in France to the notion of *Independent Administrative Authority (AAI)*, which was created by the law. The AAIs mark a break in the French administration system, which subordinates all government departments to the ministers with supreme decision-making powers in the public interest. These authorities are characterised by three criteria (Council of State 2001):

- They are vested with *powers* and cannot be purely advisory. Their fairly extensive prerogatives may include the power of regulation, authorisation, supervision, injunction, imposing of penalties, and even appointment;

- They are *administrative* and generally have no actual legal personality and, therefore, constitute a State authority. They, therefore, form part of the Administration. In reality, this criterion looks likely to be completely changed by the fact that the new Financial Markets Authority has a legal personality, which is a major innovation.

- They are *independent*, since they are completely removed from the hierarchical power of the Government. The authority of their officials is irrevocable.

However, two very clear trends have emerged from an apparently *ad hoc*[71] process for setting up these authorities. The first is that historically, the solution of the Independent Administrative Authorities was used to resolve problems related to civil liberties and administrative transparency, with the creation of the National Commission on Information Technology and Civil Liberties (*CNIL)* and the Commission on Access to Administrative Documents (*CADA)* in 1978-1979. The second is that later, the growth in the number of these authorities was supported by the needs for the State to foster a market economy. The consolidation of the Competition Council in 1986, the establishment of the Telecommunications Regulation Authority in 1997, and that of the Electricity Regulatory Board *(CRE)* in 2000, all follow this logic. This second trend also reflects the desire to conform to the Community framework.

Also in this area, the creation of these operators, which are strongly supported by the European framework, affects the traditional organisation of the French administrative apparatus. It harms the distinction, which is now 150 years old, between public and private law.[72] This factor, which is also discussed in section 3, results in particular from the allocation of part of the litigation of some of these institutions to the civil courts, the Paris Court of Appeal. This allocation first involved the Competition Council in 1986, and was extended, for reasons of consistency, to other telecommunications and electricity authorities for areas of litigation relating to competition. This approach indeed creates prejudices towards these authorities in France, the Council of State having considered that “the independent administrative authorities should not become a means of administering common law”, that “recourse to such systems should be controlled, and only contemplated when other more traditional methods are not feasible", and that it should at the same time "reinforce the credibility of the traditional State structures”.[73] The approach towards these institutions is, however, occasionally contested in France.[74]

Today, following the fairly wide acceptance of this concept, France has 25 to 35 independent administrative authorities (see Table in Appendix 6). This list shows their diversity and absence of an administrative and common law framework. In economic terms, the structure is similar to numerous other OECD countries, except that the regulators are now extremely dispersed in the financial sector. Before the rationalisation which is currently being carried out (see Box 8), there were no less than three insurance authorities, and four major authorities for the financial markets, stock exchange operations and credit and banking institutions. Finally five agencies operate in the radio and television sector, the main one being the French broadcasting control authority *[Conseil Supérieur de l'audiovisuel]*. The discussion is focused on the subset of independent administrative authorities which play an economic regulatory role.

Powers: These institutions generally have extensive powers to apply regulations. They may have powers of investigation, supervision (licences, approvals), and power to impose penalties. The regulatory power[75] of these regulators remains strictly controlled following the decisions of the Constitutional Council,[76] which censored provisions that were too ambitious (1986, 1989). However, these agencies may propose regulatory decisions, which, to become effective, must be validated by the minister. This separation of powers is a good example of the need to separate the political level, with the decision-making with regard to general rules, from the technical level, with the application of these rules in specific cases.

In most of the OECD countries, the broad range of powers of the independent regulators, who have been described as "governments in miniature,"[77] acting simultaneously as the judicial, executive and regulatory authority, refers to the issue of protecting rights and liberties which are guaranteed by constitution. This involves, in particular, the separation of the investigation/preparation stage from the decision/court stage. This is an important point, as the operation of the Stock Exchange Commission was stopped for 6 months following proceedings for failure to observe such separation before the European Court, on the basis of the European Declaration of Human Rights.[78]

Independence: In most cases, these regulators are governed by boards with, nevertheless, a chairman,[79] which may include between 5 and 17 members. These boards and their directors are appointed in the Council of Ministers, usually for a term of office of 6 years, which is more than the 3 years in the United Kingdom, and an appointment by the whole Government in the Council of Ministers. The members of the board may be dismissed for political reasons. There is no re-election for the Stock Exchange Commission, Electricity Regulatory Board and Telecommunications Regulation Authority, but it is possible for the Competition Council. The rules intended to protect the impartiality of personnel are stipulated in the law. There are rules of strict disqualification, and all private interests must be disclosed. These institutions have often received the means to operate flexibly, particularly with regard to the Civil Service Act, which enables high-quality personnel to be attracted, often from government departments. The budget is based on public funds, with levies on the markets in the financial sector and in the telecommunications sector. It should be noted that the future Financial Markets Authority will have its method of financing fixed by the law.

Litigation, relation with the judicial system. Relations of these authorities with the judicial authorities are marked by the competence for judicial review of administrative decisions being split between the ordinary administrative courts and the Paris court of appeal for matters relating to competition. Although creation of autonomy with regard to the framework of the pure administrative courts appears to reinforce the independence of these institutions, the situation of dual recourse thus created is confused. For sector regulators, decisions relating to matters regarding competition law are the responsibility of the Paris Court of Appeal, while other decisions, such as those relating to the enforcement of administrative powers to impose penalties, are the responsibility of the administrative courts. Furthermore, the "non bis in idem" rule is not observed, in other words, the same event may give rise to a dual penalty, administrative and criminal.[80] The Council of State criticised this situation, requiring that the general principle be followed, according to which litigation involving acts of administrative authorities fall under the administrative courts, without exception. At the same time, the recent work of the Council of State shows a desire for very clear openness with regard to matters of competition: the Council considered that they may as a whole form part of the area of public authorities, recognising that "competition is an element of public interest and it is up to the public authorities to protect it". For the first time, in 1999, the Council of State referred a case to the Competition Council as the factors to be taken into account were subject to its decision.[81] This marks a very clear reversal on previous positions,[82] and shows a desire for openness aimed at adapting the public service to the requirements of competition (see Section 3 for more detail).

Horizontal coordination. Good mutual coordination between the sector regulators and the competition authority is essential to ensure the coordinated application of laws on competition to the whole economy (see Section 3). In France, sectoral regulators are responsible for these matters but the advice of the Competition Council regarding matters falling within its area of expertise is provided for by law. This applies to the French broadcasting control authority and Telecommunications Regulation Authority, the latter having later served as a model for the Electricity Regulatory Board. The combining of appeals relating to competition before the Paris Court of Appeal has also made it possible to offer a standard framework for the definition of established precedents with regard to competition law.

Transparency/Consultation. The decisions of the regulators are published in the Official Gazette. All the major financial regulators have well-developed websites which are largely bilingual, enabling their decisions to be explained and justified.

Reporting mechanisms. The independent regulators continue, for the most part, to form part of the executive branch. However, without being under the supervision of the government, they do not report to Parliament.[83] The regulators have the clear task of producing information used for assessment. Consequently, the Telecommunications Regulation Authority has set up a telecommunications watchdog in partnership with INSEE. On the other hand, there is now no systematic mechanism for assessing the effectiveness of these institutions. They are still a recent creation with regard to telecommunications, and in particular energy. It is clear, however, that the French market is of specific interest internationally, both because of the specific status and the size of certain operators, and the action of these regulators is, therefore, subject to scrutiny which goes beyond national borders.

Assessment

Despite the specific difficulties related to being transposed in a French context, independent regulators have been able to find their place in the institutional framework. The principles of establishing them together with market rules are now firmly rooted, on an economic level, by the European framework. On the other hand, the diversity and high number of independent authorities playing a minor role may lead one to wonder about the possibility of rationalisation. The reform of the financial markets authority has allowed the first stage of rationalisation. However, the insurance sector has been included under a combined financial supervisory authority in Germany and the United Kingdom, while in France it still falls under a separate authority. Fragmentation remains in the area of civil liberties, and also the sensitive area of radio and television, particularly with regard to the gradual unification of the media and growing interconnection of the networks.

As regards their independence and integrity, French regulators appear to be highly respected internationally, as France has evolved a lot within a fairly short time frame. The effectiveness of their action also depends on the degree to which the markets are open to competition (see Section 3). However, even in the electricity sector, the intervention of the regulator has already had an impact on the analytical clarification of management costs relating to production, on the one hand, and the transport network on the other.

4. DYNAMIC CHANGE: KEEPING REGULATIONS UP-TO-DATE

France has shown some resistance with regard to "deregulation", which in general stems from an Anglo-Saxon approach. Despite this resistance, regulations have been liberalised and reduced with regards to price controls, and financial markets. In general, written Roman law in France has no automatic expiry clause. However, to prevent regulations from becoming out of date, and increasingly piling up, major efforts have been made since the beginning of the 1980s in the area of administrative simplification to improve access to regulations. This mainly involves codification and the simplification of forms and administrative procedures, which will be analysed below. Furthermore, e-government projects support and increase these efforts (see Box 10).

4.1. Review of existing regulations, laws and subordinate legislation

French statute law has no expiry clause. Regulations remain in force and there is no systematic review of them except in the case of the specific review programme which took place in the framework of the edict for administrative simplification adopted in 2003 (see Box 9). In this way, France does not necessarily differ from other OECD countries, but the issue may be more poignant given the historical weight of the accumulated regulatory stock.

On the other hand, France has a long experience of codification, which systematically rationalises and inventories the law, which until now, was carried out without changing any legal requirement (*i.e*. without substantially changing the law or regulation).It represents at least as much a measure of administrative transparency, allowing better accessibility of the law, as a true simplification as such. Codification is an old tradition in France, with the first five main codes drawn up at the beginning of the 19th century.[84] From 1948 to 1958 a codification and simplification committee published approximately 40 codes, which were later adopted by decree in the Council of State. The process slowed down during the 1960s, but was revived by a decree on 12 September 1989 which set up a codification committee under the presidency of the Prime Minister. Codification was then carried out by parliamentary ratification between 1989 and 1996, with the publication of 5 codes.[85] However, the codification process met obstacles of a technical and legal nature, which led the government to propose new codes by means of edicts (enabling act of 16 December 1999). The decision of the Constitutional Council in December 1999 on the enabling act confirmed the objective for this operation to have constitutional value to enable laws to be accessible and intelligible. This enabled to significantly stimulate the process, by enacting 9 codes adopted in 2000, both regulatory and legislative side. In follow up of this work, a database, with almost 57 published codes, is now available on the Internet.[86] By virtue of the enabling act no. 99-1071 of 16 December 1999, the new codes released in May 2000 were legislatively adopted by the government.

4.2. Simplification of forms, language and administrative procedures

Regulatory simplification began very early in France. In 1953, with the decree of 26 September related to the simplification of administrative formalities, the executive power recognised the need for simplification of formalities. In 1959, the interdepartmental administrative information centre was to inform the government departments of the areas where they could improve their relations with the public and/or the formalities. In 1966, an Administrative Forms Registration Centre *(CERFA)* was set up to compile a register and control the publication of forms by the government departments. From 1977, specific simplification programmes were implemented, driven by an ad hoc secretariat. In 1981, business formality centres *(CFE)* were created, and linked to the chambers of commerce and industry (see Section 3.2).

In 1983, a government campaign "Open-door policy" led to the decree of 18 July 1983 which created the commission for the simplification of formalities incumbent on companies, COSIFORM, whose powers would be extended in 1990 to all users.[87] However, COSIFORM was a relative failure. Although it managed to bring together representatives from all the government departments around simplification projects, it did not manage to create practical and visible simplification measures despite numerous reports and meetings. From 1995, the general administrative simplification task was passed on to the newly created State Reform Committee. This Committee managed to implement 290 simplification measures on an interdepartmental level between the time that it was set up and December 1996, while 4 129 authorisation systems were registered, giving an idea of the task still remaining.

A new administrative simplification programme was set up in 1997-1998 which was decentralised to the level of the ministries. Each year the ministries have to propose simplification measures to a new structure, the Commission for Administrative Simplification *(COSA*, directly linked to the Prime Minister's office as of 2 December 1998).[88] COSA coordinated simplification procedures from the bottom up, starting with the approval and revision of forms and then putting them on line at the service of users. This produced significant results, affecting almost 100 000 million administrative operations each year (Table 3)

Table 3. Assessment of simplification measures taken by COSA in relation to private individuals

(in thousands of annual operations relating to the corresponding administrative forms)

Forms	Total	Deleted	Dematerialised	Simplified	Amended
Medical claims	1 000 000		350 000		350 000
Family allowance	112 000			112 000	112 000
Records of civil status	60 000	60 000			60 000
Tax return	30 000				30 000
Certification	15 000	15 000			15 000
Car registration	12 000				
Birth, marriage and death certificates	9 000				
Identity card/passports	8 500			8 500	8 500
Universal health insurance	6 000			6 000	6 000
Judicial records	1 200		402		402
Pension	670			670	670
Welfare allowance	650			650	650
Inheritance	600				
Total	1 255 620	75 000	350 402	127 820	553 222
Proportion	100%	6%	28%	10%	44%

Source: COSA 2002.

In 1997, a register was compiled of 2 600 forms. In 2002, 583 had been deleted, and 1 200 reviewed, of which 1 123 were accessible on line (COSA, 2002). 23 forms were completed redrafted.[89] This trend continued, and towards the end of 2002, only 1 580 forms were left. This procedure was extended by the law on rights of citizens in their relations with government departments of 12 April 2000, which recognises that rules of law and administrative procedures can be unnecessarily complex and penalise citizens, by widening the area of simplification beyond the central State to territorial authorities, local public institutions and social security bodies. This was completed by the deletion of civil records form by the decree of 26 December 2000 and by the deletion of certified copies of administrative documents by the decree of 1 October 2001.

To complete this action, a Committee for the Simplification of Administrative Language *(COSLA)* was set up on 2 July 2001, France following the procedure adopted by Great Britain, Italy and Canada. This committee is unique in terms of its composition, which is open to the various components of society.[90] For example, COSLA developed a word processing software program, which helps those drafting administrative letters to write in terms which are simple and easy to understand.

Simplification measures with regard to companies remained more limited during this period, and were directed specifically towards small and medium-sized enterprises. This resulted, in particular, from the failure of the reform undertaken by the finance ministry in 2000, which, was not only to help save money but also meant to offer companies (and private individuals) a one-stop-shop for fiscal matters (see Appendix 1 on the modernisation of financial management). However, experimental elements were implemented regarding company payroll declarations to social security. The most important aspect is the simplification of annual declarations of social security data (DADS), and their implementation in the form of teleprocedures within the scope of the "Net Enterprise" Group (see Box 10). The teleprocedures were extended to VAT returns, intra Community trading of goods declarations and commercial profits tax returns. Customs clearance has been simplified (see Chapter 4). Some minor tax measures have disappeared along with their obligations to declare.

However, business representatives considered that these results were still modest. Furthermore, the closed door nature of COSA, which was only made up of representatives from government departments, made it very inward-looking to internal problems of government departments, and the ease with which they themselves had in proposing simplification procedures, in part to simplify the running of the departments. The lack of representatives from the private sector gave rise to criticism (GGPME 2003).

The existing structures (DIRE, COSA secretariat), were replaced by the decree of February 21 2003 by a delegation for modernising public administration and state organisation, a delegation for users and administrative simplification, and an agency for the developing e-government. These structures which are placed near the Prime Minister are under the responsibility of the Minister charged with State reform. The goal of this reorganisation is to better take into account the future needs of professionals and intensify dialogue with consumers. COSA, itself, deleted the July 2, 2003 law and replaced by the Council for Stirring Administrative Simplification (COSA) which is composed of elected officials (deputies, senators, member of regional and local councils) and of qualified personalities. In addition, the ministry of economy, finance and industry has set up a committee for simplification for businesses (MISSE in French). This unit is in charge of coordinating and implementing simplification towards businesses at the level of this ministry and its secretary of state for Small and Medium enterprises, in collaboration with other ministries.

Furthermore, the government announced an important additional administrative simplification programme through an enabling law in July 2003, and a vigorous e-government development programme aimed at simplification, with measures to assist small and medium-sized enterprises (see Box 9). An important aspect of this programme is to eventually replace the m*istrust a priori* relationship, which until now has been a feature of relations between citizens and government departments, with a relationship of *trust supplemented by control a posteriori*. This means that instead of having an array of declarations of numerous supporting forms to be sent beforehand, the declaration could be made on trust, and the government department could keep its right to verify the accuracy of the declaration. This is particularly well-suited to new communication and information technology.

Box 9. Administrative simplification reforms in 2003

The simplification site involves for the first time recourse by the government to procedures for orders, the application of the law of 3 July 2003 which covers approximately thirty laws and six codes. This draft covers 6 main areas:

1. The simplification of every-day administrative procedures. (Proxy vote, access to old-age pension benefits, etc)

2. Modernisation of relations between government departments and citizens:

. Reduction in the number of administrative advisory boards.

. Reduction in the departments' response time. Indication of the application processing time.

. Replacement of documentary evidence with declarations on trust, supplemented by verification a posteriori.

. Exchange of information between government departments to reduce the production of supporting documents

. Facilitating proof of possession of French nationality for citizens born abroad.

. Arranging free access to administrative justice

. Facilitating the creation of joint-owner associations by revising a law of 21 June 1865 and 27 July 1930.

3. Simplification of the organisation and management of the health system (modernisation of hospital management, simplifying access to health benefits of other Members of the European Union, devolution of powers to the regions).

4. Modernisation of public procurement (revival of private-public partnerships, with global contracts (design/completion/maintenance). Simplification of legislative measures relating to public works or supply contracts, to make them compatible with Community law.

5. Simplification of the law: six new codes, 4 of which are "non-established" law (monetary, financial, public ownership, defence, trades, artisans)

6. Simplification of the daily running of companies (creation of a "simplified single employment document", one-stop shop for certain professions, harmonisation of exemption from social security contributions, choice of membership fund for persons paying social security contributions either salaried and non-salaried workers.

In addition, a second simplification law is planned for Autumn 2003, which covers all ministerial sectors. Furthermore, the policy aims at facilitating users' access to public services and to simplify their use by simple measures Access to Internet and the more widespread setting up of call centres capable of dealing with telephone enquiries, will supplement the development of "public service centres". This enables the government department to bring together a number of services which can be made available to citizens. The smart card for daily life will also enable procedures to be simplified on a local level: use of day care centres, access to sports and cultural facilities, transport, public parking. This smart card will rely on the expertise of smart cards for which France provides significant technological leadership.

As regards companies, the essential elements of the finance ministry's reform, which failed in 2001 have gradually been implemented to simplify the daily running of the private sector, particularly with regard to fiscal matters: a department created in February 2003 for large enterprises offers a one-stop shop to the top 24 000 French companies, representing 50% of tax revenue. A one-stop shop concerning taxing issues will be set up between now and 2004 for Small and Medium-sized Enterprises.[91]

In the area of small and medium-sized enterprises, the law on economic initiatives finally passed on 21 July aims to simplify the setting up of companies, by freely fixing, in particular, the share capital, making it possible to register it on line and at a private address. This law creates simplified schemes for payment of social security contributions, and increases the possibility of using fixed-term contracts. A single representative in the social security sector for self-employed workers greatly simplifies relations with the large number of social security bodies. It could, in particular, allow major savings in running costs in the social security sector.

An important point to be noted is that despite the clear political impetus, these attempts at administrative simplification are being made without any quantitative data on the impact of the administrative burden. Apart from the inventory taken by COSA, which is an exception, there is no device in France for statistical measuring of the economic and regulatory costs. This could, however, enable political action to be guided, by more carefully working out the priorities to improve the effectiveness of the simplification action. These devices exist in some countries, in particular, the Netherlands and Norway,[92] and assessments have also been carried out by business associations in Italy.

E-government

One of the objectives of e-government[93] is to provide transparent and easy access to the user (front office), by facilitating and improving the management of back-offices which should communicate better with amongst themselves. The tool allows for shifting the burden of complexity back on the administration, and for avoiding to have it imposed on citizens and businesses. The use of Teleprocedures was developed following pressure from the interdepartmental committees for the State Reform of 2000. The first stage led to a portal site and electronic mail. The second stage enabled the use of teleprocedures to be developed in new areas, such as, tax returns without having to produce supporting documents a priori. Furthermore, the electronic tool enables all regulations in force to be made available on a combined site (see Part 2).

The data which enables the progress of e-government on an international level to be assessed is still fairly mixed. According to the data from the Accenture office, France was ranked twelfth in the world, behind Singapore, Canada and the United States, but at levels comparable to European countries such as Germany and Great Britain. France ranked above Japan and Italy.[94] The data shows the success of the government in putting services on line, ranking France in this area as third in the world behind the United States and Singapore. The problem is that the functionalities of these services need to be developed further, and in general, France suffered, until recently, a delay in widespread public access to internet and broadband. The data also shows recent rapid recovery (see Section 6).

The example of the current progress of reform made in the Ministry of Finance, brought about by the development of a modern work environment rather than by an overhaul of the structures, shows that new technology and e-government can be powerful vehicles of regulatory modernisation. This is particularly true in countries such as France where certain direct structural reforms are sometimes difficult to carry out (See Appendix 1 on modernisation of financial management).

Box 10. The move towards e-government

The use of Internet means not having to move, queue and waste time, therefore, contributing to administrative simplification. The e-government site was launched relatively early in France in 1997, with the government action programme for the information society and numerous reports and dossiers.[95] France had already had previous experience in this area with the use of the Minitel, for example, for enrolling at universities, or trading of goods declarations for companies. Most forms are already on-line following the decree of 2 February 1999 which coordinates their being made available on administration sites. On the other hand, the challenge of the current reforms is to end up with true interactive management of relations between the user and government department. This involves:

- *Teleprocedures.* 140 electronic customer support services are currently available to users. Three major reforms were initiated in 2003 facilitating social security returns by electronic means. Already, the "net enterprise" portal allows company directors to declare most of their social security returns, in particular the annual declaration of social security data (DADS); put tax returns on line and allow for the payment of a certain number of taxes, in particular, Value Added Tax (VAT); put on line during the first half of 2003 all compulsory legal declarations of companies when they are set up, changed or cease to activity.

- *Management of an administrative account on line with a personalised profile*. This project supported by the e-government services is currently being developed.

For companies, common platforms for services are in the process of being set up to facilitate social security returns of self-employed workers, shopkeepers and craftsmen. Finally, access to public procurement should be extended to most companies, in particular small and medium-sized enterprises, by a widespread dematerialisation of public procurement (which should become effective on 1 January 2005) and the abolition of the systematic production of tax and social security certificates by applicants and limitation of supporting documents.

These reform projects are supported by two separate structures. The offices of the Prime Minister, which were recently restructured with the creation of the E-government Agency, coordinating lateral projects relating to the life of citizens, while the Ministry of Finance with the Mission for the Numeric Economy and its specific projects coordinates lateral projects relating to companies and tax returns.

Assessment

Simplification policies have enabled consistency and the operation of a very complex regulatory and administrative apparatus to be maintained. In some areas, such as codification, France has played an exemplary role, and in others, such as the use of electronic tools to relieve the regulatory burden, it currently has very active policies. On the other hand, there is no programme for the automatic expiry or periodic review of laws. Furthermore, simplification initiatives are carried out without any quantitative measuring instrument to direct them. They have also had a tendency to be developed based on the internal needs of the government departments, and would benefit from being more aware of the needs of the users.

5. Conclusions AND RECOMMENDATIONS FOR ACTION

5.1. General assessment of current strengths and weaknesses

France is currently modernising its regulatory governance system. The reforms give the State a more restricted role, and are accompanied by a decentralisation process towards local authorities. These reforms aim at developing the use of new information and communication technologies. Administrative simplification is moving forward to improve the efficiency of the State. The government is currently setting up one-stop shops, whether on a fiscal or social level, and in routine dealings with public service centres. E-government is a promising alternative, as witnessed by the growing use of teleprocedures and electronic tax returns. Programmes to improve the business environment of small enterprises have been implemented through the 1999 Finance Law, and have been amended in 2003. Performance management should soon deeply alter the running of government departments and will contribute to better regulations in the future.

These changes in "regulatory governance" accompany and amplify structural reforms. France is gradually liberalising its markets, including network industries, to conform to the European framework, and competition has been recently introduced as a reference in administrative case law. The labour market issue, however, remains more difficult.

This all indicates steady improvement. The weight of regulations revealed by certain international indicators, for which France appears to rank as one of the worst,[96] does not appear to be an obstacle to increasing foreign direct investments. The reforms implemented during the last decade have improved transparency and relations between citizens and public services. The current political priority given to administrative simplification involves reducing unnecessary procedures for citizens and business. It should also be noted that these progressive changes have taken place in the absence of any major crisis and were very incremental, keeping a high level of consensus on behalf of the administration.

However, the rate of change is often hampered by the need to alter structures or ways of organising public services: The reform of the State appears to be a recurrent theme, which up to now could only move forward as long as structures were maintained and was no staff cut. Decentralisation has been taken to its limit, while creating a very costly and complex institutional system. The French legal system proceeds through piling and accumulating texts on an historical basis. This gives rise to duality of complexification balanced off by simplification, the simplifications in progress being only the counterpart of increasingly complex regulations. Until now, codification has allowed to rationalise the stock of existing texts, up to a certain extent, but complexity persists.

The biggest problem with the French regulatory system is, undoubtedly, that regulations are often first devised by and for the State, rather than for citizens, who have long been considered as simply governed. The administrative law system was designed to secure the State and the general interest from private interests. The costs that regulations represent for the economy have only recently been appreciated and accepted. The consequence is that the State may harm the general interest through excessive regulations, an idea that is not necessarily obvious in France, even if a promising process is under way.

Part of the problem is related to history and the actual philosophy of the system. France is a unitary and not a federal state, where the state never fully gives up its prerogatives, even when some of them are transferred to local authorities. Another part of the problem is related to the actual size of the State apparatus and the weight of ministries as employers and organisations. The game of balance and counterbalance between government departments, the specific role of the Ministry of Finance, the role now taken on by the Constitutional Council and Council of State, cannot fundamentally change, even if, in some respects the litigation of part of the regulatory activities has been transferred over to the area of private civil law.

The emergence of a true comprehensive policy aimed at improving the overall quality of regulations- that is implementing an efficient "regulatory governance"- is still to be developed. The 2002 Mandelkern report gave some insights, which would enable France to come closer to better international standards. A proper practice of *ex ante* regulatory impact analysis, which would be fully integrated with administrative practice, must still be implemented to bear fruit as a policy instrument for decision making. Finally, *ex post* assessment of regulations, although now systematically mentioned in bills, is still to be carried out with a view to simplifying and relieving the regulatory burden. One of the greatest challenges for France will be to dismantle the stock of laws and requirements accumulated in outdated regulations, outdated provisions and pointless administrative procedures.

Although procedures for drawing up legislation are sound and well established, the practice of prior consultation is still inconsistent and not systematic. The high number of consultative bodies brings about opaque processes, and does not necessarily allow for transparency. The outcome is a complex situation,

which even favours cases where consultation has no link to brutal implementation of reforms. As a result, the effects are poorly identified *ex ante*, as was the case with the implementation of the 35 hour work week. The induced effects are progressively corrected over time, but at a high price: waste of time and effort which could have been avoided if an in depth consultation had been carried out.

At the same time, France definitely suffers from severe institutional inflexibility, as well as the insider-outsider phenomena.[97] The public service system is often managed from the perspective of insiders, which benefits a shielded part of the economy,[98] which operates separately from a globalised economy. The size of the public system represents in itself a significant difficulty. This, coupled with the requirements of citizenship to be employed in public jobs, relates to some of the problems found in a multicultural society.[99]

The public service and public sector play a key role in the French debate. Taking into account the general interest and ensuring universal access to a range of services are key references in the institutional setting. However, debate about the practices and ways of organising services which will be used to reach these ends may sometimes hinder the undisputed legitimacy of these key notions. The traditional syncretism around the notion of public service might obstruct the process of reforms. A significant pedagogical effort is therefore required to explain how the means to ensure universal service and services of general interest can be reconciled with the search for maximal efficiency and improved well being of the citizens as consumers. The integration in the European framework would undoubtedly be facilitated if the pedagogical effort, recently initiated in France, is pursued and deepened.

The pedagogical effort would improve the results of the consultation process and would serve to build the consensus necessary to any reform strategy. The recent example of the pension reform, which led to the implementation of a central reform of public finances and some scepticism noted to be overcome, could be used as a textbook case. In other areas, the privatisation of the post and telecommunications administration, in less than ten years, into two large-sized global enterprises, shows the capacity of the French system to adapt. However, the regulatory framework of the industrial and commercial public service is still far too distant from private companies to incorporate the current movements with the desired flexibility, as shown in the case of EDF *[French electricity board]* and GDF *[French gas company]*.

One of the main difficulties in France, is that no institution has the authority or the responsibility to monitor regulatory quality from a global perspective as well as the legal content of regulation with an analysis of its external economic and social implications. However, setting up such an institution is a difficult task as it involves a deeply structured institutional environment, with a strong historical foundation. It is not a total change of practices, but rather an amendment which takes into account other parameters of general interest, such as damages caused to third parties or the overall economic impact of a regulatory text.

The political impetus behind reforms may be subject to changes regarding priorities and approach, given the trends in public opinion and electoral cycles. Only well established and relatively autonomous institutions in charge of implementing regulatory reform would enable the modernisation process to perpetuate. The official legal quality intended so far in France is not sufficient to bring overall quality to the regulatory system. However, the public service framework and administrative practice are, undoubtedly, capable of being adapted and modernised, provided that the definition of general interest can take on a slightly different meaning, reflecting an increased global view of the economic and social stakes, which would include the benefits from more competitive markets and the well being of consumers.

5.2. Policy options for consideration

The options to be considered and presented below are based on an international consensus with regard to good regulatory practices and on specific experiences of OECD countries. They are derived from the general framework set out in the 1997 *OECD report on regulatory reform*. Some options are short term, while others are medium term. They relate to improving the institutional framework, setting up of institutions and instruments intended to control the flow of new regulations, rationalising the stock, and improving relations between national and local levels.

1. Envisaging an institution in charge of the overall quality of new regulations.

The review of other OECD countries shows that having a specific institution taking decisions, and located as close as possible to the centre of government responsible for taking a final decision on policy and the implementation of policy in law can make a decisive contribution to improving the quality of regulations. However, such an institution is currently lacking in France, in spite of multiple players intervening in the preparation of texts, and those in charge of controlling their legal quality. However, the networking of the bodies responsible for this task would undoubtedly make it possible to take the first step towards remedying this shortcoming by providing a blueprint for an institution which would have responsibility for the overall quality of new regulations. The remit of this institution, or the bodies that would act as its precursors, would ultimately be to take responsibility for promoting the quality of new regulations by taking into account their costs and induced impacts on society. Its remit would also be to regularly assess the cost of existing regulations, and giving recommendations to Parliament to reduce it. This institution could give advice beforehand while regulatory and legislative bills are passed to the departments of the Prime Minister. The opinions issued by this network or institution could in future be made public, passed on to the Council of State and the Council of Ministers. To prevent it from being overwhelmed by the flood of new regulations, this institution could decide to scrutinise regulations of its choice, depending on their economic impacts. Finally, this institution could encourage questions of regulatory quality in the public debate, playing an educational role, particularly with regard to Parliament.

2. Setting up of an effective practice of Regulatory Impact Analysis to use it as a strategic tool to support regulatory policy

In many OECD countries, an effective and systematic practice of regulatory impact analysis (RIA) is a key component in ensuring regulatory quality. However, if some *ex ante* assessments exist in France, these assessments are not often co-ordinated, do not systematically take into account the overall costs and benefits of regulatory texts from a social perspective, are elaborated upstream, and outside of the RIA process. The existing RIAs are often reduced to a formal *ex post* exercise *(*after the decisions are made). This situation could be improved using the RIA process as a systematic framework to rationalise the existing practice and to ensure a relevant and consistent *ex ante* evaluation process. This improvement would also allow for a more structured *ex ante* process, in terms of an evidence-based economic approach. To this end, Regulatory Impact Assessment needs to be established as part of a legal standard imposed on the procedures used to prepare the texts, in order to ensure a real regulatory impact analysis, which can be subject to sanction. The institution in charge of regulatory quality could define precise criteria to classify the texts likely to be subject to RIA, in order to reserve the regulatory impact assessment to significant regulatory projects (a maximum of a hundred per year). The institution could also require RIA for certain texts. RIA should also include prior consultation procedures and require the results of all these procedures be made public within a sufficient time frame. A methodological guide should be drawn up for this purpose, for example by the central unit in charge of the quality of regulations.

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

The high number of consultative bodies in France does not necessarily ensure an efficient consultation process. A transparent and systematic process of public consultation which takes into account the impact on citizens and business ensures an improved quality to the regulatory process in many OECD countries.. The efficiency of the consultation process in France could be improved through more transparent and more systematic consultation processes. Internet offers an interesting opportunity which should be taken. For example, France could set up a central unique registry on the Internet with all the drafts in consultation. The registry should also include the comments of the interested parties with the comments and answers from the regulatory authorities. The process could in addition be integrated to the framework of the Regulatory Impact Analysis.

4. Pursuing and extending the move towards simplification by introducing sun-setting clauses, extending the use of one-stop shops, and introducing instruments to measure and monitor the simplification process

France has undertaken a major move towards administrative simplification, which goes beyond previous codification efforts. The experience of many OECD countries shows that administrative simplification is key to improving the cost-effectiveness of regulation. However, the initiatives taken up to now in France have not been systematic. They need to consider the whole of existing regulations in order to reduce the cumulated cost of the total stock. Certain techniques can be very useful in the context of administrative simplification, such as introducing one-stop shops targeting certain groups of clients. These one-stop shops have been introduced in France for setting up a business, or for the relationships of the large enterprises with the Ministry of Finance. This move could be extended in the social field, and also for the small and medium business and individual citizens. Automatic sun-setting clauses are another type of tool which could be used. This would force the administration to systematically review texts, under the threat that they would no longer be valid beyond a certain date, which would be the opposite of the current system. It is true that such a tool is very far from the French legal tradition. However, a pedagogical effort related to the benefits expected from this approach, could help to change the situation. Finally, a statistical effort to measure the economic deadweight generated by the regulatory burden could help to stir the current simplification efforts in order to maximise economic benefits and fix clear objectives for the future. The assessment of the impact of simplifying declarations which was made by the COSA, shows that such an approach is feasible in France.

5. Improving legal certainty by improving the transparency of procedures to implement the law and making up for time lost in the transposition of Community directives.

Legal certainty and transparency are key elements for high quality regulation. However, if the French regulatory system is highly consistent from a legal perspective, elements of weaknesses are apparent, particularly with regard to the delays in releasing the decrees, which are necessary to implement the law. In some cases, the lack of decrees has even made certain laws wholly or partially inapplicable. This is the source of ambiguous and detrimental legal situations. It would be advisable that maximum official delays be imposed on the administration for the release of implementing decrees, delays which could be subject to sanctions and also appeals from a legal perspective.

6. Clarifying and rationalising the distribution of competences generated by decentralisation.

In a number of OECD countries, decentralisation allows for setting up rules which are closer to users. France has undertaken a significant decentralisation effort in the past 20 years where numerous competences have been transferred to local authorities, which is in many ways a positive move. However, the inextricable confusion of competences across four levels of government is detrimental to an efficient regulatory process. A clearer distribution of regulatory competences among the various levels of local authorities, with rigorous block allocations, would help to clarify the situation. In addition, improved awareness and exercising by local authorities of regulatory practices should be developed in light of new responsibilities entrusted to them. A fundamental element is that the process of decentralising competences be accompanied with clear and efficient accountability requirements at every local, administrative and judiciary level.

7. Rationalising the framework of independent regulators.

Independent regulators, who are now described as independent administrative authorities, have a very diverse and heterogeneous status. This is following the passing of the law on financial modernisation. The current system of crossed dual appeal with regard to the administrative and civil courts can be seen as fragile in terms of overall consistency. Cross-consultation procedures exist between regulators and the competition authority, but they could be made systematic and mandatory for all existing regulators with an economic role. Some small independent administrative authorities could be merged. As regulators are often financed using public funds. The budgetary mechanisms could also be amended in order to consolidate the independence of these regulators.

BIBLIOGRAPHY

Barbier De La Serre R., David J.H., Joly A., Rouvillois Ph. (2003), L'État actionnaire et le gouvernement des entreprises publiques. ? Rapport à M. Francis Mer, ministre de l'Économie, des Finances et de l'Industrie. 24 février.

Barel J., Guilloux A., Lesouhaitier D. (1995), Bilan de l'exécution de la deuxième génération des contrats de plan État régions, rapport au Premier ministre. Commissariat général du plan ; Paris. (*www.ladocumentationfrancaise.fr/brp/notices/954091200.shtml*)

Basquiat J.P. (1998), Rapport sur l'impact des nouvelles technologies de l'information et de la communication sur la modernisation de l'administration à M. Zucarelli, ministère de la Fonction Publique, de la Réforme de l'État et de la Décentralisation.

Baumol W.J., Panzar J.C. Willig R.D. (1982), Contestable markets and the theory of industry structure. Éd.: New York, N.Y. : Harcourt Brace Jovanovich.

Bergougnoux J. (2000), Services publics en réseau : perspective de concurrence et nouvelles régulations

Bert T. (2000), « La réforme de Bercy : paralysie ou suicide collectif » dans Fauroux R., Spitz B, *Notre État, le livre vérité de la fonction publique*, Éditions Hachette, Pluriel.

Bert T. Champsaur P. (1999), Mission 2003, rapport au ministre de l'Économie et des Finances.

Boisson P. Milleron J. C. (1998), Rapport sur les missions, les méthodes de travail du ministère de l'Économie et des Finances, La documentation Française.

Braun G. (2001), Rapport d'information n° 348 au nom de la Commission des Finances, du contrôle budgétaire et des comptes économiques de la Nation sur une étude comparative sur la réforme de l'État à l'étranger, Sénat. *www.senat.fr/rap/r00-348/.*

CADA (2002), Rapport d'activité 2001, Commission d'accès aux documents administratifs.

Carcassone G. (2002), *La Constitution*.

Carcenac T. (2001), Pour une administration électronique citoyenne, rapport au Premier ministre, méthodes et moyens. *www.Internet.gouv.fr/français/textesref/rapcarcenac/rapcarcenac.pdf.*

Chambre de commerce américaine (2001), *Le moral des investisseurs américains en France*, Bain &Company.

CGPME (2003), *Application de la charte européenne des petites entreprises par la France*, Observations de la Confédération Générale des Petites et Moyennes Entreprises.

CGPME (2003), *Simplifications administratives*, propositions de la Confédération Générale des Petites et Moyennes Entreprises.

CGPME (2003), Transposition de la Directive 2001-115-CE du 20 décembre 2001 concernant la facturation en matière de TVA, Observations de la Confédération Générale des Petites et Moyennes Entreprises.

Chambre de Commerce et d'Industrie (1997), *Formalités des entreprises : les simplifications*, Résultats d'une enquête auprès des entreprises 1995-1996.

Chérot J.Y. (2002), L'imprégnation du droit de la régulation par le droit communautaire, Les petites affiches, *Le quotidien juridique*.

Chidiak M. (2000), Voluntary Agreements, Implementation and efficiency, CERNA, Écoles des Mines de Paris. *www.ensmp.fr/fr/cerna*.

Chone P., Flochel L., Perrot A. (2002), Obligations de service universel et concurrence dans les réseaux, Économie et Prévision, n° 156.

Chorin J. (2002), L'Europe et les services publics, A l'aube du troisième millénaire, vers une déréglementation totale ?

Cohen E. (1996), *La tentation hexagonale, La souveraineté à l'épreuve de la mondialisation*, éditions Fayard.

Cohen E. Henry C. (1997), Service Public, Secteur Public, Conseil d'Analyse Économique, Documentation Française.

Cohen E., Henry C. (1997), Service Public, Secteur Public, Conseil d'Analyse Économique.

Cohen E., Mougeot M. (2001), enchères et gestion publique, Conseil d'Analyse Économique, Documentation française.

Cohen Tanugi L. (2003), Intervention au colloque les Echos 19 mars, *Les échos du Gouvernement d'entreprise publique*, 8 Avril.

Colson J.P. (2001), *Droit public économique*, LGDJ.

Comité Interministériel de Réforme de L'État (2000), Relevé de décisions, 12 octobre.

Comité Interministériel de Réforme de L'État (2001), Relevé de décisions, 15 novembre

Commissariat à la Réforme de L'État : accountability in public organisations : Responsiveness to political authorities, users and market forces, Alex Turc, *www1.oecd.org/puma/pac/account/TURCE.PDF*

Commissariat général du Plan (2000), *Fonctions publiques : enjeux et stratégie pour le renouvellement*, B. Cieutat, La documentation française, Mars.

Commission des Communautés européennes (2002), communication de la commission, réforme économique : rapport sur le fonctionnement des marchés de produits et de capitaux, France, *http://europa.eu.int/comm/internal_market/en/update/economicreform/cardiff02fr.pdf*

Commission des Lois (2002), *Le contrôle de l'application des lois. Synthèse des travaux des commissions permanentes*, Année parlementaire 2001-2002 et 11è législature, Document présenté à la conférence des Présidents du 4 décembre 2002.

Commission nationale Informatique et Liberté (2002), Rapport d'activité 2001.

Commission pour les Simplifications administratives (2001), rapport annuel 2001, *www.cerfa.gouv.fr/servform/vigueur/formul/RAPPORT2001.pdf*

Commission pour les Simplifications administratives (2002), 1997-2002 : cinq ans de simplifications administratives. *www.cosa.gouv.fr/art20004000100017.htm*

Conseil d'Analyse économique (2000), État et Gestion Publique, Actes du colloque du 16 décembre 1999.

Conseil d'État (1991), Rapport public annuel, *De la Sécurité Juridique*.

Conseil d'État (2000), La Norme Internationale en droit français, *Documentation française*.

Conseil d'État (2002), Rapport annuel, *Collectivités publiques et concurrence.*

Conseil d'État (1994), Service Public, déclin ou renouveau.

Conseil d'État (1995), Rapport public annuel, *La transparence et le secret*, documentation française.

Conseil d'État (2001), Rapport annuel 2001, *Les autorités administratives indépendantes*.

Conseil national de l'Évaluation (2002), *Une évaluation à l'épreuve de son utilité sociale*, La documentation française.

Conseil national de l'Évaluation (1999), Rapport annuel, L'Évaluation au service de l'avenir.

Conseil scientifique de l'Évaluation (1996), *Petit guide de l'évaluation des politiques publiques*, documentation française.

Cour des Comptes (1995), *La décentralisation en matière d'aide sociale*.

Cour des Comptes (1997), *La gestion des services publics locaux d'eau et d'assainissement* (1997), documentation française.

Cour des Comptes (1999), Rapport au Président de la République, chapitre VI, Les pratiques anticoncurrentielles des collectivités territoriales. *www.ccomptes.fr/Cour-des-comptes/publications/rapports/rp1999/rp1999_28.htm*

Cour des Comptes (2000), Rapport au Président de la République, chapitre VI, Collectivités territoriales, Les délégations de service public *www.ccomptes.fr/Cour-des-comptes/publications/rapports/rp2000/rp2000_726-745.htm*

Cour des Comptes, Rapport au Président de la République (1996), Les interventions des collectivités territoriales en faveur des entreprises. *www.ccomptes.fr/Cour-des-comptes/publications/rapports/entreprises/cdc73.htm*

Cournède B., Gastaldo S. (2002), Combinaison des instruments prix et quantités dans le cas de l'effet de serre. Économie et Prévision, n° 156.

Curien N. ; Jacobzone S. (1993), « Les grands réseaux publics français dans une perspective européenne », *Économie et Statistique 1993*, n° 266, pp. 3-18.

Daniel J.C. (2003), Rapport d'information à l'assemblée nationale au nom de la délégation à l'aménagement et au développement durable du territoire, volet territorial des contrats de plan État-Région.

De la Coste P. (2003), *L'hyper république, Bâtir l'administration en réseau autour du citoyen*, Rapport au Secrétaire d'État à la Réforme de l'État.

De Margerie G. (2000), La révolution libérale masquée, in Fauroux R., B.Spitz, *Notre État, le livre vérité de la fonction publique*, Éditions Hachette, Pluriel.

De Roux X. (2002), Simplifications administratives concernant les entreprises, propositions du groupe parlementaire, décembre.

Debonneuil M., Fontané L. (2003), *Compétitivité, conseil d'analyse économique*, documentation française.

Delalande D. (2002), Pollutions atmosphériques transfrontières : mise en œuvre du protocole de Göteborg et de la directive plafonds. Direction des études économiques et de l'évaluation environnementale, document de travail E07. *www.environnement.gouv.fr*

Denoix De Saint Marc R. (1996), Le service public, Rapport au Premier ministre, documentation française.

Didier M. (2003), *Des idées pour la croissance*, Economica Rexecode.

DIRE (2002), Rapport d'activité 2000-2001 sur la réforme de l'État.

Direction à la Réforme de L'État (DIRE) (2002), Évaluation de la démarche des programmes pluriannuels de modernisation (PPM), Novembre.

Direction Générale des Collectivités Locales (1998), Rapport du Gouvernement au Parlement sur le contrôle a posteriori des actes des collectivités locales et des établissements publics locaux. Ministère de l'Intérieur.

Direction Générale des Collectivités Locales (2000), Rapport 1999-2000 du Gouvernement au Parlement sur le contrôle a posteriori des actes des collectivités locales et des établissements publics locaux. Ministère de l'Intérieur.

Du Marais B. (2002), *L'État à l'épreuve du principe de concurrence : analyse et prospective juridique*, Politiques et management public

École Nationale d'Administration (1998), La réforme de l'État (deux tomes), Promotion Valmy (1996-1998) sous la direction de Jean-Ludovic Silicani

Fauroux R. (2000), La crise de notre État in Fauroux R., B. Spitz, *Notre État, le livre vérité de la fonction publique*, Éditions Hachette, Pluriel.

Frison Roche M. (2000), Évolution du Droit comme instrument étatique d'une organisation économique, in *Conseil d'Analyse Économique État et Gestion Publique*, Actes du colloque du 16 décembre 1999.

Frison Roche M. (2001), *Le droit de la régulation*, Dalloz Chronique n° 7, pp. 610-616.

Frison Roche M., Marimbert J. (2003), *Régulateurs et Juges, forum de la régulation*, Petites affiches, le quotidien juridique.

Frison Roche M.A. (2002), *La transcription en droit français de la directive européenne sur l'électricité*.

Frison Roche M.A. (2003), *Les leçons d'Enron*, Autrement.

Frison Roche, M.A. (2000), Comment fonder juridiquement le pouvoir des autorités de régulation? *Revue d'Economie Financière*, n°60 Sécurité et régulation financières.

Guillaume H., Dureaug., Silvent F. (2002), *Gestion Publique, l'État et la performance*, Presses Sciences Po Dalloz.

Haut Conseil Du Secteur Public (2002), L'État actionnaire, rapport annuel en vertu de l'article 42 de la loi sur les nouvelles régulations économiques.

Hel Thelier S. (2000), Organisation des pouvoirs et gestion publique : une comparaison des pays de l'Union européenne, in *Conseil d'analyse économique, État et gestion publique*, Actes du colloque du 16 décembre 1999.

Henry C., Tubiana L. (2000), *Instruments économiques dans la perspective du changement climatique*, Économie et Prévision, 14-1444, pp. 1-13.

Hespel V. (2003), *L'avenir institutionnel de l'évaluation des politiques publiques*.

HoussiN P.R. (1997), *Rapport au Premier ministre sur la simplification des relations entre les usagers, citoyens et entreprises, et l'administration*, Assemblée Nationale.

IDRH (2003), *Projet de guide méthodologique pour l'élaboration des stratégies ministérielles de réforme*, Secrétariat d'État à la réforme de l'État.

Inspection des Finances (1998), *Mission d'analyse comparative des administrations fiscales*, J.L. Lepine, P.F. Gouiffes, J. Carmona.

Institut Français D'administration Publique (2002), « *Le poids de la réglementation administrative* », *www.ifrap.org*.

Institut Français Des Sciences Administratives (1997), *Administration : droit et attentes des citoyens*.

Institut International De Paris La Défense (1996), Le service public et l'Europe. Antoine Lyon Caen, rapport à la demande du *Commissariat général du plan, France. Délégation à l'aménagement du territoire et à l'action régionale. Documentation Française.*

Journal Officiel (1997), Circulaire relative aux règles d'élaboration de signature et de publication des textes au Journal officiel et à la mise en œuvre de procédures particulières incombant au Premier ministre.

Journal Officiel (2000), Circulaire du 6 mars relative à la simplification des formalités et des procédures administratives.

Journal Officiel (2001), La constitution.

Joxe P. (2000), La crise d'identité de l'État in Fauroux R., Spitz B, *Notre État, le livre vérité de la fonction publique*, Éditions Hachette, Pluriel.

La Décentralisation et l'Enseignement du Second Degré (1995), Cournède B., Gastaldo S. (2002), *Combinaison des instruments prix et quantités dans le cas de l'effet de serre*, Économie et Prévision, n° 156.

Lafferrère A. (2002), Services publics : toujours plus ou toujours mieux ? in Bébéar C. ed., *Le courage de réformer*, Éditions O. Jacob.

Laffont J.J. (2000), Étapes vers un État Moderne : une analyse économique, in *Conseil d'Analyse Économique*, État et Gestion Publique, Actes du colloque du 16 décembre 1999.

Laffont J.J. (2000), *Information et économie publique*, Économie et Prévision, n° 145-4, pp. 107-115.

Laffont JJ. POUYET J. (2000), The *Subsidiarity Bias in Regulation*, juin, IDEI mimeo.

Lamarque D. (2002), *L'évaluation dans les institutions de contrôle*, Conseil National de l'Évaluation.

Lasserre B. (2000), *L'État et les technologies de l'information*, Commissariat Général du Plan, La documentation française.

Lasserre B., Lenoir N., Stirn B. (1987), *La transparence administrative*, Presses Universitaires de France.

Les Echos, (2002), Forum international de la Gestion publique, Synthèse des Débats.

Lindbeck A., Snower D. (1988), *The Insider/Outsider Theory of Employment/Unemployment*, MIT Press.

Mahieux S. (2001), La loi organique relative aux lois de finances du 1er août 2001, RFFP, Novembre.

Mandelkern (2002), Rapport du Groupe de Travail interministériel sur la qualité de la réglementation, Annexes : Circulaire du 26 janvier 1998 relative aux études d'impact, bilan du Conseil d'État sur les études d'impact (1997), bilan de l'analyse d'un échantillon d'études d'impact.

Mandelkern D. Du Marais B. (1999), Diffusion des données numériques. La Documentation française.

Marimbert J. (2002), L'office des autorités de régulation. Les petites affiches. Le quotidien juridique.

Martinand C. (1993), L'expérience française du financement privé des équipements publics. Economica.

Martinand C. (1996), La Régulation des services publics, concilier équité et efficacité, J.H. Lorenzi, S. Jacobzone rapporteurs.

MEDEF (1999), Cartes sur table, faire gagner la France.

MEDEF (2002), Concurrence : marché unique, acteurs pluriels, pour de nouvelles règles du jeu. PARIS.

MEDEF, AFEP/AGREF (23002), Pour un meilleur gouvernement des entreprises cotées. Rapport Bouton.

Ministère De La Fonction Publique Et De La Réforme De L'état (2003), rapport annuel, chapitre I, améliorer la qualité du service rendu au citoyen, chapitre II, améliorer la qualité de la gestion publique

Ministère de l'Environnement, Ministère de l'Économie et des Finances (2000), Les réformes fiscales vertes en Europe. Actes de la conférence organisée dans le cadre de la présidence française de l'Union Européenne.

Nora S. (1967), Rapport sur les Entreprises publiques, La Documentation Française, 1967

OCDE (1998), « La capacité du gouvernement à produire des réglementations de grande qualité », rapport de référence dans *Examens de l'OCDE sur la réforme de la réglementation aux États-Unis*, Paris.

OCDE (1999a), « La capacité du gouvernement à produire des réglementations de grande qualité », rapport de référence dans *Examens de l'OCDE sur la réforme de la réglementation en Italie*, Paris.

OCDE (1999b), « La capacité du gouvernement à produire des réglementations de grande qualité », rapport de référence dans *Examens de l'OCDE sur la réforme de la réglementation au Royaume-Uni*, Paris.

OCDE (1999), *Relationship between Regulators and Competition Authorities*, Paris.

OCDE (2000), Étude Annuelle, France, *Renforcer le climat entrepreneurial*, pp. 85-101,

OCDE (2001), Étude Annuelle France, *Comment ouvrir à la concurrence les industries de réseaux* ?

OCDE (2002a), *Éliminer la paperasserie: la simplification administrative dans les pays de l'OCDE*, chapitre France.

OCDE (2002b), « La capacité du gouvernement à produire des réglementations de grande qualité », rapport de référence dans *Examens de l'OCDE sur la réforme de la réglementation au Canada*, Paris.

OCDE (2002c), Politiques de régulation dans les pays de l'OCDE, De l'interventionnisme à la gouvernance de la régulation, Paris.

OCDE (2002d) *International Investment Perspectives*, Paris.

OCDE (2002e), *Distributed Public Governance, Agencies, Authorities, and other autonomous bodies*, Paris.

OCDE (2003), *The E Government Report*, Paris.

Picq J. (1994), *L'État en France, servir une nation ouverte sur le Monde*, Rapport de la mission sur les responsabilités et l'organisation de l'État ?

Rapp L. (2000), *Le droit public, l'économie et la régulation, l'exemple des télécommunications, mimeo*, université des sciences sociales de Toulouse.

Rapp L. (2001), Les nouvelles régulations économiques, commentaire de la loi du 15 mai, AJDA, juin.

Saugey B. (2003), Rapport au nom de la commission des lois constitutionnelles, de législation, du suffrage universel, du règlement et d'administration générale sur le projet de loi habilitant le gouvernement à simplifier le droit. Sénat. *www.senat.fr*.

Seban A. (2002), Les formes institutionnelles impliquées par le droit de la régulation, Les petites affiches, *Le quotidien juridique*.

Secrétariat Général du Gouvernement (2002), Qu'est ce que le Secrétariat Général du Gouvernement, à partir de l'ouvrage de M. Fournier (le travail gouvernemental (Dalloz), et Mme Py, Le Secrétariat Général du Gouvernement, Documentation Française.

Simon J. (2002), « Quelques réflexions sur la sanction en droit des affaires », *Mimeo*, Medef.

Stoffaes C. (1995), *Services Publics, questions d'avenir*, Commissariat Général du Plan/Éditions Odile Jacob.

Vimont C. (2002), Libérer les entreprises, in Bébéar C. éd., *Le courage de réformer*, Éditions O. Jacob.

Waintrop F. (1999), *Enquête portant sur le renforcement des relations entre les administrations et les citoyens*, Délégation Interministérielle à la Réforme de l'État.

World Economic Forum (2002), The Global Competitiveness Report 2001-2002. M. Porter, J. Sachs, J. Arthur, Harvard University, P. Cornelius, K. Schwab World Economic Forum.

APPENDICES

APPENDIX 1. Modernisation of the financial management of the State

The modernisation of the financial management of the State has been organised in the form of major reform projects. It follows from a long period of relative stagnation since the beginning of the 1970s, and the failed attempt to rationalise budgetary options (Guillaume *et al*. 2002).

1. Revision of the budgetary expenditure management framework.

The new Organic Law on the Financial Laws *(LOLF)* promulgated on 1 August 2001 modernises the Organic law of 2 January 1959.[100] The reform will be fully applicable on 1 January 2006. This legislation aims to:

- Modernise public management by setting objectives and measuring results;
- Increase transparency of budgetary information while giving more flexibility to government departments in managing the resources allocated to them.

This reform delegates a large part of the powers, relating to the allocation of budgets, to the managers of the public sector, while making them responsible for reporting and performing quality. This is carried out concurrently with the move towards performance quality and quality monitoring. In practical terms, the current 848 budget heads have been regrouped into 100 to 150 fungible programmes, as expenses are no longer budgeted for by type but by programme, with the intention of meeting precise and assessable objectives. Within the programmes, the presentation of funds by title becomes indicative, with the only reservation being that a ceiling be placed on the wage bill, the fungibility being organised asymmetrically in order to favour investment and expenses outside the wage bill. Furthermore, funds may be cancelled by decree within a limit of 1.5% of the budgetary funds, allowing budgetary control during the year without the need for an amending finance law. Funds must be accompanied by an annual performance plan, to work out the expected results according to the associated costs. Parliament is more involved in the running of the budget and better informed of the situation relating to the finances and national assets of the State. This reform which represents a managerial and cultural revolution, is accompanied by the training of officials and the dissemination of the methods of management supervision.

2. Modernisation of accounting and computing management tools.

The review of the budgetary framework is accompanied by the modernisation of accounting rules: Article 30 of the Organic law stipulates that accounting rules shall, in future, be those of businesses, except in the case of particular requirements, with annual accounting. The ACCORD *[Coordinated Accounting, Order to Pay and Settlement of State Expenses Application]* management system is being set up to deal with all data on expenses and budgetary, accounting and management data, according to processes common to financial directors, who decide the expenses, to financial controllers, who authorise them, and to accountants, who enter them in the books and pay them.

The modernisation is also being brought about by using tools enabling one-stop shops to eventually be set up in terms of tax services. Consequently, a very large-scale computer is currently being used to merge the management of all the services provided for tax payers from declaration information to payment. From now to 2008, the COPERNIC system will include an interconnected file with all tax information relating to a tax payer, and may be queried from various points of the network, including from call centres. This tool enables both the service provided to citizens to be strengthened, and the efficiency of the tax authority to be improved.

APPENDIX 2. Is the civil service an instrument at the service of the public authorities?

The great founding principles were laid down by the French Revolution, in particular, the Declaration of the Rights of Man and of the Citizen of 1789: free access for citizens to public office depending on their ability and obligation imposed on public servants to account for their administration. Consequently, the senior civil service was organised around "senior branches" recruited in special schools.

The French Civil Service Act, adopted in 1946, tried to unify the civil service by giving it a common framework. It did not, however, abolish regulations existing in the ministries leading to a large number of special branches being maintained, although the unification of the salary scales gave rise to a degree of uniformity. Following the laws of 1983 and 1984, the Act also related to territorial and hospital authorities. A department with interdepartmental powers under the Prime Minister is responsible for the management of the civil service. In practice, the Council of State exercises supreme control over the management and the way of thinking of the Department. The Budget Department is also strictly involved in all regulatory matters relating to the Civil Service.

Up until 1946, the principle of an Act was resisted by union organisations because of its regulatory and unilateral nature. The Act of 1946, revised in 1983, is the result of a compromise between the State's prerogatives of public authorities and recognition of the full citizenship of civil servants, in particular on a union level. It is based on 4 principles:

- the State is not an ordinary employer, and its relationship with its employees does not, fall under the common law.
- management is carried out according to statutes and regulations, and not through contracts
- the principle of career and separation of grade and job: employees are given a permanent appointment to a grade and are not tied to a specific job. This is both a guarantee for the employee and a multi-purpose tool.
- participation: the act recognises the right to form trade unions and allows employees to participate through their representatives both in the organisation of the services and management of personnel.

Principles blurred by a maze of management rules

The principles on which the French Civil Service Act is based, although they are clear and shared by all employees, have over the years been blurred by a large number of increasingly complex management rules, which have restricted the initiatives and recognised rights of managers. Whether this relates recruitment methods, promotion, bonus awarding, working hours or whether it is a matter of specifying the method of managing numerous special branches created over the years, there has been an emergence of legislation, rules and restrictions with disastrous consequences on the management of human resources:

- Bureaucratisation: the manager’s time is taken up with the application of regulations, leaving aside a more qualitative and anticipative management of needs.
- Prevention of mobility: the differences with regard to working conditions and bonuses reduce flexibility of mobility or redeployment.

- Recruitment of contract workers: the inflexibility of management together with the difficulty in redeploying staff, leads to the recruitment of numerous contract workers to meet new demands and, therefore, sometimes an uncontrolled increase in public office.

- Egalitarianism rather than equality: even though since 1798, it is recalled that the method of managing public servants should encourage the emergence of skills and talents, the running of government departments favours length of service instead and, therefore, demotivation of employees. This drift towards egalitarianism gives rise to the question of union-management co-operation, even though the State employer has played its role in resisting confrontation.[101]

This "regulatory maze" prevents overall direction and implementation of a policy to reform human resource management which would give managers new leeway. Reforms, therefore, seem necessary.

Reforms to improve information tools and daily management of public servants

Taking stock of existing circumstances is a prerequisite to any reform. The Public Office Watchdog was set up in 2000 to make up for the absence of information on the real situation relating to staff in the civil service. This interdepartmental body is responsible for compiling statistics on the workforce and drawing up procedures to enable the projected management of jobs and skills. Furthermore, this tool should enable the public authorities to deal with mass retirement by managing public office through forecasting.

To stop the drift towards egalitarianism, assessment/grading was replaced by the simple practice of grading which restricted the promotion of employees on length of service alone. Assessment/grading should, in the future, be based on a real dialogue between a team leader and his colleagues and on an objective evaluation of the work. It should enable a differentiation to be made with regard to the promotion of employees who have proven to be effective or to have a particular skill, and start up a thought process about the future and the development of each employee' duties.

Trying to ascertain performance: reconciling civil service culture with new managerial values

- *Finding a good level of management.* Should the management of the civil service remain centralised or should it be decentralised as far as possible towards the departments, by delegating responsibility for recruitment, mobility and promotion of its employees to the managers? This question is important within the framework of the LOLF which introduces responsibility and performance (see Appendix 1).

- *Reconciling the notion of career with the need for expertise and skills.* The career, based on competition, should be reconciled with the recognition of the jobs and needs for new skills and expertise. This is not impossible provided that the tools (formalisation by contract, creation of single branches etc.) are found, enabling government departments to have skilled personnel and the civil servant to be assured of developing his career.

- *Ensuring competitiveness of the employer State*. Tools are necessary to maintain the attractiveness of the civil service, and to identify, recruit, manage and retain skilled personnel.

- *Adapting the civil service to European stakes.* Access of citizens of the Community to the civil service, apart from high-ranking government posts, upsets the current framework. Should the career civil service resist the need to take into account past experience? How should internal promotion systems be co-ordinated?

APPENDIX 3. Procedures for preparing laws and decrees

Figure A1. Procedures for preparing draft legislation (originating from Government)

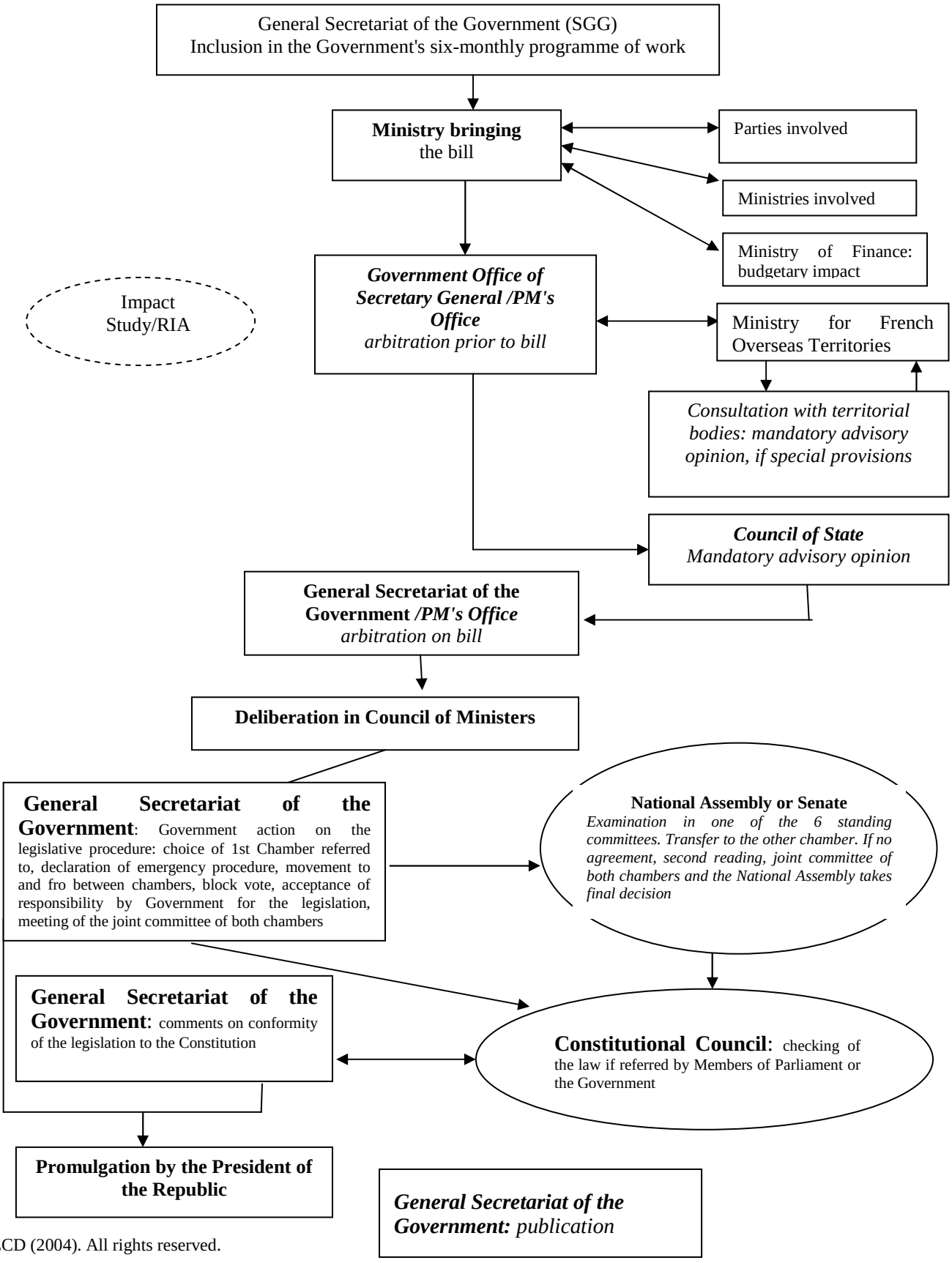


Figure A2. Procedure for drafting legislation, by edict

Government initiative

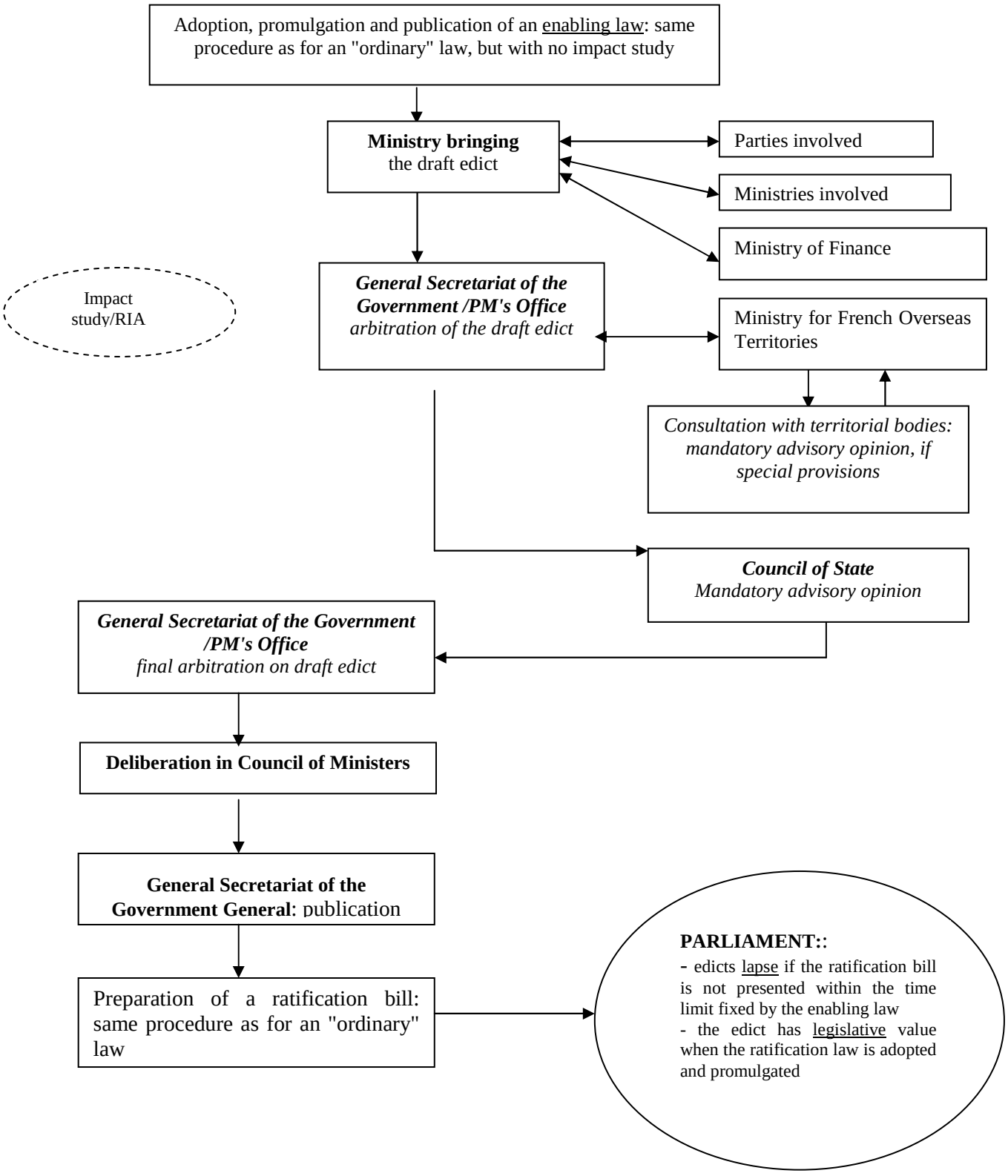
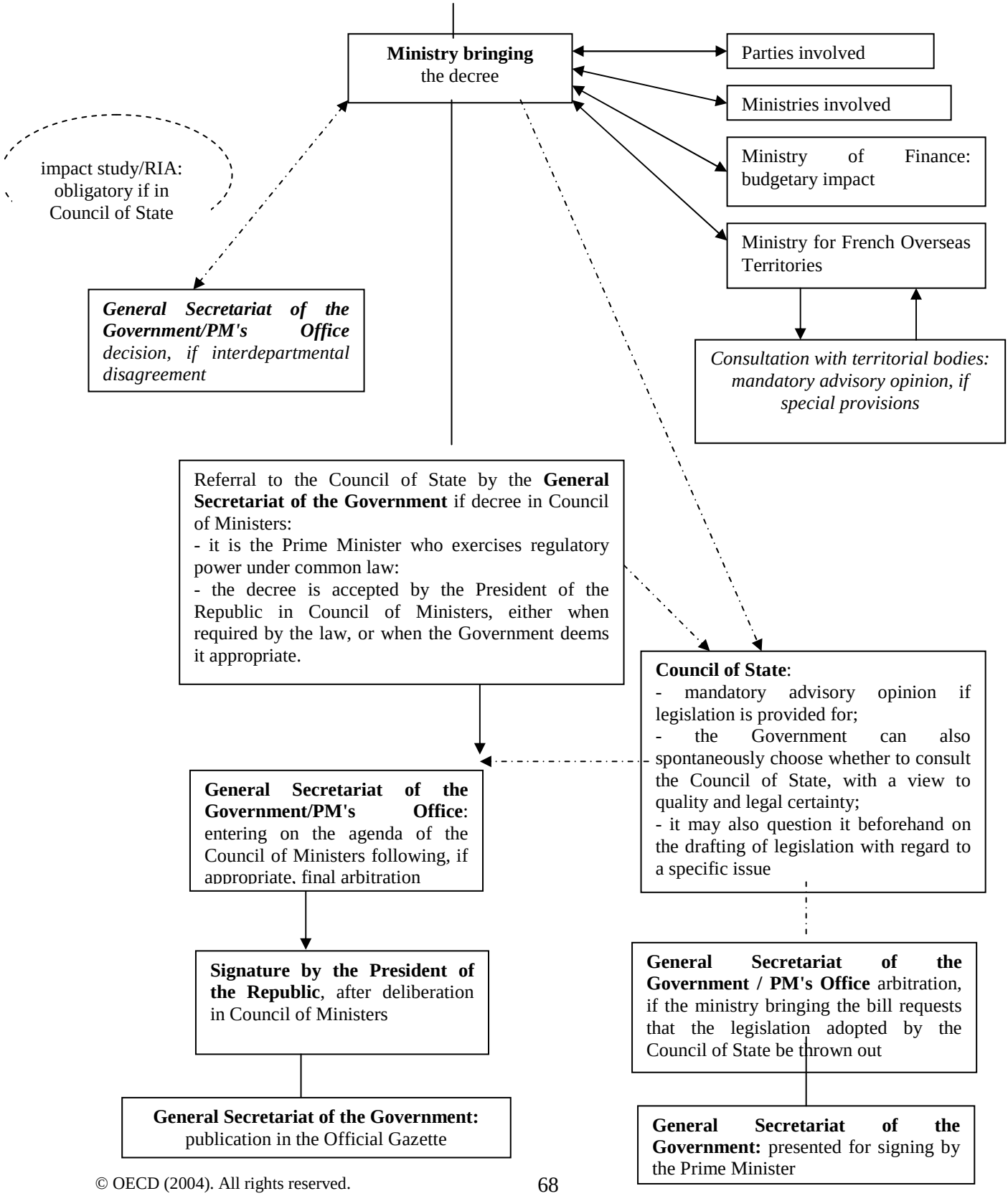
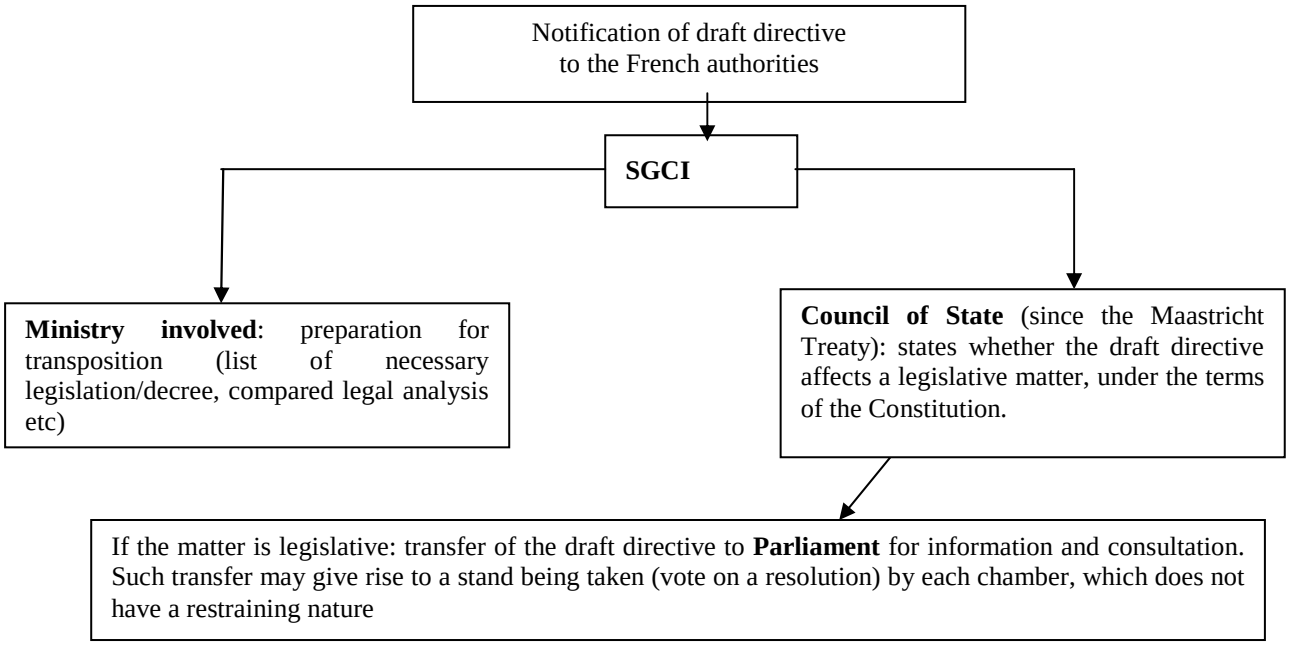


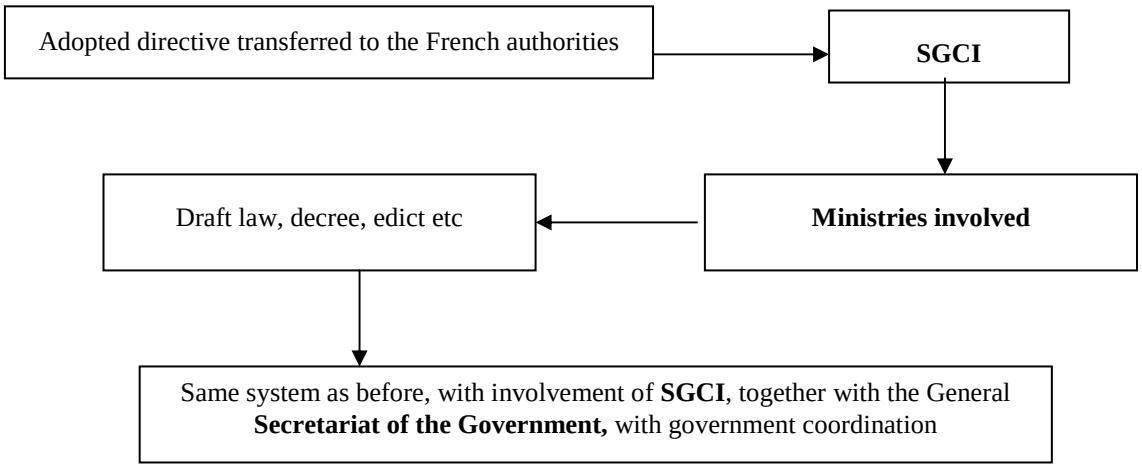
Figure A3. Procedure for the preparation of a regulation, draft decree



APPENDIX 4. Preparation of European directives and transposition into French law



TRANSPOSITION OF EUROPEAN DIRECTIVE



APPENDIX 5. Division of regulatory powers across levels of government

Policy area	Division of powers following the 1982-84 decentralisation laws, Before the 2003 reforms				Division of powers currently being envisaged, After the 2003 reform			
	National	Regions	Departments	Municipalities	National	Regions	Departments	Municipalities
Security, Police	♦			♦	♦			
Justice	♦				♦			
Fire protection	♦			♦	♦			♦
Civil Protection	♦				♦			
Kindergarten equipment and current expenditure, except pedagogical content				♦				♦
Elementary Schools Equipment and current expenditure except pedagogical content				♦ Element. Schools	♦			♦ Element Schools
Secondary schools Equipment and current expenditure except pedagogical content		High school, last grades	High school, first grades			High school, last grades	High school, first grades	
Training for adults	♦	♦		♦		♦		
Health insurance	♦				♦			
Social services for youth and family			♦	♦ Child care			♦	♦ Child care
Social insurance Pensions	♦				♦			
Social Housing	♦		♦	♦	♦		♦	♦
Urban planning	♦			♦82	♦			♦82
Water treatment				♦				♦
Waste treatment			♦	♦			♦	♦
Cemeteries				♦				♦
Slaughterhouse	♦			♦	♦			♦
Environmental Protection	♦				♦			
Concerts, theatres	♦	♦	♦	♦	♦	♦	♦	♦
Museums, Art Galleries, libraries	♦	♦	♦	♦	♦	♦	♦	♦
Public parks and gardens	♦	♦	♦	♦	♦	♦	♦	♦
Sports et leisure	♦		♦	♦82	♦		♦	♦82
Roads	♦		♦82	♦82	♦		♦	♦
Highways	♦				♦			
Urban transports				♦				♦
Railways	♦	♦			♦	♦		
Ports	♦			♦	♦	♦	♦	♦
Airports				♦	♦	♦	♦	♦
Gas	♦				♦			
Water (irrigation)	♦		♦		♦			
Agriculture, Fishing	♦		♦		♦		♦	
Electricity	♦			♦	♦			
Commerce	♦				♦			
Tourism	♦	♦	♦	♦	♦	♦	♦	♦

APPENDIX 6. Independent Administrative Authorities in France

Name of the authority	Date/law created Reform	Role, duties
CIVIL LIBERTIES		
Ombudsman of the Republic	Law of 3 January 1973/1989	Mediation, final appeal authority with regard to government departments
National Commission on Information Technology and Civil Liberties (CNIL)	Law of 6 January 1978	To protect the automated processing of personal data
Commission on Access to Administrative Documents	Law of 17 July 1978	To ensure effective transparency of administrative documents
Electoral Campaigns and Political Financing Supervisory Board	15 January 1990	To check the legality of financing of political parties within the scope of electoral campaigns
National Supervisory Board for Electoral Campaigns relating to the election of the President of the Republic	Law of 14 March 1964	To check the legality of the election of the President of the Republic
Committee for Financial Transparency of Political Life	Law of 11 March 1988	Information on the net personal assets of elected members.
National Committee for Security Intercepts Control (CNCIS)	10 July 1991	To deal with confidential management of telecommunication correspondence
Consultative Commission on National Defence Secrecy (CCSDN)	Law of 8 July 1998	FRANCE: TO BE SPECIFIED
Children's Advocate	Law of 6 March 2000	Mediation, protection of children
ECONOMY		
Competition		
Competition Council	1 December 1986	To ensure the protection of the right to competition.
National Commercial Facilities Board	Law of 29 January 1993	To deal with authorisation for enlargement of hypermarkets.
Telecommunications		
Telecommunications Regulation Authority (ART)	26 July 1996	Encourage the practice of competition in the telecommunications field, deal with the supply and financing of all components of the public telecommunications service
Energy		
Energy Regulatory Board (gas and electricity since 2003)	10 February 2000, 3 January 2003	To guarantee right of access to the networks, deal with technical operations, guarantee the independence of the electricity transmission network
Financial Sector		
Stock Exchange Commission	28 September 1967, 2 July 1996	To protect savings, close supervision of management of assets and financial markets
Banking Commission	Law of 24 January 1984	To ensure the close supervision of banking institutions
Credit Institutions and Investment Companies Board	Law of 24 January 1984	To grant approval to banks and market operators. Give advice regarding bank mergers
Shares and transfers commission	Law of 6 August 1986	To ensure that the State's financial interests are protected during the privatisation process.
Financial Markets Board (CMF)	Law of 2 July 1996	To ensure the regulation and rules of good conduct of market and investment services.
Insurance Supervisory Board	Law of 31 December 1989	To ensure the close supervision of insurance
Mutual Insurance Companies and Provident Societies Supervisory Board	Law 31 of 8 August 1994	To ensure the close supervision of mutual insurance companies

Name of the authority	Date/law created Reform	Role, duties
Central Rating Bureau (building insurance)	Law of 4 January 1978	Settles disputes regarding compulsory insurance premiums for building work
Financial Management Disciplinary Board (CGDF)	Law of 2 July 1996	Disciplinary power regarding managers of collective investments (UCITS)
Other		
Permanent Central Commission for matters relating to Agricultural Profits	Law of 13 January 1941	Calculation of agricultural profit in the event of an appeal before the Council of State regarding excess power
Commission for Tax Offences	Law of 29 December 1977	Gives approval prior to any complaint lodged by government departments aimed at penalties relating to tax matters.
COMMUNICATION, PRESS		
Conseil Supérieur de l'Audiovisuel [Broadcasting control authority]	Law 1984, reformed in 1989	To manage licences and radio and television allocation slots
Publications and Press Agencies Joint Commission	Decree of 25 March 1950	Non-modifiable decision on tax relief for the press
High Council of Agence France Presse	Law of 10 January 1957	Ensure compliance of the agency's obligations regarding the accuracy and objectivity of broadcast information
Opinion Poll Commission	Law of 19 July 1977	Proposes rules aimed at ensuring the objectivity and quality of polls and monitoring the conditions of their broadcasting and marketing.
Film Industry Ombudsman	Law of 29 July 1982	To issue injunctions.
HEALTH AND SAFETY, ENVIRONMENTAL HEALTH		
Council for the Prevention and Fight against the Use of Drugs (CPCD)	Law of 23 March 1999	To ensure the implementation of the law on drug use
Airport Nuisance Control Authority (ACNUSA)	Law of 12 July 1999	To ensure the application of the law on airport nuisance control.
National Commission for Security Ethics	Law of 6 June 2000	
Assessment		
Assessment Board for Public Institutions of a Scientific, Cultural and Professional Nature	Law of 26 January 1984, + law of 10 July 1989	Assessment of the performance of public institutions.

NOTES

1. See Council of State report 1991, Legal Security.
2. Council of State, ditto.
3. Fauroux (2000).
4. SGG (2003).
5. Saugey (2003).
6. Cf. World Economic Forum classifications which can be discussed but which are also used by official initutions for internal debate. Hel Thélier in CAE (2000).
7. Economic Advisory Committee, Cieutat 2000 report.
8. It is estimated that there are between 1 500 and 1 700 statutes, of which 900 are still in existence and 190 are dying out, 300 employment statutes and 300 public institutional statutes.
9. Margerie (2002).
10. HCSP (2002).
11. OECD (2003).
12. Cf. Pierre Joxe's analyses on the State's identity crisis, J. Kerna's on State delays in managing or T. Bert's thoughts on the reform of a Finance Ministry.
13. According to Roger Fauroux in 2000.
14. Information report on State reform abroad. Gérard Braun (2001).
15. See Box in Section 4.
16. See Box in Section 3.
17. Decree of 31 January 1935 providing for the organisation of administrative services for the Chairmanship of the Council. At that time the British system was used as an example.
18. See Box on electronic administration, Section 4.
19. The constitutional law, legislation, universal suffrage, regulations and general administration committee for the Senate and the conitutional law, legislation and general Republic administration committee in the National Assembly. Parliamentary committees are working parties specialising in examining general or specific problems, particularly legislative, before they are discussed in a public session.
20. Houssin (1997), Carcenac (2001), De Roux *et al*. (2002), De la Coste (2003).
21. In addition, the government may decide not to follow the advice of the Council of State in cases where the latter is not based on legal or constitutional criteria but on the criteria of administrative appropriateness, although in practice this is rare.
22. It includes economics, finance, industry, budget, external trade, craft, SMEs, independent professions, consumer goods. This Ministry is referred to in the text under the generic term of Ministry of Finance.
23. - If there is a disagreement between the two assemblies or if the government has said that it is urgent, the Prime Minister may convene a joint mixed committee to propose wording for the clauses that are still in question. The text drawn up by the mixed committee may be submitted to the two assemblies for approval. No amendment is admissible without the government's agreement. If there is no agreement the government may require the National Assembly to give a definite ruling on it after the bill has been read again.

    - The Government may also declare the inadmissibility for any amendment or element of the legislative procedure if it meant that the law goes beyond its scope in a constitutional sense.

    - The Government may ask for a "blocked" vote on a piece of legislation bill only keeping the amendments that it has proposed or accepted.

- The Government may take responsibility for a piece of legislation under the terms of Article 49-3 of the constitution. The legislation is deemed to have been adopted unless a censure motion is voted for by the majority of members of Parliament.

24. If the first efforts at regrouping departments into administrative constituencies dated from 1955, the actual creation of regions dates from 1964. In 1972 the Region became a public corporation with a Regional Council elected by indirect universal suffrage.

25. For example, Brittany, a strong historical body, was divided up and its historical capital put in another region.

26. Paris is a special case in that the City of Paris has only had a mayor elected by universal suffrage since the reform of 1976 and that the constituency currently includes both a commune and a department.

27. Hortefeux, Levôtre (2003).

28. Barel *et al*. (2001).

29. Of this total, 4.7 million acts related to budgets and internal personnel management, and 690 000 acts to the police. Regulatory acts included 290 000 general decisions, 201 000 decrees relating to markets, loans, concessions and leasing and 924 000 town planning acts.

30. On the other hand prefects win at higher level courts in three quarters of the case. On average over the last ten years fewer than 50 decisions per year have gone against the prefects in the final analysis. Town planning appeals represent approximately 30% of referrals while deals and contracts also represent an increasing share at 30%.

31. DGCL (Local authorities board) 2001.

32. 1995, 1999, 2000 reports.

33. Margerie (2002).

34. This department was initially set up in 1948 to co-ordinate France's activities with regard to the Organisation for European Economic Co-operation which was the forerunner of the OECD. The SGCI has seen its role extended to include European co-operation since 1958. It currently consists of 160 people.

35. Les Echos, March 2003.

36. Implementing the "Invoices" directive under the amended Finance Act of 2002 is an example of this.

37. Cohen Henry (2002).

38. Baumol, Panzar Willig (1982).

39. Bergougnoux (1995).

40. Law Commission 2002

41. Waintrop, 1999.

42. According to a survey conducted in 1962, there were already 4700! (Waintrop 1999) (France: Recent estimate?)

43. As with the attempt to reform social security and pensions in autumn 1995.

44. Cf www.pco-bcp.gc.ca/raoics-srdc

45. Cf. 1999 OECD report on reforming regulations in the Netherlands.

46. Under constitutional council decision No. 99421 on the codification law.

47. The légifrance site, http://www.legifrance.gouv.f, www.journal-officiel.gouv.fr; regulated under the Decree of 7 August 2002, summarises all public law that is accessible on line in France. It is a unique site run by the Prime Minister's office. Since the end of 2001 it has been decided that the dissemination of information on line had to be made a legal obligation, which required the law to be amended. The Act of 2 July 2003

authorises the Government to regulate this obligation by ordinance. There are also other websites providing access to the law: *www.adminet.fr*,

48. It is even possible to access even older laws on the Internet dating back to the Ancien Régime, some of which still have legal force today or have been incorporated into more modern laws. (Cf www.droit.org, 1566 law on the inalienability of the royal domain).

49. On the assemblies' sites: www.sénat.fr; www.assemblee-nationale.fr.

50. http://www.legifrance.gouv.fr.

51. It also offers the possibility of consulting other national public sites, foreign States' sites and European institution or international organisation sites which provide legal information. Licences to reuse data held by the State may be granted by way of an agreement to people who wish to make use of these data as part of their work whether it is commercial or not.

52. Some examples quoted are a 90 page circular for applying a reduced rate tax for businesses with a turnover of less an 40 000 euros or implementing the Invoices directive under the amended finance law of 2002.

53. Council of ate, transparency and secrecy 1995. Transparency 1987.

54. Their checks may be legal a financial, they may deal with the running of services, technical aspects or even, more generally, applying a ministerial policy.

55. Pro memoria., all civil and commercial disputes represent 2 200 000 decisions, 20 000 for the Court of Appeal.

56. Such as incompetence of the authority making the decision, mistakes in form and procedure, violation of the rule of law, perverting power.

57. Thus the ombudsman has recently increased resources in difficult districts to develop a local ombudsman system if possible in the complainant's language.

58. Doctors, midwives, dental surgeons, lawyers, chartered surveyors, chartered accountants, architects, pharmacists, veterinary surgeons, physiotherapists and chiropodists

59. The 160 CCIs have a budget of 3 400 million euro and 26 000 employees, and also have an important training role, with 500 000 trainees. They manage 121 airports (see Section 5), 180 ports, numerous bonded warehouses, road networks, bridges, logistics parks and 55 conference centres.

60. See 2000 Économie et Prévision document on the financial analysis of the greenhouse effect, the conference proceedings on green tax reforms organised under the French presidency of the European Union in October 2000 (Ministry of the Environment et. al. 2000). And working documents of the department of economic studies and environmental assessment at the Ministry of the Environment (www.environnement.gouv.fr). See also Cournède Gastaldo 2002).

61. www.environnement.gouv.fr/actua/cominfos/dosdir/dirppr/reducgaz.htm.

62. Chidiak 2000.

63. AJDA 1985.

64. Delalande 2002.

65. It is based on assessments by the Council of State, secondary work related to the preparation of the Mandelkern report.

66. Impact analysis of regulations, best practices within OECD countries. Box 3 page 247.

67. This means that the OMB administration examines around 600 regulations each year, i.e 15 to 17% of the rules published (OECD 2002, from interventionism to regulatory governance).

68. In this respect, the French language draws a distinction between the term "réglementation", which involves the preparation of general rules applying to financial employees, and the concept of "regulation", which

corresponds to the application of the rule, and defines the delegated field of action of the independent regulators (Frison Roche 2002).

69. See OECD 2002, main report, Regulation policies in OECD countries, from interventionism to regulatory governance.

70. There are also agencies in the fields of drugs and food safety but they have no independent regulatory rights under the terms of the French definition of independent administrative authorities. They are public institutions.

71. See Council of State 2001, p. 267.

72. Resulting from a decision of the Jurisdiction Court of 1873.

73. Council of State 2001.

74. See Hortefeux, Levôtre 2003.

75. In the sense of power to lay down general rules, as opposed to regulation which relates to the application of the rule.

76. According to these decisions, it is, by nature, a regulatory power to apply the law and in no event an autonomous regulatory power. This power relates to limited measures, and remains strictly subordinated and specialised.

77. Majone. Reference to be specified.

78. Reference to be specified. See B. Du Marais.

79. Which correspond to British boards.

80. Even if this situation is controlled by the decisions of the Constitutional Council

81. Council of State 2002.

82. As shown by the 1994 annual report.

83. The Ombudsman of the Republic can address Parliament when his annual report is submitted, but has no regulatory role in economic terms.

84. The civil code (1804), the code of civil procedure (1806), the commercial code (1807), the code of criminal procedure (1808) and the penal code (1810).

85. The codes also give rise to concordance tables linking laws and code numbers.

86. http://www.legifrance.gouv.fr/WAspad/ListeCodes. Some of these codes are also available in English and Spanish on the website

87. Following the extension to all users, COSIFORME will be renamed COSIFORM.

88. The Commission for Administrative Simplification takes over the Administrative Forms Registration Centre and COSIFORM which existed beforehand.

89. Identity card application, supplementary benefit application, Annual Declaration of Social Security Data, applications for family allowance forms).

90. It is made up of language specialists, associations assisting users in difficulty and government representatives, and also representatives from society and artists, singers and writers.

91. This is carried out by bringing together 850 tax collection offices (answerable to the French Inland Revenue Department), and 800 revenue offices, and transferring management of corporate tax and income tax payments to the French Inland Revenue Department. (See Box: modernisation of public management).

92. See Germany report, Box on measurement of the administrative burden.

93. The OECD also carries out specific projects on e-government, with numerous conferences organised in 2002, a summary report published in 2003 (Reference), and specific country studies on the subject (Finland).

94. Cf Accenture report, 2003. E-Government Leadership, Realizing the Vision.

95. Cf report by Basquiat in 1998, report by M. Carcenac in 2000. Legal reality of administrative law, July, August 2001.

96. Economic Outlook No. 66.

97. These terms taken from labour economics refer to individuals already in place, and assured guaranteed security and income, which individuals outside the system cannot receive. See Lindbeck Snower (1988).

98. Lafférère in Bébéar (2003).

99. Boutih in Bebéar (2003).

100. Mahieux (2001). Also see the Annual Study, France 2003, special public expenditure section.

101. Council of State, "Public rapport 2003, Jurisprudence and opinions of 2002, Prospects for the Civil Service" Studies and documents n°54.