

Chapter 2

Institutional capacities for Better Regulation

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

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

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

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

Assessment and recommendations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Box 2.1. Comments from the 2000 OECD report

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

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

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

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

Background

The Spanish public governance context

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

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

Decentralisation and public administration modernisation remain key areas of further change and development and adjustment. More recently and specifically, a major restructuring of the State executive took place in April 2009.³ The aim was to streamline the structure and make it more effective,⁴ with a view to accelerating implementation of the so-called Plan E (*Plan de Estimulo de la Economia y del Empleo*)⁵ launched to counter the economic crisis. Further to these changes, the Prime Minister is now supported by a third Vice-President. The creation of a new Vice-Presidency -the Ministry for Territorial Policy - reflects a decision to structure government action along three main lines: to recover from the economic crisis and create new jobs; to carry out reforms to bring Spain into the 21st century; and to strengthen social and territorial cohesion.⁶ To raise the profile of territorial policy, the Ministry of the Presidency has taken over the public governance functions (*Función Pública*) of the former Ministry of Public Administration.

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

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

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

The Head of State

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

The executive

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

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

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

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

- **The Ministry for the Treasury** (*Ministerio de economía y hacienda*). It holds the second Vice-Presidency. The Ministry is responsible for proposing and executing the general directives and measures supporting the economic policy of the government and, especially, policy relating to the inland revenue, budgets and expenditure, and public companies.
- **The Ministry for Territorial Policy** (*Ministerio de Política Territorial*). It includes the core functions of the former Ministry for Public Administration, covering issues related to co-ordination between the AGE and the ACs (essentially regional policy).¹¹

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

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

The legislature

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

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

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

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

The judiciary

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

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

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

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

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

The Constitutional Court

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

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

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

Regulatory agencies

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

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

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

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

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

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

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

Subnational levels of government

Spain is divided into 17 Autonomous Communities (ACs)²² and two Autonomous Cities (*Ciudades con Estatuto de Autonomía, Ceuta y Melilla*). Each AC comprises one or several provinces up to a total of 50 across the national territory. In turn, each province is divided into a variable number of municipalities, for a total of 8 111 overall.

General policy co-ordination and the role of the Moncloa

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

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

The role of the Moncloa

It has several key functions in the policy making process:

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

- **Policy evaluation.** The *Moncloa* is not directly involved in the development of policy. However, the Private Office and the Economic Office of the Prime Minister are responsible for evaluating the initiatives of line ministries. Through mirror units, they oversee the flow of policy information addressed to the Prime Minister; provide advice; and assess the activity of the AGE (AEVAL also carries out evaluations as part of its Annual Work Programme).
- **Gatekeeping.** The formal supremacy of the Prime Minister over line ministers means that the *Moncloa* acts as gatekeeper for government business. It can return ministries' drafts, bills or other proposals for further work on the basis of policy considerations. However, the *Moncloa* is a political structure, not an administrative entity. The Prime Minister is briefed regularly only on the most important and topical dossiers. The General Commission of General Secretaries and Sub-secretaries (CGSYS) is the key filter for determining what goes into the agenda of the Council of Ministers for discussion, together with the Delegated Commission for Economic Affairs regarding economic issues (see below).

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

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

Inter-ministerial co-ordination

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

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

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

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

Figure 2.1. Ministry of the Presidency Organisation chart

Organigrama



Source: Official website of the Ministry of the Presidency.

Developments in State Better Regulation institutions

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

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

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

Key institutional players for Better Regulation policy at the national level

The executive centre of government

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

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

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

Ministry of the Presidency

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

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

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

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

Co-ordination across central government on Better Regulation

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

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

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

Regulatory agencies and Better Regulation

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

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

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

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

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

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

The legislature and Better Regulation

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

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

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

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

The judiciary and Better Regulation

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

Three issues stand out as relevant to Better Regulation:

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

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

Other important players

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

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

Box 2.4. AEVAL

The National Agency for the Evaluation of Public Policies and Quality of Services (AEVAL) was established in 2007³⁵ to enhance the performance of the public service and improve general understanding of the effects of public policies and programmes; to promote a more rational public spending and allocation of resources; and to enhance transparency, accountability to citizens, and their participation. By contributing to the strategy to reduce administrative burdens, AEVAL supports the government's efforts to boost the competitiveness of the Spanish economy.

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

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

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

Council of State

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

Box 2.5. The Council of State

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

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

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

The Council must be consulted in the cases provided by in the Organic Law of the State Council³⁹ and other laws, notably in relation to proposal of subordinate regulations (royal decrees and administrative regulations). Consultation is optional in all other cases. The ruling of the Council of State is the last piece of advice gathered by the government before it adopts a proposal. The Council's rulings are not binding but the government must indicate explicitly any divergent opinion expressed by the Council in the preamble of the regulation. The Council of Ministers generally follows its advice but if not, the policy adopted must show clearly that its advice was considered. The Council's opinions are made public.

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

Economic and Social Council

The Spanish Economic and Social Council (*Consejo Económico y Social, ESC*) is a government advisory body made up of employees' organisations, trade unions and other representatives of public interest. It is provided for in the Constitution of 1978 and was established in 1991.⁴⁰ The ESC is a forum for reaching compromise and understanding between the social and economic partners.

Box 2.6. The Economic and Social Council

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

importance in regulating these fields.

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

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

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

Institutional support for the e-Government strategy

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

Resources and training in the AGE

Resources

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

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

Training

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

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

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

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

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

Training covers:

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

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

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

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

Notes

1. Law 50/1997 *Ley del Gobierno* was an important step in efforts to modernise political and administrative processes in the central administration. The law sets general good practice requirements on ministries for the development of regulations (including on impact assessment and public consultation). The Spanish Administrative Procedure Law of 1958 has been reformed twice in order to increase accountability and transparency across the administration. It modernised decision-making and the functioning of the State.
2. As one interlocutor put it to the OECD peer review team, Spanish society has changed but the modernisation of the public administration has not kept up. Another interviewee put it that “Spaniards are masters in producing laws and then ignore them...”.
3. See: Royal Decree 542 of 7 April 2009.
4. See: www.la-moncloa.es/ActualidadHome/2009/220409Congreso.htm (last accessed 10 August 2009).
5. See: www.plane.gob.es.
6. See: www.la-moncloa.es/ActualidadHome/2009/070409CambioGob.htm (last accessed 10 August 2009).
7. See: Art. 56 SC.
8. See: Title IV (Art. 97-107) of SC and Law 50/1997 (*Ley del Gobierno*) and Law 6/1997, which set the general framework for the organisation of the central executive.
9. See: www.boe.es.
10. See: www.cepc.es.
11. See: Royal Decree 1040/2009.
12. Sometime the system is therefore characterised as “imperfect bicameralism”.
13. See: www.senado.es/caract_territ/index.html (last accessed 23 February 2010). The reform of the Senate in relation to its territorial representation has been the subject of political and academic discussions for many years. On the issue, see: the Report by the Council of State on Modifications of the Spanish Constitution (2006), pp.222ff, at: www.consejo-estado.es/pdf/MODIFICACIONES%20CONSTITUCION%20ESP.pdf (last accessed 23 February 2010).

14. See: Art. 56.3 SC.
15. See: Arts. 117.5; 149.1.5 of the SC, and Art. 3.1 Organic Law 6/1985 (*Ley Organica del Poder Judicial, LOPJ*).
16. The Council (www.poderjudicial.es) is regulated by the Judiciary Act 6/1985.
17. The “judicial district” is a 19th century concept that warrants that disperse populations will have close access to justice. Such districts normally include several municipalities. Nowadays, courts (*juzgados*) are created based on the burden of cases to be judged, in all or several of the different jurisdictions (civil, criminal, administrative, social-labour).
18. As per Art. 53.2 SC.
19. Enshrined in the Organic Law 2/1979. See: www.tribunalconstitucional.es.
20. See: Law 6/1997 on the organisation and functions of the General State Administration (LOFAGE). See also 2006 law on State Agencies.
21. See: Art. 2 of Law 28/2006.
22. The seventeen Autonomous Communities are: Andalusia, Aragon, Balearic Islands, Canary Islands, Cantabria, Castile-La Mancha, Castile and Leon, Catalonia, Community of Madrid, Foral Community of Navarre, Valencian Community, Extremadura, Galicia, Basque Country, Principality of Asturias, Region of Murcia and La Rioja.
23. Information drawn from www.sgi-network.org/pdf/SGI09_Spain.pdf, p.28 (last accessed 17 August 2009).
24. *Ibid.*, p.29 (last accessed 17 August 2009).
25. See: www.mpr.es/Ministerio+de+la+Presidencia/ministerio.htm (last accessed 10 August 2009).
26. See: Royal Decrees 542 and 640 of 2009.
27. See: Art. 4 of Royal Decree 1040/2009, at: www.060.es/te_ayudamos_a/legislacion/disposiciones/45154_LEG-ides-idimp.html (last accessed 25 February 2010).
28. See: Royal Decree 1039/2009.
29. The General-Directorate for the Promotion of e-Government has oversight of e-Government.
30. A few have shown initiative and commitment (in the Bank’s case, data reuse, and attacking internal bureaucratic procedures, in the Health Agency’s case, setting up a “virtual office” for processing authorisations). Such initiatives and tools are usually communicated on their websites and at public workshops. The

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

31. See: Art. 48.16 of the Spanish Telecom Act.
32. See: www.senado.es/caract_territ/index.html (last accessed 23 February 2010). The reform of the Senate in relation to its territorial representation has been the subject of political and academic discussions for many years. On the issue, see the Report by the Council of State on Modifications of the Spanish Constitution (2006), pp.222ff, at: www.consejo-estado.es/pdf/MODIFICACIONES%20CONSTITUCION%20ESP.pdf (last accessed 23 February 2010).
33. The Council (www.poderjudicial.es) is regulated by the Judiciary Act 6/1985.
34. AEVAL's remit is similar to that of the Australian Productivity Commission, which has played, and continues to play, a significant role in the promotion of Australian regulatory reforms.
35. The Agency is one of the government bodies created by Central Government Agencies Act 2006 (Law 28/2006). See: www.aeval.es/en/index.html (last accessed 21 October 2009).
36. The tasks of AEVAL are set out in its Statute approved by Royal Decree 1418/2006.
37. See: www.consejo-estado.es.
38. Further to ruling 304/1992 of the Constitutional Court, the Council of State can address its opinion only about national legislation and about regional legislation, if no equivalent institution exists in the relevant AC. In all ACs but Cantabria there is an advisory council or commission. ACs can therefore ask the Council for an opinion, but this occurs seldom.
39. See: Art.s Art. 21 and 22 thereof.
40. See: Art. 131.2 SC. Its website is: www.ces.es.
41. The areas covered range from labour, taxation, labour relations, employment and social security, social affairs, to agriculture and fisheries; education and culture; health and consumption; the environment; transport and communications; industry and energy; housing; regional development; the single European market, and co-operation for development.
42. The Spanish ESC consists of 61 members, appointed by the government. Besides its President, a First Group of twenty members is designated by the most representative trade unions, in proportion to their membership (Art.s 6.2 and 7.1 of Organic Law 11/1985). The Second Group, also of twenty members, is designated by the most representative employers' organisations, in proportion to their membership (6th additional provision of Law 8/1980, in the revised wording given by Law 32/1984). The Third Group also comprises twenty

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

43. For further details on the institutional setting related to e-Government in the Spanish government, see: Annex A.
44. The 14 persons in charge of implementing the policy are: the President, the Vice-President, the Secretary, as well as 2 General Directors (Instruction Division; Resources and Services Division) and 9 Directors (President's Cabinet, International Bureau, Legal Department, Administration, Operator Regulation Bureau, Economic and Markets Analysis Bureau, Technical Bureau, Studies, Statistics and Documentary Resources Bureau and Information Systems Bureau).
45. See: www.inap.map.es.
46. As well as officials from Latin American countries.
47. They are distributed as follows:
 - Public Employees belonging to the A1 Public Administration Sub-group: 75;
 - Public Employees in management and administrative support tasks: 25;
 - Local Administration officials: 355; and
 - Officials in training period who take part in selective courses: 166.